KING'S BENCH FOR SASKATCHEWAN

Date: 2023 01 25
Docket: QBG-MJ-00019-2022
Judicial Centre: Moose Jaw

BETWEEN:

JERRY BARON KAISER

APPLICANT

\- and -

THE RURAL MUNICIPALITY OF BAILDON NO. 131

RESPONDENT

Counsel:

Milad Alishahi and Shawna L. Sparrow — for the applicant
Lauren J. Wihak and Jenna Sambrook — for the respondent

JUDGMENT — MEGAW J.
JANUARY 25, 2023

INTRODUCTION

[1] The applicant, Jerry Kaiser, applies for an order setting aside certain resolutions passed by the council for the respondent, Rural Municipality of Baildon No. 131 [R.M.]. The challenged resolutions are:

- Resolution 262/21 – Requiring the applicant to make a public apology;

- Resolution 263/21 – Requiring the applicant to be removed from all committees;
- Resolution 264/21 – Restricting the applicant's access to R.M. property and interaction with R.M. personnel;
- Resolution 302/21 – Suspending the applicant from his council position until the apology sanctions are completed.

[2] The first three resolutions were passed by the R.M. council on October 14, 2021 and the last one was passed on November 18, 2021. Mr. Kaiser has been suspended from participating on council since the last resolution was implemented.

[3] The applicant argues that the suspension resolution is illegal and beyond the scope of the jurisdiction of council. He argues further that he was not provided with a fair hearing prior to this resolution being put in place. With respect to the apology resolution, he argues this is an illegal infringement of his freedom of speech pursuant to the *Canadian Charter of Rights and Freedoms* [*Charter*].

[4] The applicant challenges the sanctions resolutions on the grounds he was not accorded procedural fairness prior to their implementation. He also asserts the resolutions are affected by a reasonable apprehension of bias. For these reasons as well he seeks to have the resolutions set aside.

[5] Finally, the applicant asserts the Public Conduct Policy is in conflict with *The Local Authority Freedom of Information and Protection of Privacy Act*, SS 1990-91, c L-27.1 [*LAFOIP*] and it is *ultra vires The Municipalities Act*, SS 2005, c M-36.1 [*Act*].

[6] The R.M. responds to the challenges by defending its actions in passing the resolutions. It further takes the position that it was left in the position of having to do something to attempt to control the actions of Mr. Kaiser which were detrimentally affecting both council and the R.M. personnel generally.

[7] I have determined that the suspension resolution must be set aside as the council does not have the legislative authority to impose the sanction which was imposed. I have further determined that Mr. Kaiser was not provided with procedural fairness prior to the suspension resolution being imposed. As a result of those determinations, I determine it is unnecessary to consider the arguments raised by Mr. Kaiser with respect to the assertion of his *Charter* rights.

[8] I determine the council did not accord the applicant procedural fairness with respect to the suspension resolution. However, I dismiss the assertion that the applicant was not provided with procedural fairness or there was an apprehension of bias with respect to the remaining resolutions.

[9] Finally, I determine the Public Conduct Policy is neither in conflict with *LAFOIP* nor is it *ultra vires* the *Act*.

[10] As a result of all of the foregoing, I determine the applicant is entitled to an order for costs but neither at the level of solicitor/client costs nor enhanced costs. Rather the costs are at a set amount.

[11] My reasons follow.

BACKGROUND

[12] Mr. Kaiser resides in the R.M. He was elected as a councillor for the R.M. for a four year term commencing November 10, 2020. Mr. Kaiser, both in his capacity as a resident of the R.M. and in his capacity as a councillor, has engaged in actions and behaviour involving the R.M. which he thinks are both part of his rights as an engaged citizen and part of the heavy hitting that he thinks comes with the democratic electoral system.

[13] Those actions and behaviours of Mr. Kaiser have proven difficult for the R.M. and for its employees. They have required employees to invest a considerable amount of time in various information requests of Mr. Kaiser. As well, they have been costly to the R.M. through legal fees incurred to confront what Mr. Kaiser has sought. They have also, apparently, taken their toll on the emotional condition of those individuals responsible for the operation of the R.M. It is asserted by the R.M. that the fallout from those actions has not been easy for either the individuals who work for the R.M. or those who have been elected to council of the R.M.

[14] There is no dispute on this application that Mr. Kaiser's actions have proven to be difficult for the R.M. to deal with and he has been exceedingly confrontational with R.M. personnel and demanding of R.M. resources. There has been no effort from his side in these proceedings to attempt to justify his behaviour or his actions. As indicated, he holds the view it is his right to do as he does and the effect those actions have on others appears not to be any of his concern. Indeed, there is no indication in the current materials that Mr. Kaiser, in any way, regrets his various behaviours or actions in this regard.

[15] In view of this lack of dispute on the materials filed, it may fairly be observed that as a result of the difficult behaviours and actions of the applicant, matters reached a peak in the early spring of 2021 when a report was tabled before council listing the various actions of Mr. Kaiser and the legal costs which the R.M. had incurred in attempting to deal with this behaviour. This step by council then resulted in Mr. Kaiser laying a complaint against the R.M. Reeve and other council members, alleging a contravention of the Code of Ethics Bylaw No. 03-2021 [*Code of Ethics Bylaw*] for the R.M. In turn, this action by Mr. Kaiser caused the Reeve, the Administrator, the Assistant Administrator, and the former Reeve to file an ethics complaint against Mr. Kaiser asserting he had breached the *Code of Ethics Bylaw* and the Harassment Policy of the R.M.

[16] Upon receipt of the competing complaints, the council determined to have both referred to an independent investigator to have an investigation and report completed separate from the council and Mr. Kaiser. It appears council recognized the conflict position it was in and accordingly this third party was engaged. The investigator appointed was Ms. Leslie Belloc-Pinder, K.C. Following her investigation into the various matters, she provided a detailed report to the parties. The report is dated August 10, 2021. That investigation report concluded that Mr. Kaiser's Code of Ethics complaint was not well-founded. The report further concluded that the Code of Ethics complaint laid by these R.M. individuals and employees against Mr. Kaiser, and who remain connected to the R.M., were well-founded. Ms. Belloc-Pinder therefore concluded that Mr. Kaiser had breached the *Code of Ethics Bylaw* and the Harassment Policy as a result of his actions as against these various individuals.

[17] The investigation report's findings and conclusions in this regard provide a complete explanation of the situation. I quote extensively from Ms. Belloc-Pinder's

report as it provides context to the nature of the complaints and the situation of the R.M. *vis-à vis* the applicant:

> <u>Harassment Policy Complaints</u>
>
> [49] The analysis above includes descriptions of incidents, letters, behavior, and conversations which have occurred over several years. There is a clear pattern in Kaiser's interactions with the complainants, and the evidence establishes that every complainant has been subjected to personal harassment by Kaiser. I have considered the subjective experiences of each complainant and Kaiser's own knowledge of how his behavior is being perceived. While each incident, inquiry or communication viewed individually may not be egregious, the collective weight of Kaiser's repeated behavior has produced harm for each of the complainants. They described, to varying degrees, psychological, emotional, and even physical distress due to Kaiser's actions. Bellefeuille and Breitkreuz felt intimated and threatened by Kaiser, and oppressed by his repeated inquiries and demands for information. Anthony and Loos were insulted and offended by correspondence and publications.
>
> [50] I have also applied an objective analysis to the evidence by considering Kaiser's behavior directed toward the complainants from the point of view of a reasonable third-party observer. Using that lens, I have no hesitation in concluding that a reasonable person would find the tone, nature and content of Kaiser' communication with the complainants improper, insulting, and offensive. Further, I find a reasonable person considering the context and surrounding circumstances from which the complaints spring, including Kaiser's strong belief in exercising his *Charter* rights and freedoms, would view his behavior as objectionable, unreasonable, unnecessary, and harassing.
>
> [51] That said, not every encounter the complainants identified in their complaints can result in a finding that the Policy has been breached. This is because the RM's Harassment Policy deals only with behavior which emanates from and relates to the workplace and, consequently, to people who work in the RM administrative offices and populate the RM council. For this reason, it is only Kaiser's behavior since he became an elected representative on the RM council which is relevant to my consideration of whether there is sufficient evidence to find he has breached the Policy. Further, I must consider only his behavior against RM staff and Reeve Anthony from his election onward because Kaiser was not a council member when he took the actions he did against Loos, and she is no longer the Reeve

nor a person in the workplace. Therefore, I cannot find the Harassment Policy applies to Loos' experiences with Kaiser as described in her complaint. But for this jurisdictional constraint, I would have found her complaints substantiated.

[52] Within this constraint and considering acts following the 2020 election onward, I find the evidence demonstrates, on a balance of probabilities:

- Kaiser displayed improper and offensive conduct, including objectionable acts, comments, or displays, including acts of intimidation or threats;

- Kaiser's behaviour was directed at each of the three complainants, at various times, since his election;

- The complainants were offended or harmed, including the feeling of being demeaned, belittled, personally humiliated or embarrassed, intimidated or threatened;

- Kaiser knew or reasonably ought to have known that such behaviour would cause offence or harm;

- A third party observer would view Kaiser's behaviour as improper and offensive, considering all the surrounding circumstances;

- The context surrounding and preceding Kaiser's behaviour exacerbates the harm experienced by the complainants;

- The behaviour occurred in and around the RM of Baildon workplace.

[52] The persistent and deliberate course of targeted conduct by a person who earnestly believes he is entitled to act as he does can still constitute harassment. Kaiser seems to genuinely believe that he is entitled to express his opinion as often as he wishes using whatever approach and terms he deems appropriate because he is a citizen in a democratic country, an elected official with a mandate to represent others, and an activist dedicated to fighting for his principles and challenging laws he views as illegitimate. However, regardless of the genuineness of Kaiser's beliefs which are amplified by his perceived *Charter* rights, such beliefs do not justify Kaiser persisting in a course of conduct which is harassing, oppressive, intimidating, and contrary to the RM's Workplace Harassment Policy.

> [54] The complaints of personal harassment against Kaiser by Bellefeuille, Breitkreuz, and Anthony are substantiated. The complaint of personal harassment against Kaiser by Loos is unsubstantiated due to the jurisdiction and scope of the Harassment Policy.
>
> Code of Ethics Bylaw
>
> [55] The totality of the evidence summarized above demonstrates that Kaiser has not met standards for behavior as an RM council member, especially regarding expectations for respectful conduct as set out in section 5(c) and leadership in section 5(f). Kaiser has engaged in harassment, used derogatory language, behaved discourteously, and failed to recognize the different roles others play in decision making within the municipality. Further, Kaiser does not consistently act in a matter [*sic*] which would build or inspire public trust nor would his objectionable behavior withstand close public scrutiny. The complaints against Kaiser that he has breached the Code of Ethics Bylaw are substantiated.
>
> [56] The evidence does not demonstrate that Anthony or any other council member failed to abide by the Code of Ethics Bylaw as alleged by Kaiser. As a result, Kaiser's complaint that Anthony, and all other council members, breached the Code of Ethics Bylaw in several ways is not substantiated.

[18] As a result of the conclusions reached by the investigator in that report, council advised Mr. Kaiser by letter dated September 15, 2021, that it was considering specific sanctions against him including: that he provide a written public apology; that he admit the contents of the investigation report were true; and that he be removed from all committees in the R.M. To that point in time Mr. Kaiser had been advising the council that he denied the findings made in the investigation report and planned to file an appeal of them. No such appeal was taken by him at that time and the applicant has not subsequently attempted to attack the conclusions reached by the investigator.

[19] The applicant did continue to verbally assert to council that he disputes the contents of the investigation report. However, there is nothing in the materials to suggest that he had taken any steps to actually dispute those contents, or to attempt to

set those conclusions aside. In the materials filed with the application presently before the court, there is no indication by the applicant that he takes issue with, much less dispute about, anything that is contained in that report.

[20] The summary of the sanctions which council intended to take against Mr. Kaiser were set forth in its correspondence. Those proposed sanctions were as follows:

> 1) Mr. Kaiser will be not be permitted on any RM property without an appointment arranged ahead of time for the remainder of his elected term. This restriction does not apply to regular or special RM of Baildon Council meetings.
>
> 2) If Mr. Kaiser does not show up for the scheduled arranged appointment time promptly, the appointment is considered cancelled and Mr. Kaiser may not enter the premises. The RM office will allow a 5 minute window around the arranged appointment time.
>
> 3) All legal correspondence is to be directed to the RM of Baildon's legal counsel.
>
> 4) This Level 3 response is effective immediately as of the date of this letter.
>
> 5) Written public apology to Council, Staff and Ratepayers for his wrongdoings in the report and to acknowledge the 3rd party Investigators report as true.
>
> 6) Remove from all committees in the RM of Baildon #131.
>
> (Affidavit of Jerry Kaiser sworn February 18, 2022, Exhibits H and I)

[21] Those proposed sanctions as set forth above were then passed by way of resolutions of council on October 14, 2021. Mr. Kaiser was advised of the intention of council to deal with the proposed sanctions at the October 14, 2021 meeting. Mr. Kaiser was present at that meeting. On October 26, 2021, Mr. Kaiser then received a letter from the R.M. setting out the resolutions that were implemented at the October 14, 2021 meeting which provided as follows:

Sanction #1

262/21 **McDonald:** Written public apology in the Moose Jaw Express, to the Ratepayers for his wrongdoings in the Investigation report and to acknowledge the 3rd party investigators report as true, by November 17, 2021.

And

Verbal apology to Council and Staff at the next meeting of Council on November 10, 2021. ...

Sanction #2

263/21 **Lewis:** Removal from all committees in the RM of Baildon #131, effective immediately. ...

Sanction #3

264/21 **Shortland:** That Council direct Administration to send a copy off [*sic*] all Sanctions imposed with the deadline attached to each.

Public Conduct Policy – Level III

For the remainder of Mr. Kaisers term in office

1) Mr. Kaiser will be not be permitted on any RM property without an appointment arranged ahead of time for the remainder of his elected term. This restriction does not apply to regular or special RM of Baildon Council meetings.

2) If Mr. Kaiser does not show up for the scheduled arranged appointment time promptly, the appointment is considered cancelled and Mr. Kaiser may not enter the premises. The RM office will allow a 5 minute window around the arranged appointment time.

3) All legal correspondence is to be directed to the RM of Baildon's legal counsel.

(Affidavit of Jerry Kaiser sworn February 18, 2022, Exhibit J)

[22] Then, on November 18, 2021, at a meeting of the R.M., Resolution 302/21 was passed which stated as follows:

> **302/21 Shortland:** That Councilor Kaiser is suspended from the R.M. of Baildon Council until all Sanctions have been met. Delivery of letter to be made in person by Security Collections Agency. Councillor Kaiser must return IPAD to the R.M. of Baildon by November 25, 2021, at 12 noon, and will be returned to Councillor Kaiser once Sanctions are lifted. …
>
> (Affidavit of Jerry Kaiser sworn February 18, 2022, Exhibit L)

[23] The record reflects that while a special meeting of council was set for November 18, 2021, its stated, or advertised purpose, was to allow the members of council to participate in a "municipal leaders roles and responsibilities webinar". While Mr. Kaiser appears to have been advised of this meeting and this purpose, there is no indication in the material that the specific item of the imposition of a sanction against him would be an agenda item to be discussed. Specifically there is no indication he was informed of the possibility of a suspension from council. It was at that meeting that Resolution 302/21 suspending Mr. Kaiser from the R.M. was put in place. Mr. Kaiser was not present at the meeting.

[24] The R.M. had in place the Public Conduct Policy [PCP] passed by way of Resolution 240/20 on October 14, 2020. The PCP sets forth expected behaviour from individuals involved with officials of the R.M. The PCP sets forth its objectives as follows:

> 27. The Public Conduct Policy's objective is to assist Baildon Administration in handling requests for information and services from ratepayers, while at the same time setting out Baildon's expectations with respect to the behaviour of those interaction with Baildon staff and Council:

> 1. Policy Objectives
>
> 1.1 The Rural Municipality of Baildon is committed to providing excellent customer service to all members of the public and to address service requests and complaints equitably, comprehensively, and in a timely manner, while promoting a respectful, tolerant and harassment-free workplace between the public, officers and employees of the Rural Municipality of Baildon, and Members of Council.
>
> 1.2 In order to achieve these objectives, this policy outlines expectations for appropriate behaviour by all individuals interacting with RM Staff, Members of Council, and other patrons and users of RM facilities and services. Under this policy, Unacceptable Behaviour may result in the application of restrictions against an individual or group of individuals. Any restrictions applied will be reasonable, consistent, and proportional to the Unacceptable Behaviour, and communicated in a manner that is clear and understandable to the individual(s) affected.

[25] Pursuant to the PCP, Mr. Kaiser was issued a level one response/warning which imposed certain restrictions on his ability to interact with the R.M. regarding requests for information for contact by telephone. The restriction imposed specifically did not apply to matters related to council business. Those restrictions upon him initially remained in place until February 3, 2021. In February 2021, the R.M. issued what is referred to in the PCP as a level 2 response notice extending the restrictions imposed on Mr. Kaiser until May 15, 2021.

[26] The applicant applies to quash the resolutions passed by council with respect to him. He asserts Resolution 302/21 suspending him is beyond the scope of power given to council pursuant to the *Act*. He further asserts Resolution 262/21 compelling him to provide apologies for his actions and acknowledge the accuracy of

the investigation report conclusions infringes on his *Charter* right to free speech and cannot be justified pursuant to s. 1 of the *Charter*.

[27] In addition, Mr. Kaiser argues that the R.M. breached its duty of providing procedural fairness to him by failing to provide to him an opportunity to be heard, by not providing sufficient reasons, and as a result of an apprehension of bias on the part of the R.M.

[28] Finally, Mr. Kaiser attacks the PCP on the basis that it is both in conflict with the freedom of information legislation, the *LAFOIP*, and is *ultra vires* the *Act*.

[29] Mr. Kaiser seeks either solicitor-client costs or enhanced costs as a result of the need to bring this application to set aside the various sanctions and to be reinstated to his position as an R.M. councillor.

[30] The R.M. seeks to uphold the resolutions which have been put in place. The respondent argues that the powers of the R.M. under the *Act* should be given a wide interpretation to allow the R.M. to effectively conduct its business. They specifically deny the apology resolution is an infringement on the applicant's right to freedom of speech.

[31] At its core, the R.M. submits that the actions and behaviours of the applicant have left it with no other options but to take the steps which were taken. Indeed, they state any apology does not even have to be sincere; they just want to cause Mr. Kaiser to have to apologize publicly and directly to the individuals involved. As well, they want him to have to publicly admit the nature and extent of his behaviour as found by the independent investigator. It might be concluded they want the applicant to take ownership of his behaviour.

DECISION

The law with respect to a rural municipality generally

[32] Mr. Kaiser applies to quash the four resolutions pursuant to s. 358 of the *Act*. That section provides as follows:

> **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.

[33] Pursuant to the *Act*, rural municipalities are required to put in place a Code of Ethics with application to all members of council as set forth at s. 93.1 of the *Act*:

> **Code of ethics**
>
> 93.1(1) A council shall, by bylaw, adopt a code of ethics that applies to all members of the council.
>
> (2) The code of ethics must define the standards and values that the council expects members of council to comply with in their dealings with each other, employees of the municipality and the public.
>
> (3) No member of council shall fail to comply with the municipality's code of ethics.
>
> (4) Compliance with the code of ethics does not relieve a member of council from complying with the other requirements of this Act.
>
> (5) The code of ethics adopted pursuant to subsection (1) must:
>
> (a) include the prescribed model code of ethics;
>
> (b) comply with any prescribed requirements regarding adoption, updating and public accessibility; and
>
> (c) set out the process for dealing with contraventions of the code of ethics.
>
> (6) In addition to the matters set out in subsection (5), the code of ethics may include:
>
> (a) codes of ethics for members of committees, controlled corporations and other bodies established by council who are not members of the council;
>
> (b) subject to the regulations, rules regarding the censure or suspension of a member of council who has contravened the code of ethics;
>
> (c) policies, rules and guidelines regarding a member of council accepting gifts or other benefits in connection with that member's holding of office; and

> (d) any other statements of ethics and standards determined to be appropriate by the council.
>
> (7) The Lieutenant Governor in Council may make regulations prescribing:
>
> (a) the model code of ethics;
>
> (b) the period within which a code of ethics must be adopted by the council, including prescribing different dates for different municipalities or classes of municipalities;
>
> (c) the form of a code of ethics adopted pursuant to this section and the manner of its adoption, updating and being made publicly accessible;
>
> (d) rules or limitations regarding the censure or suspension of a member of council who has contravened a code of ethics adopted pursuant to this section;
>
> (e) the public notice and public reporting required in relation to a code of ethics adopted pursuant to this section;
>
> (f) any other matter or thing that the Lieutenant Governor in Council considers necessary for the purposes of this section.

[34] The *Act* deals specifically with circumstances under which a member of council may be disqualified from serving in their elected position as follows:

> **Reasons for disqualification**
>
> 147(1) A member of council is disqualified from council if the member:
>
> (a) when nominated, was not eligible for nomination or election as a candidate pursuant to *The Local Government Election Act, 2015*;
>
> (b) ceases to be eligible for nomination or election or to hold office pursuant to *The Local Government Election Act, 2015* or any other Act;
>
> (c) is absent from all regular council meetings held during any period of 3 consecutive months during which at least 2 meetings of the council have been held, starting with the date

that the first meeting is missed, unless the absence is authorized by:

(i) a resolution of council; or

(ii) a leave of absence policy adopted by council;

(d) is convicted while in office:

(i) of an offence punishable by imprisonment for five years or more; or

(ii) of an offence pursuant to section 123, 124 or 125 of the *Criminal Code*;

(iii) subsection 114.1(2) of this Act; or

(iv) subsection 192(5) of this Act;

(e) contravenes:

(i) a bylaw passed pursuant to section 34 of *The Local Government Election Act, 2015*;

(ii) section 142 or 144 of this Act;

(iii) subsection 114.1(2) of this Act; or

(iv) subsection 192(5) of this Act;

(f) other than a member of the council of a rural municipality, resort village or municipality that has adopted a bylaw pursuant to clause 89(2)(a) or (b), ceases to reside in the municipality;

(g) in the case of a rural municipality or a municipality other than a rural municipality that has adopted a bylaw pursuant to clause 89(2)(b), ceases to reside in Saskatchewan and for three consecutive months does not reside in Saskatchewan;

(h) in the case of a rural municipality or a municipality other than a rural municipality that has adopted a bylaw pursuant to clause 89(2)(b), is convicted of making a false statement in the acceptance of his or her nomination as a candidate;

> (i) is determined to have made a false statement or declaration in the nomination paper filed in accordance with *The Local Government Election Act, 2015*; or
>
> (j) is removed from office by the Lieutenant Governor in Council or by the minister pursuant to section 399 or 402, as the case may be, unless the order directs that the person is not disqualified.
>
> (2) A member of council who is disqualified pursuant to this section is not eligible to be nominated or elected in an election in any municipality until the earlier of:
>
> (a) 12 years following the date of the disqualification; and
>
> (b) the date of any pardon obtained with respect to a disqualification pursuant to a conviction pursuant to clause (1)(d).

[35] The removal from office of a council member is set forth in ss. 399 and 402 of the *Act*. The authority to so remove resides in the Lieutenant Governor in Council.

[36] The *Act* provides to council a broad power to enact bylaws:

> **Guide to interpreting power to pass bylaws**
>
> 6(1) The power of a municipality to pass bylaws is to be interpreted broadly for the purposes of:
>
> (a) providing a broad authority to its council and respecting the council's right to govern the municipality in whatever manner the council considers appropriate, within the jurisdiction provided to the council by law; and
>
> (b) enhancing the council's ability to respond to present and future issues in the municipality.
>
> (2) Any specific power to pass bylaws provided for in this Act to be exercised by a municipality is intended to operate without limiting the generality of any general power that might otherwise be interpreted as including the specific power and without limiting the generality of subsection (1) and of section 8.

…

Jurisdiction to pass bylaws

8(1) A municipality has a general power to pass any bylaws for the purposes of the municipality that it considers expedient in relation to the following matters respecting the municipality:

(a) the peace, order and good government of the municipality;

(b) the safety, health and welfare of people and the protection of people and property;

(c) people, activities and things in, on or near a public place or place that is open to the public;

(d) nuisances, including property, activities or things that affect the amenity of a neighbourhood;

(e) transport and transportation systems, including carriers of persons or goods;

(f) subject to *The Traffic Safety Act*, the use of vehicles and the regulation of pedestrians;

(g) streets and roads, including temporary and permanent openings and closings;

(h) businesses, business activities and persons engaged in business;

(i) services provided by or on behalf of the municipality, including establishing fees for providing those services;

(j) public utilities;

(k) wild and domestic animals and activities in relation to them;

(l) the abandonment, discontinuance, dismantling, removal or decommissioning of any use, building, or other structure, including former railway lines, and the reclamation of the land on which the use, building or other structure is located.

[37] In reviewing an action of council in imposing a resolution or bylaw, the standard of review to apply is that of reasonableness. In this regard, I refer to the

comments of McCreary J. (as she then was) in *Maharaj v Rosetown (Town)*, 2020 SKQB 254, 94 Admin LR (6th) 127 [*Rosetown*]:

> [17] Reasonableness is the standard of review to be applied by a reviewing court when a challenge is brought under s. 358 of *The Municipalities Act*: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16 and 17, 441 DLR (4th) 1 [*Vavilov*].
>
> [18] In *Vavilov*, the Supreme Court eliminated two circumstances in which courts might previously have applied a correctness standard of review: where an administrative decision raised "a true question of jurisdiction", and where a "contextual inquiry" indicated that the legislature intended the correctness standard to be applied. Following *Vavilov*, a correctness standard only applies when: the legislature explicitly prescribes it; on statutory appeal; or, where the rule of law requires it, such as for constitutional questions, general questions of law of central importance to the legal system as a whole, and questions related to the jurisdictional boundaries between two or more tribunals. The majority of jurisdictional questions respecting the authority of the decision-maker to act are reviewable on a reasonableness standard.
>
> [19] I find that the standard of review for the whole of Mr. Maharaj's application under *The Municipalities Act* is reasonableness.

[38] Madam Justice McCreary's comments on the court's role in reviewing a rural municipality's actions are helpful with respect to the issues now before the court:

> [14] The court's role in reviewing the actions of municipal councils is limited. In *Kane v Lac Pelletier (Rural Municipality)*, 2009 SKQB 348, 342 Sask R 113, McIntyre J. described the role as follows:
>
>> 40 Municipal councillors are elected representatives of their community. They often have to weigh and balance competing interests in arriving at decisions which they believe to be in the public interest. Residents of the municipality may disagree with actions taken by their municipal council. Two of the forums in which residents can challenge decisions of their municipal council are the political arena and the courts. In the political arena, residents may make representations to council, hold public meetings and engage in activities of that sort. An option is to challenge decisions of council through the legal process which may take the form of an application to quash a bylaw or resolution pursuant to s. 358 of *The Municipalities Act*. However, such challenges are limited to the grounds

> identified in the section. It may be open to residents to challenge decisions of council through the court's inherent jurisdiction of judicial review. In *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 28, the Supreme Court of Canada has observed:
>
> > [28] ... Judicial review is the means by which the courts supervise those who exercise statutory powers, to ensure that they do not overstep their legal authority. <u>The function of judicial review is therefore to ensure the legality, the reasonableness and the fairness of the administrative process and its outcomes.</u>
>
> <u>The function of judicial review is not for the court to substitute its view on issues of fact or policy on questions which are in the purview of municipal councils.</u>
>
> [Emphasis added] (Emphasis in original)
>
> [15] The court is restricted from finding that a bylaw or resolution is unreasonable, if it was passed in good faith: *The Municipalities Act*, s. 360.
>
> [16] Finally, even if a bylaw or resolution violates *The Municipalities Act* or a municipality's bylaws, the court's decision to quash such a resolution is discretionary (*London (City) v RSJ Holdings Inc.*, 2007 SCC 29 at para 39, [2007] 2 SCR 588):
>
> > 39 The power to quash a by-law for illegality contained in s. 273(1) of the *Municipal Act, 2001* [SO 2001, c 25] is discretionary. Of course, in exercising its discretion, the court cannot act in an arbitrary manner. The discretion must be exercised judicially and in accordance with established principles of law. Hence, when there is a total absence of jurisdiction, a court acting judicially will quash the by-law. In other cases, a number of factors may inform the court's exercise of discretion including, the nature of the by-law in question, the seriousness of the illegality committed, its consequences, delay, and mootness. ...

[39] All of this leads to the conclusion that in reviewing the actions of the R.M. council, the court must be mindful that a rural municipality council is involved in the difficult balancing of weighing different interests and different expectations. As

indicated by Mr. Justice McIntyre in *Kane v Lac Pelletier (Rural Municipality)*, 2009 SKQB 348, 342 Sask R 113, it may be that individuals in the rural municipality will disagree with the actions taken by council, but council must still continue forth to act in the best interest of the rural municipality.

[40] Finally, the brief of the applicant focuses the court's attention on the R.M.'s council's obligation to act within the constraints of its governing legislation because it is a creature of statute. In *Catalyst Paper Corp. v North Cowichan (District)*, 2012 SCC 2, [2012] 1 SCR 5, the court stated:

> [10] It is a fundamental principle of the rule of law that state power must be exercised in accordance with the law. The corollary of this constitutionally protected principle is that superior courts may be called upon to review whether particular exercises of state power fall outside the law. We call this function "judicial review".
>
> [11] Municipalities do not have direct powers under the Constitution. They possess only those powers that provincial legislatures delegate to them. This means that they must act within the legislative constraints the province has imposed on them. If they do not, their decisions or bylaws may be set aside on judicial review.

[41] With that discussion of the law, I move to discuss the specific issues of this application.

The Suspension Resolution – Resolution 302/21

[42] The suspension resolution suspends Mr. Kaiser from his position as an R.M. councillor unless and until he completes those things required of him by council pursuant to the sanctions resolution. Those require of him to provide apologies and to provide an admission that the contents of the investigation report are true. His suspension will continue indefinitely until he complies with those requirements, pursuant to the terms of Resolution 302/21. Failing Mr. Kaiser taking the steps

mandated to him by council, the suspension resolution of council has effectively prohibited him from fulfilling his democratically elected role as a R.M. councillor. Council has thereby effectively prohibited him from exercising those functions which the electors have reposed on him.

[43] Mr. Kaiser has been determined by the investigation report to be in breach of the *Code of Ethics Bylaw*. Pursuant to s. 93.1(6)(b) of the *Act*, council is provided with the authority to "censor or suspend, a member of council for the contravention of the Code of Ethics". I set out that provision again for ease of reference:

> 93.1(6) In addition to the matters set out in subsection (5), the code of ethics may include:
>
> ...
>
> (b) subject to the regulations, rules regarding the censure or suspension of a member of council who has contravened the code of ethics;

[44] It is clear from both this legislative provision and the other cited sections that council is specifically not provided the authority to remove a councillor from office for breach of the Code of Ethics provision. Rather, as earlier cited, that authority is reserved to the Lieutenant in Council pursuant to the *Act*. While council does have the ability to impose sanctions, the ultimate sanction of removal is not provided to them in the legislation.

[45] With that review of the legislation, when interpreting specific legislative provisions speaking to censor or suspension, I must then look to the principles of statutory interpretation as set forth by the Court of Appeal. In this regard, I refer to the comments in *Holt v Saskatchewan Government Insurance*, 2018 SKCA 7:

C. Principles of statutory interpretation

[36] The issue before the trial judge was one of statutory interpretation. The trial judge quite properly began his examination of s. 123(4) from the purview of the legal principles established by the Supreme Court in *Rizzo Shoes* [[1998] 1 SCR 27], as adapted to this *Act* in *Ballantyne* [2015 SKCA 38, 457 Sask R 254]. This Court in *Ballantyne* summarized the interpretive approach at para 19 of its decision:

> [19] The leading case with respect to statutory interpretation is the Supreme Court of Canada's decision in *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 SCR 27. A number of principles set out in that case are applicable to the case at hand, namely:
>
> 1. The words of an *Act* are to be read in their context and in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, its objects, and the intention of the legislature (See: *Rizzo Shoes* at para. 87). (See also: *Saskatchewan Government Insurance v Speir*, 2009 SKCA 73 at para 20, 331 Sask R 250; and *Acton v Rural Municipality of Britannia, No. 502*, 2012 SKCA 127 at paras 16–17, [2013] 4 WWR 213 [*Acton*]).
> 2. The legislature does not intend to produce absurd consequences. An interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent or if it is incompatible with other provisions or with the object of the legislative enactment (See: *Rizzo Shoes* at para. 27).
> 3. Any statute characterized as conferring benefits must be interpreted in a broad and generous manner (See: *Rizzo Shoes* at para. 21). This principle is enshrined in s. 10 of *The Interpretation Act, 1995*, SS 1995, c. I-11.2 (See: *Acton* at paras. 16–18).
> 4. Any doubt arising from difficulties of language should be resolved in favour of the claimant (See: *Rizzo Shoes* at para. 36).

[37] As a matter of statutory interpretation, it is presumed that the ordinary meaning of the language employed in a statute was intended by the Legislature and, in the absence of a reason to reject it, the ordinary meaning must prevail. In divining the ordinary meaning,

> courts may consider such things as purpose, related provisions, drafting conventions, legislative presumptions and avoidance of absurdities: Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham, Ont: LexisNexis, 2014) at 28–29; and *Ballantyne* at para 20.

[46] This approach to interpretation is set forth in *The Legislation Act*, SS 2019, c L-10.2 which directs words in legislation are to be interpreted in their ordinary sense in accordance with the object and intention of the legislation:

> 2-10(1) The words of an Act and regulations authorized pursuant to an Act are to be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature.
>
> (2) Every Act and regulation is to be construed as being remedial and is to be given the fair, large and liberal interpretation that best ensures the attainment of its objects.

[47] In this case, the R.M. attempts to have the applicant suspended unless and until he takes the remedial steps they have outlined. If he does not do so, the only available result is that he will remain suspended indefinitely and therefore throughout his elected term. I conclude the power to suspend does not extend to a power to effectively permanently remove Mr. Kaiser from his elected office.

[48] A suspension is intended to be a temporary state of affairs. In *Black's Law Dictionary,* 11th ed at 11748, the word is defined as follows:

> Suspension. … **1.** The act of temporarily delaying, interrupting, or terminating something <suspension of business operations><suspension of a statute>. **2.** The state of such delay, interruption, or termination <corporate transfers were not allowed because of the suspension of business>. **3.** The temporary deprivation of a person's powers or privileges, esp. of office or profession; esp., a fairly stringent level of lawyer discipline that prohibits the lawyer from practicing law for a specified period, usu. from several months to several years <suspension of the bar license>. •Suspension may entail requiring the lawyer to pass a legal-ethics bar examination, or to take one or more ethics courses as continuing legal education,

> before being readmitted to active practice. **4.** The temporary withdrawal from employment, as distinguished from permanent severance <suspension from teaching without pay>. **5.** *Eccles.law*. An ecclesiastical censure hat can be temporary or permanent, and partial or complete. See DEPRIVATION. **6.** *Scots law*. The process of staying a judgment pending an appeal to the Supreme Court.

[49] The word suspension has further been consistently considered judicially to be a temporary action. In *Perrenoud v eHealth Ontario*, 2012 ONSC 6704, 33 CPC (7th) 60, the court applied the *Concise Oxford English Dictionary*, 11th ed, definition as follows:

> [66] For the meaning of suspend, I will simply refer to the Concise Oxford English Dictionary (11th ed.), which defines "suspend" as follows: "Suspend v. 1. Halt temporarily. 2 debar temporarily from a post, duties, etc. as a punishment 3. Defer or delay (an action, event, or judgment) …"

See also *Canada (Minister of Transport) v Beingessner*, [1996] FCJ No 787, 113 FTR 301 (QL) (Fed Ct).

[50] Reading the words in the legislation in their ordinary context and according to the scheme of the *Act*, I conclude the power of suspension is intended to allow for the imposition of a temporary sanction to allow council to both control its process and its proceedings. It is neither intended, nor available, to permit council to impose its will long term or usurp the democratic process for elected members.

[51] To determine otherwise would lead to an unreasonable consequence. While council may sanction an elected member, the legislation does not empower that body to ultimately determine eligibility to serve on council. To let council make that determination indirectly in the way done here, would lead therefore to an unreasonable result.

[52] The applicant is a duly elected member of council. What council is doing is removing him from the position to which he has been elected and to which office he is entitled to hold. Rural municipality council members are elected in a general election to hold office. The democratic will of citizens cannot be interfered with lightly and cannot be interfered with on the whim of any authority such as a council or any other elected body.

[53] This same sentiment has been expressed on those occasions where courts have been faced with a similar dilemma. In *McKenzie v Mikisew Cree First Nation*, 2020 FC 1184, 97 Admin LR (6^{th}) 236, a decision was made by the Mikisew Cree First Nation's Chief-in-Council as follows:

> [18] The Suspension BCR states, in part:
>
> > WHEREAS: The Mikisew Cree First Nation Chief and Council have been elected to represent and empowered to act on behalf of the constituents of the Mikisew Cree First Nation;
> >
> > WHEREAS: The Powers and Authorities of the Council are exercised as provided for under the Indian Act [RSC 1985, c I-5]; and
> >
> > WHEREAS: The liabilities of Council are limited to those specifically provided for under the Indian Act; and
> >
> > WHEREAS: This Council has met duly convened meeting on December 11, 2018; and
> >
> > WHEREAS: Rubi Shirley, Darren Mercredi, and Sherri McKenzie have engaged in conduct contrary to the MIKISEW CREE FIRST NATION CUSTOMARY ELECTION REGULATIONS: APPENDIX E ETHICAL GUIDELINES FOR CONDUCT OF COUNCIL by interfering in the day to day operations of Mikisew Cree First nation by purporting to terminate members of senior staff, by engaging in political activity designed to undermine other members of Chief and Council, by making false allegations with regard to other members of Chief and Council, by acting without authority to purport to call "Band General Meetings"

> for the express purpose of calling the governance of the Mikisew First Nations into disrepute;
>
> IT IS HEREBY RESOLVED:
>
> That Rubi Shirley, Darren Mercredi, and Sherri McKenzie are hereby suspended from Council of the Mikisew Cree First Nations until such time as they have acknowledged their unethical conduct and acknowledged the harm that they have caused to the Mikisew Cree First Nation, its members, and its Chief and Council through their prohibited behaviour, and apologised in writing for this conduct in the form attached to the Band Council Resolution;
>
> THEREFORE LET IT BE FURTHER RESOLVED:
>
> That the payment of salaries, honoraria, and expenses for Rubi Shirley, Darren Mercredi, and Sherri McKenzie are hereby suspended.
>
> THEREFORE LET IT FURTHER BE RESOLVED:
>
> That Jeff Rath will be retained to deal with any issues or claims resulting from any petition or suspension from Rubi Shirley, Darren Mercredi, and Sherri McKenzie or affiliated persons.
>
> The quorum for this First Nation consists of four (4) Council Members.

[54] In determining that the suspensions imposed there were effectively removing councillors from office, Strickland J. stated:

> [67] As I noted above, here the suspensions occurred 2 years ago. The Respondents argue that the suspensions would have been lifted when Applicants signed the letter of Acknowledgment of Unethical Conduct and Apology, or a negotiated version of it acceptable to the Respondents. However, the reality is that if the Applicants were not prepared to concede that the Chief and Council had the authority to suspend them in the manner that they did, to acknowledge or concede the alleged conduct attributed to them and, therefore, the validity of their suspension and consequent loss of income, then the suspension would not be lifted and could, and did, run until the end of their elected term. Thus, as in *Lafond* [2008 FC 726], while this is "couched as a suspension from office, and thus quantitatively different from a

> removal, what has actually occurred… is a removal of the applicant from his elected position" (*Lafond* at para 12). Justice Tremblay-Lamer concluded that the applicant in *Lafond* was removed from his elected office, not suspended, and I reach the same conclusion in this case. Thus, s 15 covers the field.
>
> [68] Nor do I agree that item 9 of Schedule B provides the Respondents with the authority to suspend the Applicants. The powers and authority listed in items 1 to 8 of Schedule B are the: approving and implementing policies concerning the management and administration of the MCFN affairs; responsibly managing the MCFN's assets; effecting by-laws; negotiating financial and other agreements with the Crown; effecting amendments to the Election Regulations, by-laws and other legislation; voting as a deemed proxy holder in specified circumstances; establishing committees and hiring staff, all within budget constraints. Item 9 is a catch all provision, stating "Other actions and decisions as deemed necessary from time to time for the proper governance of the Mikisew Cree First Nation". Thus, viewed in whole, it is apparent that Schedule B is concerned with the powers and authority of Chief and Council to manage the day-to-day operations and administration of the MCFN. In my view, while item 9 of Schedule B is broadly stated, viewed in this context, item 9 does not provide authority to suspend a councillor from office.
>
> [69] In sum, because s 15 of the Election Regulations provides the grounds and process for removing Chief or Councillors, and because an indefinite suspension such as the one imposed in this case in effect amounts to a removal, s 15 "covers the field" and ousts any inherent power of removal that may otherwise have been available to Chief and Council.

[55] Council for the applicant has also directed the court's attention to *Lafond v Muskeg Lake First Nation*, 2008 FC 726, 330 FTR 60. There, the Chief of the First Nation took steps to suspend a dully elected councillor from his duties as a councillor, the background in the decision states as follows:

> [6] In late 2007, Chief Ledoux began receiving complaints concerning Councillor Lafond's behaviour towards Band members and Band employees. In addition, other complaints were made to the Chief to the effect that Councillor Lafond was improperly and illegally using Band members' treaty numbers when selling cigarettes from a store which he owned.

> [7] In response to these complaints, Chief Ledoux removed the portfolio of Sports, Culture, and Recreation from the applicant in late 2007. On approximately October 26, 2007, the applicant received a letter from Chief Ledoux expressing his concerns regarding the applicant's behaviour and the welfare of the Band members and employees and warning the applicant that there would be consequences if the behaviour continued. Finally, by way of written notice dated January 8, 2008, Councillor Lafond had his duties as councillor suspended by Chief Ledoux. The Band Council was not involved in any of these actions.

[56] In determining that removal was not a power available to the Chief, the court stated as follows:

> [9] In order to determine the jurisdiction of the Federal Court in this matter, it is imperative to properly characterize the action taken by Chief Ledoux in regards to the applicant. In his submissions, the applicant characterizes the action as a removal from office, falling squarely within the four corners of the *Election Act* [*Act Respecting the Government Elections and Related Regulations of the Muskeg Lake Cree Nation*] which establishes explicit procedures to be followed in such a circumstance. On the other hand, the respondents characterize Chief Ledoux's act as a suspension which does not fall within the *Election Act*, and thus was carried out pursuant to his customary authority as Chief of the MLCN.
>
> [10] The respondents concede that some of the Chief's traditional powers and authority have been replaced by legislation enacted by the Band, and the provisions of the Indian Act, but that certain traditional powers and authority remain vested in the Chief such as assigning, moving, and removing portfolios from Band councillors. The Chief thus retains his customary powers and authority where Band legislation has not "covered the field". Indeed this was recognized by the Federal Court of Appeal in *Samson Indian Band v. Samson Indian Band (Election Appeal Board)*, 2006 FCA 249, [2006] F.C.J. No. 1051 (QL), at para. 39, where it held that "(. . .) evidence of prevailing election practice and custom may be relevant in resolving ambiguities or filling gaps in the Election Law".
>
> [11] I agree that the Chief does have inherent powers to encourage harmony in his community which are rooted in Band custom and that while some of these powers may be modified pursuant to Band legislation and the *Indian Act* [RSC 1985, c I-5] others remain intact and exercisable.

> [12] Nevertheless, I am of the view that while couched as a suspension from office, and thus qualitatively different from a removal, what has actually occurred in the present case is a removal of the applicant from his elected position.
>
> [13] · I note that the respondents cite *Black's Law Dictionary*, 8th Edition, which defines "suspension" as: "[t]he temporary deprivation of a person's powers or privileges, esp. of office or profession". The respondents argue that the Chief was "removing Councillor Lafond's powers and privileges in an emergent situation pending a hearing". However, no evidence was submitted to this effect, nor was there any evidence indicating that the suspension was for a limited period of time. Further, when probed at the hearing, counsel for the respondents conceded that no hearing was actually pending, nor was any type of appeal procedure envisioned. Thus, in essence, the applicant was stripped of all attributes of his elected position as Councillor for an indefinite period of time and without an avenue of recourse.
>
> [14] · For the foregoing reasons, I am of the opinion that the applicant was removed from his elected office and not suspended.

[57] In the result, I determine here that the indefinite suspension until Mr. Kaiser takes the remedial steps demanded by council, effectively amounts to a removal from office. Such a power is at odds with the legislation and effectively leads to council thwarting the democratic will of the citizens and thereby determining those who actually sit on council will do so provided they abide by council's directions. This is not a power which is entrusted to council pursuant to the legislation. Council is not entitled to usurp the powers vested in the Lieutenant Governor in Council pursuant to the *Act*.

[58] The suspension posed does not have an end date and is conditional upon events which may not occur depending upon the steps taken by Mr. Kaiser. It is my view that this action is not authorized by the *Act* and that only temporary suspensions for defined periods are permitted by the *Act*.

[59] I repeat that the democratic will of the public cannot be defeated by the administrative acts of the council, regardless of how well meaning they may be. To allow such defeat is to subject the democratic process to a decision taken by council, or the whims of those in power.

[60] I determine council acted without legislative jurisdiction in imposing the ongoing suspension and accordingly the suspension resolution is set aside pursuant to s. 358 of the *Act*.

[61] The R.M. points to the fact that there has been no application for judicial review to challenge the findings made in the investigation report. In this regard the R.M. submits that it has "tremendous leeway" pursuant to s. 93.1 of the *Act* to decide on the appropriate remedy. Further, it argues that the findings of the investigation report were final, and apparently for the council, that justifies the sanction imposed. However, the R.M. does not identify any specific power in the legislation to effectively remove a councillor from office pursuant to the powers envisioned by s. 93.1 of the *Act*.

[62] In effect, what the R.M. is arguing is that it was justified in imposing the suspension because of the extreme behaviour and actions of Mr. Kaiser. The frustration of council with these actions is evident in the steps it has taken to try to control his various behaviours as to express disapproval of those behaviours. As indicated, there is no suggestion in the material that Mr. Kaiser's behaviour or actions are sought to be justified. It is apparent that because of his behaviour and actions, council was at its wits end as to how to effectively deal with the various difficulties he presented. The R.M. is frustrated. Effectively the R.M. says "what else can we do?" in these egregious circumstances.

[63] There is no question but that Mr. Kaiser's behaviour has been both difficult and inappropriate. That has been established by the investigation report. His counsel, during argument on this matter, did not speak to justify that behaviour but rather solely sought to challenge the authority of the R.M. to take the actions which it did. The applicant's confrontational actions, his recurrent demands, his generally pugnacious behaviours have been very difficult for council and for those employed by the R.M. Clearly they are looking for a solution to remove the frustration, the impasse, and the emotional impact, of his actions.

[64] However, I determine that council's frustration with the circumstances cannot drive a finding of their authority to act beyond that mandated by the legislation. For all of the forgoing reasons, I determine that the sanction resolution suspending the applicant, Resolution 302/21, is beyond the jurisdiction of the R.M. pursuant to the *Act* and it is set aside.

Should the assertion of a breach of Mr. Kaiser's Charter rights be determined in light of Resolution 302/21 being set aside?

[65] Having determined that the suspension resolution cannot stand, it is not necessary for me to decide the issue of a breach of Mr. Kaiser's rights. With the suspension resolution gone, there is nothing compelling Mr. Kaiser to act in any certain way. Without any measure of compulsion, the apology resolutions and admission are little more than a request by council that the applicant act in a certain fashion.

[66] With the suspension resolution set aside, the parties should be the ones to determine how they intend to proceed with the issues before them. In the absence of a sanction for a failure to complete the apologies or admission, any court comment would be necessarily incomplete.

Did the R.M. breach its duty of fairness to Mr. Kaiser?

[67] The parties are agreed that the R.M. owed a duty of procedural fairness to the applicant. The extent of that procedural fairness has been commented upon in *Rosetown* by McCreary J.:

> [54] In sum, I find that because the decisions made by the Town respecting the Code of Ethics complaints are highly important to Mr. Maharaj and have the potential to affect his political career and community reputation, and because there is no mechanism to appeal the Town's decision (other than judicial review), the Town is required to employ a moderate degree of procedural fairness assessing the complaints at issue.
>
> **d. Reasons Were Required to Meet A Moderate Duty of Procedural Fairness**
>
> [55] Putting it simply, the four basic cornerstones of procedural fairness are: (1) the right to know what the accusations are; (2 and 3) the right to make representations and to have those representations heard – the *audi alteram partem* principle; and (4) the right to know the reasons for the decision.
>
> [56] In some cases, formal reasons for a decision are not required because the reasoning process that supports the decision is so clear and straightforward that the rationale for the decision is easily understood. In the recent decision of *Vavilov* the Supreme Court stated at para. 137:
>
>> 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* [2012 SCC 26, [2012] 1 SCR 5]; *Green* [2017 SCC 20, [2017] 1 S.C.R. 360]; *Trinity Western University* [2018 SCC 32, [2018] 2 S.C.R. 293]. 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* [[1999] 2 SCR 817], 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…
>
> [Emphasis added] (Emphasis in original)

> [57] The Saskatchewan Court of Appeal has similarly found that a motion made by a municipal council constituted sufficient reasons for its decision when the motion, itself, adequately describes council's reason for the decision, the motion was made pursuant to a statutorily defined process, and the motion was made following public debate: *Eagle's Nest Youth Ranch Inc. v Corman Park (Rural Municipality #344)*, 2016 SKCA 20 at paras 29-33, [2016] 7 WWR 35.

[68] I accept and adopt the above comments to the case before me. The council owed to Mr. Kaiser a moderate degree of procedural fairness. I determine the council complied with its duty with respect to the sanctions resolution. However, I determine council did not comply with its duty with respect to the suspension resolution.

[69] Here, while I accept that Mr. Kaiser was provided both with reasonable notice and the ability to make representations with respect to the original sanctions resolutions, he was seemingly provided with no notice of the fact that the suspension resolution was going to be discussed at the scheduled meeting. According to the record, he was advised there was a meeting but the agenda item indicated was not a suspension of him from council but rather a separate, and completely unrelated, topic.

[70] The record discloses that Mr. Kaiser was provided with notice that the sanctions resolutions were to be considered by council in advance of their appearance as agenda items. He had been provided with specific notice of the sanctions which council was seeking to impose.

[71] With respect to sufficiency of reasons, all parties had the investigation report in hand. That report had been obtained to deal specifically with the complaints laid. Mr. Kaiser had the report and was aware of its contents and conclusions. The sanctions resolutions were the outcome of that report.

[72] As a result of the foregoing, I conclude the council provided the necessary degree of procedural fairness to Mr. Kaiser with respect to the sanctions resolutions.

[73] Mr. Kaiser was not present at that meeting regarding suspension. There is nothing to take from his absence as there is nothing to indicate he either knew, or reasonably ought to have known, that his ultimate penalty, or any penalty for that matter, for his failure to abide by the earlier directions of council was going to be discussed at that meeting. Again, he was provided with no notice this was going to be a topic for discussion before the council.

[74] In these circumstances, I conclude that the council failed in its duty to be procedurally fair to Mr. Kaiser with respect to the suspension resolution. They failed to advise him that his suspension was going to be discussed. They failed to indicate to him that a topic for the upcoming meeting was him and any potential penalties which might be imposed. By failing to provide him with notice, he was denied the right to make representations to council and he was denied a hearing of any sort.

[75] The applicant further argues that he had a reasonable apprehension of bias in the council proceeding to deal with these matters as it did. The respondent has identified the test for reasonable apprehension of bias in a municipal setting as set forth in *Mushka v Candle Lake (Resort Village)*, 2003 SKQB 147, 233 Sask R 246:

> [56] Finally, the Mushkas argue that the resort village was biased and/or acted in bad faith in passing the resolutions. The duty of procedural fairness includes a duty to act in a manner that does not

give rise to a reasonable apprehension of bias (See: *Baker v Canada, supra* [[1999] 2 SCR 817]).

[57] The test for reasonable apprehension of bias approved by the Supreme Court of Canada was set out by Grandpré J. in Committee for Justice and *Liberty v. Canada (National Energy Board)*, [1978] 1 SCR 369 at 394:

> ...The apprehension of bias must be a reasonable one held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information... [T]hat test is "what would an informed person, viewing the matter realistically and practically -- and having thought the matter through -- conclude. Would he think that it is more likely than not that [the decision maker], whether consciously or unconsciously, would not decide fairly".

[58] The Saskatchewan Court of Appeal in *Harker v. Regina (City)* (1995), 128 Sask R 224 (CA) dealt with the issue of bias. At para. 14 of that decision, Justice Sherstobitoff, speaking for the Court, adopted the reasoning of Kerans, J.A. in *Aitkens et al. v. Calgary (City) et al.*, 1994 ABCA 385, 162 AR 97 at pages 9-10:

> This was the precise issue in the Old St. Boniface case. Rejecting the approach earlier taken by it in *Wiswell v. Metropolitan Corporation of Greater Winnipeg*, [1965] S.C.R. 512, the Supreme Court held that, where political and legislative duties are engaged, fairness requires only that the predisposition of the legislators not be so firm that submissions are futile because minds are utterly closed. That is quite different from a claim that fairness commands that minds must be utterly open.

[59] The evidence in this case discloses the mayor, Dale McLeod, was biased in making the decisions in issue. It is clear from his testimony that he did not approach the Mushkas' situation with an open mind. He made it quite clear that his mind was closed and that nothing the Mushkas could have said or done would have changed his mind. Such bias should have disqualified Mr. McLeod from participating in the decision. He was, however, only one member of the council for the resort village. He could not pass the resolutions in issue except as part of a quorum of that council. There was no evidence that any other member of the council was biased. Mr. McLeod's bias is insufficient to taint the whole council. (See: *Save Richmond Farmland Society v. Richmond (Township)* (1989), 36 B.C.L.R. (2d) 49, aff'd (1990), 52 B.C.L.R. (2d) 145 (S.C.C.))

[76] On the basis of the material before the court, I am unable to conclude there was a reasonable apprehension of bias on the part of the R.M. Rather, the R.M. took steps to deal with the difficult situation it had been presented with through the actions of Mr. Kaiser. They referred the matters for independent investigation by a third party investigator. That individual provided a complete report making certain findings regarding the complaints laid and providing comment on Mr. Kaiser's veracity. The council then determined to act on that report.

[77] I acknowledge the applicant's identification of this same factor to consider with respect to this issue as set forth in *Middlesex-London H.U. and Middlesex County v I.F. Propco*, 2018 ONSC 3229.

[78] The contents of that independent report were not challenged in any respect by Mr. Kaiser. At best, he indicated he intended to challenge those findings but took no steps to actually act on that. Having been provided an opportunity to have input into the factual determinations of the report and then being given an opportunity to discuss the potential sanctions, I am unable to determine there was a reasonable apprehension of bias here. Because an individual feels aggrieved by the actions of a body, it does not then necessarily mean they are biased or that there is a reasonable apprehension of bias.

[79] On the evidence as disclosed on the record, I am unable to conclude that the actions of council display anything which might be viewed through the lens of bias or apprehension of bias. While the council was intimately involved in the dealings with Mr. Kaiser, their comportment in this regard was such as to deal appropriately with the issues presented to them by the applicant's actions.

Is the PCP in conflict with LAFOIP?

[80] The final issue to consider is whether the PCP enacted by council is in conflict with the provisions of *LAFOIP*. I determine there is no such conflict.

[81] *LAFOIP* provides as follows:

> **Transfer of application**
>
> 11(1) Where the head of the local authority to which an application is made considers that another local authority or a government institution has a greater interest in the record, the head:
>
> (a) may, within 15 days after the application is made, transfer the application and, if necessary, the record to the other local authority or government institution; and
>
> (b) if a record is transferred pursuant to clause (a), shall give written notice of the transfer and the date of the transfer to the applicant.
>
> (2) For the purposes of this section, another local authority or a government institution has a greater interest in a record if:
>
> (a) the record was originally prepared in or for the other local authority or the government institution; or
>
> (b) the other local authority or the government institution was the first to obtain the record or a copy of the record.
>
> (3) For the purposes of section 7 and section 7 of *The Freedom of Information and Protection of Privacy Act*, an application that is transferred pursuant to subsection (1) is deemed to have been made to the local authority or the government institution on the day of the transfer.
>
> (4) Where the application is transferred to a government institution, *The Freedom of Information and Protection of Privacy Act*, and not this Act, applies to the application.

[82] The conflict asserted by the applicant between the PCP and *LAFOIP* is submitted to be contained in the requirements set forth in s. 22 of *LAFOIP*:

> **Confidentiality provisions in other enactments**
>
> 22(1) Where a provision of:
>
> (a) any other Act;
>
> (b) a regulation made pursuant to any other Act; or
>
> (c) a resolution or bylaw;
>
> that restricts or prohibits access by any person to a record or information in the possession or under the control of a local authority conflicts with this Act or the regulations made pursuant to it, the provisions of this Act and the regulations made pursuant to it shall prevail.

[83] Specifically, it is asserted that the PCP directly conflicts with s. 5 of *LAFOIP*:

> **Right of access**
>
> 5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a local authority.

[84] The PCP implemented by the council does not, however, prohibit Mr. Kaiser from obtaining such information as he may seek. Rather, it puts in place certain requirements for the protection of the R.M. personnel. I repeat that the policy provides:

> 1. Policy Objectives
>
> 1.1 The Rural Municipality of Baildon is committed to providing excellent customer service to all members of the public and to address service requests and complaints equitably, comprehensively, and in a timely manner, while promoting a respectful, tolerant and harassment-free workplace between the public, officers and employees of the Rural Municipality of Baildon, and Members of Council.
>
> 1.2 In order to achieve these objectives, this policy outlines expectations for appropriate

> behaviour by all individuals interacting with RM Staff, Members of Council, and other patrons and users of RM facilities and services. Under this policy, Unacceptable Behaviour may result in the application of restrictions against an individual or group of individuals. Any restrictions applied will be reasonable, consistent, and proportional to the Unacceptable Behaviour, and communicated in a manner that is clear and understandable to the individual(s) affected.

[85] The PCP provides specifically the following:

> 6.1.1 The following restrictions may be applied to an individual with respect to any level of response described in this Policy:
>
> (a) Prohibiting attendance or limiting activities, interactions, or access to RM Services at one or more specific RM Properties;
>
> (b) Limiting the number of complaints, inquiries or requests that the individual may submit to the RM, including in relation to matters that have already been addressed;
>
> (c) Limiting the number of responses that RM Staff shall provide with respect to further complaints or inquiries regarding one or more specific matters, including in relation to matters that have already been addressed;
>
> (d) Requiring any in-person interaction with RM Staff and/or RM Council to be in the presence of another member of RM Staff and/or RM Council, or other representatives of the RM;
>
> (e) Limiting correspondence to a particular format, time, or duration;
>
> (f) Closing any active complaints, inquiries or requests for RM Services;
>
> (g) Requiring correspondence to be directed only to specific RM Staff, RM Council, solicitors, or third parties.

[86] The PCP then ensures there is no restriction of the ability to obtain disclosure or make requests:

> 2.2.2. Nothing in this policy restricts or otherwise limits the ability or obligation of the RM to comply with any requirements established by municipal, provincial or federal legislation.

[87] The applicant cites *Rural Municipality of North Qu'Appelle No. 187 (Re)*, 2021 CanLII 52037 (Sask IPC) and *Village of Neudorf (Re)*, 2021 CanLII 114555 (Sask IPC) in support of his contention that the PCP is in conflict with *LAFOIP* legislation and therefore the former cannot stand. However, unlike those decisions, the situation here is not that there has been a prohibition on obtaining disclosure. Rather, there has been a structure put in place to deal with the difficulties apparently presented by Mr. Kaiser. There is no evidence that Mr. Kaiser either has been unable to obtain disclosure sought or will be unable to obtain disclosure sought, nor even that he has been actually impeded in his efforts in this regard.

[88] For these reasons, I dismiss the applicant's argument that the PCP is in conflict with *LAFOIP*.

[89] The applicant further argues that the PCP is *ultra vires* the R.M. because it is not explicitly authorized to enact a public policy resolution pursuant to the *Act*. I have earlier commented on the broad scope of the R.M.'s ability to enact bylaws. This broad scope is set forth in ss. 6 and 8 of the *Act* and the ability of council to act in the best interests of the R.M. The PCP is viewed to be an attempt to preserve the peace, order and good government of the R.M. It could also be seen to impact upon the safety, health and welfare of the people in the R.M. and the R.M. facilities and offices.

[90] The power of the R.M. in this regard is to be exercised broadly and the court should not be seen to unduly restrict that power. In the result, I determine the PCP is within the legislated authority of the R.M. pursuant to the *Act*.

Costs

[91] This then brings the court to the issue of costs. Mr. Kaiser has been successful in setting aside the suspension resolution. He has also been successful in his assertion that he was not provided with the necessary degree of procedural fairness required from the R.M. with respect to that suspension resolution. The R.M. was successful in resisting the attack on the PCP resolution and also in resisting that it acted with a reasonable apprehension of bias or failed to give the necessary degree of procedural fairness for the sanctions resolutions.

[92] The applicant seeks solicitor/client costs. Jackson J.A. sets forth the considerations to apply in this regard in *Siemens v Bawolin*, 2002 SKCA 84, 219 Sask R 282 [*Siemens*]:

> [118] These are the principles, relevant to this appeal, which I take from my review of the above authorities:
>
> > 1. solicitor and client costs are awarded in rare and exceptional cases only;
> >
> > 2. solicitor and client costs are awarded in cases where the conduct of the party against whom they are sought is described variously as scandalous, outrageous or reprehensible;
> >
> > 3. solicitor and client costs are not generally awarded as a reaction to the conduct giving rise to the litigation, but are intended to censure behaviour related to the litigation alone;
> >
> > 4. notwithstanding point 3, solicitor and client costs may be awarded in exceptional cases to provide the other party complete indemnification for costs reasonably incurred.
>
> [119] Turning back to the trial judge's reasons for awarding solicitor and client costs, these were her reasons:
>
> > [262] I have found that the defendant, Kaspar Bawolin, deceived Viola Siemens and misappropriated her property in

> breach of his fiduciary duty to her. The plaintiff, Viola Siemens, has been put to enormous cost to determine what became of her property. At the time of the contempt application in 1996 the plaintiff had already incurred over $50,000 in solicitor client costs, including disbursements. Clare Heagy's account alone will be in excess of $37,000. Justice to Viola Siemens requires indemnification for these costs, incurred entirely due to the dishonest and reprehensible conduct of the defendant, Kaspar Bawolin, in his breach of fiduciary duty to her. In addition, the trial of this action consumed almost four full weeks. Throughout the proceedings prior to the trial and at trial Kaspar Bawolin provided convoluted, confusing, inconsistent and dishonest evidence. This plaintiff shall have costs against Kaspar Bawolin on a solicitor and client basis.

> [120] Thus, the trial judge awarded solicitor and client costs on two primary bases:
>
> 1. to provide complete indemnification for costs reasonably incurred for a breach of fiduciary duty;
>
> 2. to punish Kaspar Bawolin for providing "convoluted, confusing, inconsistent and dishonest evidence" prior to and during the trial.

See also *Hope v Gourlay*, 2015 SKCA 27, 457 Sask R 43 and *Spoger Holdings Ltd. v Plains Midstream Canada ULC*, 2018 SKQB 233.

[93] I am unable to determine that this case is one of those rare and exceptional cases referred to by Jackson J.A. Rather, the R.M. acted on the information presented to it in an effort to deal with a difficult situation. Because their ultimate action has been determined to be ill-founded does not raise this situation to the rare and exceptional case. It is not that. Rather it is a dispute between parties on an issue that has arisen between them.

[94] The actions of the R.M. cannot be described as scandalous, outrageous or reprehensible. Rather, again, the material indicates that the R.M. was presented with a difficult situation and it was attempting to find a solution. In attempting to deal with

that situation there is nothing to suggest, in any way, that the R.M.'s behaviour was inappropriate.

[95] I note the comments of Jackson J.A. in *Siemens* that solicitor/client costs are not generally given as a result of the circumstances of the litigation. Rather, they are intended to provide a measure of censure for behaviour within the litigation itself. I am unable to find anything in this litigation, on the part of either party, that would require censure. Indeed, the actions of the parties, through their counsel, in advancing this litigation appears to been done quite smoothly and appropriately.

[96] As a result, I decline to award solicitor/client costs here. There is no basis shown for such an award.

[97] The next step is to determine whether the applicant is entitled to an award of enhanced costs. As identified by the applicant, those things to be considered in determining the issue of costs generally were identified by Danyliuk J. in *1348623 Alberta Ltd. v Choubal*, 2016 SKQB 200, 94 CPC (7th) 210 [*Choubal*]:

> [28] There is no "magic" rule to apply to determine costs. As stated in *Northland Material Handling Inc. v Parkland (County)*, 2012 ABQB 586 at para 26, 77 Alta LR (5th) 150: "Rather than one principle, the weight of the case law establishes that the facts and circumstances of each particular case must be assessed to determine whether a higher column or a multiple of a column is appropriate in that case". I agree.
>
> [29] Factors to be considered were also reviewed in the context of a complex judicial review application in *Lum v Alberta Dental Association and College*, 2015 ABQB 276. These included:
>
>> (a) Difficulty and complexity of the case. This included the number and difficulty of the issues; whether arguments were novel or raised settled law; and whether anything took the case into the realm of "out of the ordinary".

(b) Importance of the case to the parties and to the community at large.

(c) Whether the case was lengthy.

(d) Positions, relationships and conduct. This involves both the parties and their counsel. It involves the conduct leading up to the litigation, and conduct of the litigant and his or her counsel during the litigation.

[30] Our *Queen's Bench Rules* list some factors to consider in deciding what cost award to make. There is no corresponding list to determine which column of the tariff to use once that cost order is made. The tariff itself clearly imports complexity as the dominant consideration in selection of a column.

[31] Distilling the cases and considering the nature of our Rules and tariff, it strikes me that in determining on which column party-and-party costs ought to be awarded, the following factors should be considered:

(a) Complexity of the case. This would include several sub-considerations, such as the complexity and number of any issues of fact, law and evidence; the nature and number of witnesses and exhibits; whether novel or intricate points of law were raised; whether the case was markedly out of the ordinary; and the cooperation (or lack thereof) of counsel and/or the parties in streamlining the case. All of these bear on overall complexity, which the tariff itself highlights as the overarching consideration in determining the appropriate column.

(b) Importance of the case. Litigation is virtually always important to the parties involved. Consideration of that aspect of this criterion will seldom be overly helpful, much less determinative. However, consideration of the impact of the case to the community at large as well as the legal community will be of some importance. For example, a case may have important repercussions to policy and procedure within government or regulatory organizations. It may deal with how ordinary citizens may comport themselves within our society. As well, there may be importance to the matter in advancing the state of the law in a given area. The more such factors pertain, the more complex the case is.

(c) The duration and conduct of the proceedings. A trial may be long because it is complicated with many issues of fact and law, or it just may be long because there is substantial history to cover. Length alone cannot determine complexity, but in an age where judicial economy is assiduously pursued a long case may be indicative of complexity. As well, the manner in which the proceedings were conducted by counsel and/or the parties can complicate or simplify matters. Steps taken which shorten or lengthen (or simplify or complicate) the proceedings may affect complexity for the purpose of the application of the tariff.

(d) The urgency of the matter. This may not apply to trials but there are numerous complex applications which are also urgent. Injunctions, receiverships and bankruptcies, *Anton Piller* and *Mareva* orders – these are but a few of the types of cases where counsel must "drop everything" and devote an intense effort to putting together comprehensive material in what is usually an extremely tight time frame. In the appropriate case this could push a matter toward more complexity and even into Column 3.

(e) The amount at issue. This court has moved away from an assessment of the amount of the claim or award as determining which tariff column is used. Rather, complexity is now the measure. Nevertheless the amount involved may play a role in determining the overall complexity of a particular matter. There can be an interplay between the amount involved and the concept of proportionality, which is set out in the Foundational Rules.

(f) Whether experts were involved. Expert witnesses almost inevitably increase the preparation time of counsel, whether one is calling or responding to an expert witness. Again, merely because an expert witness testifies does not mean a case is complex but it is at least an indicator of some degree of complexity.

(g) Parity and expectations. While each case is different, the court should consider comparable awards and make the appropriate adjustments. This should have the effect of avoiding inconsistency amongst cost awards. Reasonable consistency will lead to litigants and their counsel being able to form reasonable expectations as to the potential cost consequences of litigation in a given range of circumstances.

(h) Access to justice. There is an inherent tension between a cost award which operates (in whole or in part) as an indemnity, and the objective of promoting access to justice.

> There is a balance to be struck, and achieving same will sometimes be difficult. If the effect of an established range of cost awards in a province is to discourage frivolous and baseless litigation, so be it. But if the effect is to prevent or deter reasonable and meritorious claims from being brought, that is something to be considered at a policy level.
>
> (i) Discretion and reasonableness. While an examination of the tariff award on the three available columns should be performed, overall it does not strike me as reviewable error that the judge awarding costs take a wide perspective of the proceedings and determine if the overall award is fair and reasonable in the circumstances.
>
> (j) Any other relevant matter. This list is not exhaustive. Factors can arise which cannot presently be anticipated. This last criterion recognizes the wide discretion this court enjoys as to costs.

[98] The case before the court here had certain complexities and was of some considerable importance to both the applicant and to the broader issue of ensuring democratically individuals are permitted to serve their terms subject to any legitimate restrictions. It was similarly of considerable impact to the R.M. as it attempted to control its process and ensure there were controls in place for what it considered, and what had been determined to be, inappropriate behaviour.

[99] While I have determined the R.M. should have adopted a different tact to handle that which was before it, it cannot be suggested that its actions were either in bad faith or driven by any concern other than the council's perception of the good governance of the R.M. As can be seen from the findings of the investigation report, the applicant had, by his own actions, made matters quite difficult for the council and for those employees working for the R.M. and, he was entirely unapologetic for his actions in this regard.

[100] This case was of importance to both parties. While the applicant has ultimately prevailed on the issue of suspension, it should not detract from the important issues for both parties involved in the litigation.

[101] The applicant refers to the necessity of awarding costs to both permit and encourage access to justice. On this basis, he submits an award of enhanced costs is appropriate.

[102] The R.M. here committed some missteps in its efforts to control the behaviour of the applicant. The record indicates that the R.M. was attempting to preserve and protect its proceedings and its personnel. While ultimately proven to have gone beyond that which is authorized by the legislation, the record does not allow for a conclusion their efforts were inappropriate or done for any wrong purpose.

[103] While access to justice is an important consideration, it alone cannot drive the decision of costs in this case. All of the applicable factors identified by Danyliuk J. in *Choubal* above must be considered in the mix.

[104] The parties here presented positions which were attempts to deal with the situation which presented itself. I am unable to determine one or the other should be entitled to a greater or enhanced award of costs as a result.

[105] As a result of the foregoing, I similarly decline to award enhanced costs on the unique circumstances of this case.

[106] Rather, I determine to exercise my discretion and award the applicant a fixed amount of costs recognizing he has achieved a measure of success on this application. He has not been entirely successful in all that he sought. The R.M. has achieved some success in resisting certain aspects of the application. I also must

recognize that the applicant's behaviour in these matters, causing the R.M. to take steps and have an investigation conducted, is not something that should be rewarded through this litigation.

[107] In all of the circumstances, I determine to exercise my discretion by awarding the applicant costs in the fixed amount of $1,500.00.

J.
M.T. MEGAW