

Court of Queen's Bench of Alberta

Citation: Rocky View (County) v Wright, 2021 ABQB 422

Date: 20210531
Docket: 2001 03559
Registry: Calgary

Between:

Rocky View County also known as Municipal District of Rocky View No. 44

Applicant

- and -

Samantha Wright

Respondent

**Reasons for Judgment
of the
Honourable Mr. Justice N.E. Devlin**

I. Overview

[1] The Municipal District of Rocky View's Council is not a happy family. For the second time in as many years, a quarrel over councillors' conduct has found its way to this Court. In this application, Rocky View (the "MD") asks the Court to exercise its powers under the *Municipal Government Act*, RSA 2000 c M-26 (the "*MGA*") to declare Councillor Samantha Wright disqualified from Council and her seat vacant.

[2] There are two separate bases for this application. First, Councillor Wright spoke and voted on a development application in which she is alleged to have had a direct pecuniary interest, contrary to section 174(1)(g) of the *MGA*. Second, she was indebted to the MD for property taxes for an extended period of time, rendering her ineligible to hold her elected office pursuant to section 174(1)(b) of the *MGA*.

[3] Councillor Wright resists the attempts to remove her. She contends that she had no financial interest in the development at issue and, alternatively, any interests she had were held in common with the members of the community she represents, and not ones that any informed person would perceive as likely to influence her stance on the issue. She says she acted with openness and due diligence before participating in the decision-making process and that, if she was wrong about not having a pecuniary interest, her mistake was an honest one, made in good faith and without benefit to her.

[4] Councillor Wright acknowledges that she is *prima facie* disqualified because the property taxes on her home were overdue. However, she says that she honestly believed her husband had paid those taxes, that she herself cleared the outstanding balance the day she learned of it, and that she has been the victim of a procedurally unfair political vendetta. Councillor Wright therefore asks the Court to exercise its discretion to allow her to remain in office.

II. Factual Background

[5] Councillor Wright was elected to represent Division 8 of Rocky View County, which comprises the Bearspaw neighborhood, in the 2017 municipal election. She and her husband live in the area, in a home they jointly own on Bearspaw Road.

A. The Development Application

[6] In January 2019, a rezoning application was brought before Council by the owner of a parcel of land adjoining Councillor Wright's property (the "January Hearing"). The application sought to change the designation of that parcel (the "Adjacent Property") from R2 to R1. It was brought in furtherance of a plan to subdivide the Adjacent Property and develop it into eight country residential lots (the "Development").

[7] The Adjacent Property is large. It adjoins twelve other multi-acres residences. In total, the development application was circulated to 94 landowners in the surrounding area (comprising just over 6% of the total households in Bearspaw), whom the MD identified as having a direct interest in the Development. This included Councillor Wright and her husband.

[8] Councillor Wright's husband wrote a letter expressing concern about the Development prior to her election in 2017. He made oral submissions in opposition to the rezoning at the January Hearing. These centered on the impact of the Development on stormwater management and the potential for enhanced flooding risk to the property he and Councillor Wright co-owned.

[9] Councillor Wright initially moved to briefly table the rezoning application so that further information could be provided. This motion was defeated. The rezoning was passed by Council at the January Hearing. Councillor Wright voted in favour of it.

[10] The Development came before Council again in September 2019, this time on an application for subdivision. This application was also approved. Councillor Wright again supported it. Both the rezoning application and subdivision request were endorsed by the MD's professional staff as appropriate and compliant with the MD's applicable planning instruments.

1. The Alleged Pecuniary Interest

[11] In its Notice of Application, the MD lays out the alleged pecuniary interest in the following terms:

As an adjacent property owner who is affected by the conceptual scheme, redesignation and subdivision of the Adjacent property, the Respondent has a pecuniary interest in those matters.

[12] The MD alleges that a property owner has a *de facto* pecuniary interest in changes to a property next door to their own. The MD specifically alleges that, if stormwater were to improperly drain onto her property from the Adjacent Property, Councillor Wright would suffer a loss, giving her a pecuniary interest in the Development.

[13] The existence of this alleged interest is derived from the fact that Councillor Wright's husband raised stormwater management concerns about the project at the January Hearing. The MD's reasoning runs thusly: Councillor Wright's husband was worried that the Development would result in stormwater flooding his property. He was so concerned that he made a presentation on the topic to Council. Floods cause property damage. Property damage requires money to fix. Councillor Wright is a joint owner of the property her husband was worried about. Therefore, she and her husband were concerned that the consequences of the Development could end up costing them money and thus she had a pecuniary interest within the meaning of the *MGA*.

[14] The MD does not allege that the Development would have any determinate impact on the market value of Councillor Wright's home, either positive or negative. In cross-examination, the CAO expressly disclaimed any knowledge or opinion that the Development could or would have such an impact.

[15] Councillor Wright responds that the stormwater management concerns were her husband's, and she did not share them, as illustrated by her having supported the Development in both votes. She testified in cross-examination that the engineer retained by the developers had allayed any concerns she might have had. She further submits that broader concern over the impact of the Development on the area around it constitutes a "common interest" of all the affected residents, bringing it within the exception in section 170(3)(i) of the *MGA*.

2. Steps taken by Councillor Wright before the January Hearing

[16] Councillor Wright knew that the Development concerned her neighbour's property. Her evidence is that she consulted broadly before the January Hearing as to whether she had a resulting conflict of interest. She spoke with some of her fellow councillors, the MD's lawyer at the time (Angie Keble), the Reeve, and the MD's Chief Administrative Officer (the "CAO"). She also spoke with staff from the Ministry of Municipal Affairs, who advised her that she could not abstain from the vote unless she had a pecuniary interest in the decision being made, and that failing to vote on the matter without declaring such an interest could result in her disqualification. Councillor Wright deposes that the MD's lawyer gave her the same advice.

[17] Councillor Wright also spoke with two other experts in municipal law who had previously presented workshops for councillors on identifying pecuniary interests. Consistent with their earlier advice, they told her that the mere fact that a matter before Council concerned a neighbour did not, in and of itself, give rise to a disqualifying pecuniary interest for the councillor who lived next door.

[18] Councillor Wright also provided evidence that her consultation and previous education highlighted the "common interest" exception to the general pecuniary interest rule in section 170(3)(i) the *MGA*, which permits councillors to take part in decisions where they have a pecuniary interest that is held in common with the portion of the community affected by the decision.

[19] Her evidence is that she understood that the decision as to whether she had a pecuniary interest was strictly her own. Councillor Wright has no direct financial stake in the Development. She stated that her only concern about its potential impact regarded stormwater outflow on lands further north, beyond her own property. Ultimately, she determined that the Development had no specific and different impacts on her property, that any interest she had was a "common interest", and that she was consequently under a strict legal obligation to vote on the matter.

3. The January Hearing and subsequent events

[20] At the outset of the January Hearing, two public participants associated with the applicants raised the issue of whether Councillor Wright had a conflict of interest given the proximity of her home to the Development. The Reeve responded by saying the following:

Reeve Boelke: I will tell you that both of the issues that you talked about were discussed before the hearing started and the decision of no bias was there.

Mr. Neustaeder: On both items, on both people?

Reeve Boelke: You bet.

[21] Counsel for the MD argues that this awkward utterance should be interpreted as meaning that Councillor Wright herself had determined that she did not have a conflict of interest. Respectfully, I find otherwise. A member of public present at the January Hearing would have been left with the impression that the Reeve participated in discussions about whether Councillor Wright had a disqualifying pecuniary interest and shared in the conclusion that she did not.

[22] No other member of Council, and no member of the MD's professional staff present at the January Hearing, raised any concerns about Councillor Wright's participation.

[23] Councillor Wright gave a brief statement outlining her understanding of the issue, stating that she could not see how she was financially interested in the Development, and concluding that she had no pecuniary interest.

[24] No complaint or concern was raised by any member of the public about Councillor Wright's participation in the development decisions after the January Hearing. No one raised any concerns about Councillor Wright's participation at the September meeting, or thereafter.

[25] The matter lay dormant until January 2020.

4. One Year Later

[26] A full year after Councillor Wright's declaration that she had no pecuniary interest in the Development, the matter was resurrected. On January 6, 2020, the Reeve and Deputy Reeve met with Councillor Wright and told her that Council would be considering a motion to declare her disqualified for having voted on the Development.

[27] By that time, Councillor Wright and two of her colleagues were embroiled in a highly contentious dispute with the CAO and the rest of Council concerning the CAO hiring process. This had resulted in Council and the CAO imposing sanctions in May and June of 2019 upon Councillor Wright and the other two councillors with whom she shared common cause on the issue. Those sanctions included barring Councillor Wright from travel on behalf of the MD, removing her from all Council committees and bodies to which the Council appoints members, and decreasing her compensation by 30%.

[28] Councillor Wright and her two colleagues sought judicial review of those measures and their application was heard before Justice Eamon of this Court on January 22, 2020. That review resulted in the sanctions being set aside for lack of procedural fairness, with this Court describing facets of Council's actions towards Councillor Wright and her colleagues as harsh and unreasonable: *Kissel v Rocky View (County)*, 2020 ABQB 406.

[29] On January 14, 2020, Council brought forward the notice of motion to declare Councillor Wright disqualified from office for having voted on the Development. Despite Councillor Wright providing a detailed response, drafted by her solicitors, raising serious factual and legal issues, the record reflects no meaningful public debate of any sort on the motion to disqualify her. The motion passed the same day, with only the other two councillors involved in the pending judicial review opposing it.

[30] The CAO states that, at some point, he had obtained a legal opinion stating that Councillor Wright had had a pecuniary interest in the votes regarding the Development. He provided this opinion to the Reeve, but never to Councillor Wright. It is unclear when that opinion was sought or given. In undertakings, the CAO advised that the opinion had been discussed by the Reeve during an *in-camera* portion of the January 14, 2020 meeting, but that he could not recall if councillors were given a copy of it.

[31] The CAO could provide no explanation for why Council waited a year to impeach Councillor Wright in respect of the January 2019 vote.

B. Unpaid Property Taxes

[32] On January 20, 2020, one week after the vote on the conflict of interest issue, and 48-hours before this Court was to hear Councillor Wright's judicial review application, the Reeve called a special meeting (the "Special Meeting"). At the Special Meeting, and without advance notice, he presented a package to all Council members showing that the property taxes on the home co-owned by Councillor Wright and her husband had been in arrears since June 2018, with the balance owing, at that time, exceeding \$10,500. This was accompanied by a motion to declare Councillor Wright disqualified under section 174(1)(b) of the *MGA*, demand her immediate resignation, and empower the MD to seek her judicial removal if she did not resign.

[33] At the Special Meeting, Councillor Wright put forward a motion asking for a one-week adjournment to allow her to consult legal counsel and prepare an informed response. That motion was rejected without debate. The motion to disqualify Councillor Wright was passed. The vote again followed familiar lines, with only Councillor Wright's co-applicants on the pending judicial review opposing her removal. Only those two councillors spoke publicly on the motion, both highlighting the procedural unfairness of what was taking place.

[34] There is no dispute that the taxes on Councillor Wright's home went unpaid for 2018 and 2019 and were in arrears when the Special Meeting was called.

[35] Councillor Wright's evidence is that she honestly thought her taxes were paid and up to date. She states that payment of household bills has always been her husband's responsibility within their relationship and she believed he had taken care of them.

[36] The property has a history of late tax-payment, but Councillor Wright made sure that the taxes were current when she filed her nomination papers in 2017, as she understood this was a requirement for eligibility to run for office. She described her reaction to learning of the tax situation in January 2020 as follows:

On January 20, 2020, the Reeve called a Special Council Meeting. I was not given any advance notice of what the subject of this meeting would be. There was no information in the Reeve's email explaining the purpose of the meeting.

When the Special Council Meeting began, it was immediately moved in-camera. Once in-camera, all councillors received a package stating my property taxes were in arrears for two years and, because of that, I was disqualified as a councillor. I was blindsided and shocked, as I did not know my property taxes were in arrears for one year, let alone two. I stated that I would pay my taxes in full then and there. Reeve Boehlke responded by stating it was too late, and the paying the taxes at that time was not possible. I immediately asked for a brief recess to make a phone call, and left the room to call my husband.

I spoke with my husband and asked him why he had not paid our property taxes. He informed me that he already intended to pay the 2019 property taxes that week, and he had not paid them because last June he didn't have enough money in his account cover them. He further advised me that he was going to contact the County to ask what the outstanding amount was, as he could not locate any tax notifications. He seemed shocked at the fact that the 2018 property taxes had not been paid as well, and told me that it was his honest believe that his assistant had paid the 2018 property taxes on his behalf as they had come due. This turned out not to been the case.

[37] Councillor Wright's husband, Damon Maerz, filed an affidavit confirming this version of events. He explained his decision not to pay the 2019 taxes when they came due as a choice to stretch payables and manage cash flow. He explained that he did not tell his wife about this because she was already under a large amount of stress from of the conflict on Council, which had flared up around that time and resulted in her salary being reduced by 30%. He deposed that he did not want to increase her stress with this financial issue.

[38] In cross-examination, Mr. Maerz reiterated the reasons for having failed to pay the 2019 taxes, and insisted that his nonpayment of the 2018 taxes had been a mistake and oversight that he was not aware of until his wife called him from the Special Meeting. He also testified that only he had a key to their community mailbox because business and home expenses were his responsibility and he did not want his wife to be worried by them.

[39] Mr. Maerz confirmed that Councillor Wright had asked him to make sure the taxes were paid prior to filing her nomination papers in 2017 and that he had done so.

[40] When she was cross-examined on her affidavit, Councillor Wright stated that she had not checked with her husband as to whether the 2018 and 2019 taxes had been paid. She maintained that she did not know the taxes had gone unpaid and had not seen either of the 2018 or 2019 tax notices addressed to her, nor the overdue notices that followed.

[41] Those notices were in evidence and there is no dispute that they were correctly addressed. It appears to be in response to these facts that Mr. Maerz described being the person in the family with responsibility for collecting the mail.

III. Relevant Statutory Provisions

A. Municipal Government Act

[42] The rules on financial conflict of interest and the disqualification of elected councillors are found in Divisions 6, 7 and 8 of the *MGA*. A "pecuniary interest" for purposes of the *MGA* is

defined in section 170, which also sets out certain key exclusions and limits on the reach of this concept.

Pecuniary interest

170(1) Subject to subsection (3), a councillor has a pecuniary interest in a matter if

- (a) the matter could monetarily affect the councillor or an employer of the councillor, or
 - (b) the councillor knows or should know that the matter could monetarily affect the councillor's family.
- (2) For the purposes of subsection (1), a person is monetarily affected by a matter if the matter monetarily affects
- (a) the person directly,

[...]

- (3) A councillor does not have a pecuniary interest by reason only of any interest

[...]

- (i) of the councillor, an employer of the councillor or a member of the councillor's family that is held in common with the majority of electors of the municipality or, if the matter affects only part of the municipality, with the majority of electors in that part,
- (j) that is so remote or insignificant that it cannot reasonably be regarded as likely to influence the councillor,...

[Emphasis added]

[43] After defining what does and does not constitute a pecuniary interest, the *MGA* goes on to prohibit councillors from participating in decisions that could affect them financially. It does so by requiring that councillors disclose the general nature of any pecuniary interest they may have related to a matter prior to its discussion and mandating that they abstain from voting on any question related to it.

Disclosure of pecuniary interest

172(1) When a councillor has a pecuniary interest in a matter before the council, a council committee or any other body to which the councillor is appointed as a representative of the council, the councillor must, if present,

- (a) disclose the general nature of the pecuniary interest prior to any discussion of the matter,
- (b) abstain from voting on any question relating to the matter,
- (c) subject to subsection (3), abstain from any discussion of the matter, and
- (d) subject to subsections (2) and (3), leave the room in which the meeting is being held until discussion and voting on the matter are concluded.

[Emphasis added]

[44] The prohibition on councillors participating in any decision-making that impacts their personal financial interests is enforced in section 174(1)(g) of the *MGA*, which states that a councillor is disqualified from council if he or she contravenes the conflict of interest rules stated in section 172. Notably, s 174(1)(f) *requires* councillors to vote unless they are compelled to abstain for reasons enumerated in the *MGA*.

[45] Section 174(1)(b) also enumerates the continuing eligibility requirements for councillors to hold office. Relevant to this application, it provides that councillors are disqualified from their office if they cease to be eligible for nomination, pursuant to the terms of the *Local Authorities Election Act*, RSA 2000, c L-21 (“*LAEA*”).

Reasons for disqualification

174(1) A councillor is disqualified from council if

(a) when the councillor was nominated, the councillor was not eligible for nomination as a candidate under the *Local Authorities Election Act*;

(b) the councillor ceases to be eligible for nomination as a candidate under the *Local Authorities Election Act*;

[...]

(f) the councillor does not vote on a matter at a council meeting at which the councillor is present, unless the councillor is required or is permitted to abstain from voting under this or any other enactment;

(g) the councillor contravenes section 172;

[...]

[Emphasis added]

[46] Finally, section 175 requires that a councillor who falls afoul of section 174 resign immediately. If they do not, the Council can apply to the Court of Queen’s Bench for an order determining whether the person has ceased to be qualified to remain a councillor or an order declaring the person to be disqualified from council.

Resignation on disqualification

175(1) A councillor that is disqualified must resign immediately.

(2) If a councillor does not resign immediately,

(a) the council may apply to a judge of the Court of Queen’s Bench for

(i) an order determining whether the person was never qualified to be or has ceased to be qualified to remain a councillor, or

(ii) an order declaring the person to be disqualified from council,

(b) The councillor ceases to be eligible for nomination as a candidate under the *Local Authorities Election Act*;

[47] This Court is then provided with a series of discretionary remedial powers that it may exercise when a disqualification dispute comes before it.

Decision on disqualification application

176(1) After hearing an application under this Division and any evidence, either oral or by affidavit, that is required, the judge may

- (a) declare the person to be disqualified and a position on council to be vacant,
- (b) declare the person able to remain a councillor, or
- (c) dismiss the application.

[48] Section 177 provides a further discretion for the Court to excuse certain breaches of section 174 where it finds that the councillor has acted mistakenly, but in good faith.

Inadvertence or genuine error

177 A judge who hears an application under this Division and finds that the person is disqualified under section 174(1)(f), (h) or (i) may still dismiss the application if the judge is of the opinion that the disqualification arose inadvertently or by reason of a genuine error in judgment.

B. Local Authorities Election Act

[49] The *MGA* incorporates the criteria and requirements to run for office contained in the *LAEA* as continuing requirements for eligibility to hold office in section 174(1)(b). The *LAEA* provides as follows:

- 21(1) A person may be nominated as a candidate in any election under this Act if on nomination day the person
- a) is eligible to vote in that election,
 - b) has been a resident of the local jurisdiction and the ward... for the 6 consecutive months immediately preceding nomination day, and
 - c) is not otherwise ineligible or disqualified.

[50] Section 22(1) of the *LAEA* provides a list of circumstances in which a person is not eligible to be nominated as a candidate. Section 22(1)(c) and (d) are relevant to the issue of unpaid taxes and are relied upon by the MD in this application. These subsections provide that a person is ineligible to be nominated if they are indebted to the municipality.

22(1) A person is not eligible to be nominated as a candidate in any election under this Act if on nomination day

[...]

- (c) The person is indebted to the municipality of which the person is an elector for taxes in default exceeding \$50, excluding from that amount
 - (i) Any indebtedness for current taxes, and
 - (ii) Any indebtedness for arrears of taxes for which the person has entered into a consolidation agreement with the municipality, unless the

person is in default in the payment of any money due under the agreement;

- (d) The person is indebted to the local jurisdiction for which the election is to be held for any debt exceeding \$500 and in default of more than 90 days;

[Emphasis added]

[51] These provisions prohibit a person with virtually any indebtedness to their municipality from seeking elected office on its council. As incorporated into section 174(1)(b) of the *MGA*, they make timely payment of fines and taxes a continuing condition of eligibility to hold elected municipal office.

IV. Issues

[52] This application raises three issues:

- i. Did Councillor Wright have a pecuniary interest in the Development such that her votes on it result in her disqualification from Council?
- ii. If so, should this Court remove her from Council and declare her seat vacant or permit her to continue in her elected office until the next election?
- iii. Should this Court remove Councillor Wright from Council for her failure to pay her property taxes on time or declare that she is eligible to remain on Council?

V. Analysis

[53] I will address these three issues in sequence. The onus is on the applicant to establish on a balance of probabilities that the respondent councillor in fact had a pecuniary interest in the decision they are alleged to have improperly participated in: *Calkin v Dauphinee*, 2014 NSSC 452 at para 97 [*Calkin*].

[54] Councillor Wright concedes that her unpaid taxes result in her *prima facie* disqualification and the MD has nothing further to prove in this regard. Neither party bears a legal onus in respect of the Court's choice of remedy under section 176 of the *MGA*.

A. Pecuniary Interest

1. Principles

[55] Divisions 6, 7 and 8 of the *MGA* are integrity legislation. They exist to prevent elected municipal officials from acting in financial conflict of interest. Specifically, sections 172 and 174 are meant to stop elected officials from using their democratically-given authority to benefit themselves monetarily. It is in this context that the language of the sections must be understood: *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 26.

[56] The Alberta Court of Appeal in *McCaghren v Lindsay*, [1983] 42 AR 212 (CA) at para 16 defined the concept of a "pecuniary interest" in the context of the *MGA* as one sufficient to create a credible perception of conflict of interest:

One could then say that a pecuniary interest is a pecuniary interest of sufficient significance that there is a reasonable apprehension of bias. In short there is to be a readily recognizable pecuniary incentive to vote other than for planning reasons.

[Emphasis added]

[57] This interpretation, which is both binding and compelling, excludes interests that are too remote, too contingent, too minimal, or in any other way too uncertain to lead reasonable people to think that the councillor in question might be influenced to vote for reasons other than the proper discharge of their democratic representational duties: see *Re Wanamaker and Patterson*, (1973) 5 WWR 193 at 200-201 (Alta SCAD).

[58] The *MGA* itself now codifies this limitation on what constitutes a pecuniary interest, with section 170(3)(j) specifying that: “[a] councillor does not have a pecuniary interest by reason only of an interest...that is so remote or insignificant that it cannot reasonably be regarded as likely to influence the councillor”.

[59] In *Calkin*, the Nova Scotia Supreme Court interpreted near identical language in that province’s *Municipal Conflicts of Interest Act*, concluding at paragraph 55 that the legislation was intended to capture only:

...a pecuniary interest not held in common with electors, that is not so remote or insignificant as to require disclosure and abstinence from participation, arises when a reasonably well-formed person could conclude that it *is likely to*, as opposed to *might or could possibly*, influence the members exercise of his or her duty.

[Emphasis in original]

[60] The Ontario Divisional Court has also held that the scope of disqualifying pecuniary interests¹ should be narrowly construed. In *Madger v Ford*, 2013 ONSC 263 at para 43 [*Madger*], the unanimous Court concluded that:

...since a pecuniary interest results in a prohibition against participation in a public meeting which, if not obeyed, attracts a severe penalty, it is appropriate to strictly interpret the pecuniary interest threshold.

[61] A further reason to strictly construe pecuniary interests under the *MGA* flows from the particular predicament the wording of the *MGA* places councillors in when deciding whether to vote on a matter that touches upon their interests to a limited extent. Specifically, the *MGA* forbids councillors from voting on matters where they have a pecuniary interest, on pain of disqualification, but conversely *demands that they vote* on matters *unless* they have declared a pecuniary interest: s 183(1). Failing to vote also triggers *prima facie* disqualification and the risk of losing one’s seat: s 174(1)(f).

[62] The *MGA* appears to provide no option for councillors to abstain from votes either out of an abundance of caution in close cases or on the basis of conflicts of interest other than direct financial ones as defined in section 170(1) – such as a spouse having taken a public position on an issue.

¹ The Court in *Madger* was being asked to interpret and apply the Ontario *Municipal Conflict of Interest Act*, RSO 1990, c M-50, section 5(b) of which contains identical limitations on “pecuniary interests” as section 170(3)(j) of the *MGA*.

[63] It is unlikely that a Court would exercise its discretion under section 176 to remove a councillor for being circumspect where their potential pecuniary interest is somewhat vague or remote. Indeed, section 177 expressly provides for relief from disqualification where a councillor chooses not to vote “inadvertently or by reason of a genuine error in judgment.” Nevertheless, the “damned if you do, damned if you don’t” scheme created by the *MGA* warrants a more constrained interpretation of pecuniary interests. The *MGA* exists to facilitate effective local government. It should be read in a way that avoids putting councillors at risk of significant personal cost and distraction from their elected duties when deciding whether to vote on a matter that peripherally impacts them.

2. Application of these Principles

[64] I agree with the MD that a development approval for a neighbour’s home or land almost always brings the possibility of *some* impact on one’s own property. This is common sense: see for example *Fewer v Harbour Main-Chapel’s Cove-Lakeview*, 2007 NLTD 91 at para 43. However, that is not the standard for finding a disqualifying pecuniary interest under the *MGA*.

[65] The *MGA* does not disqualify a councillor if a matter impacts their non-monetary interests such as, for example, their environmental philosophy or a desire to reduce personal conflict with their spouse. To the contrary, the purpose, structure and language of the *MGA* all evidence a desire that elected councillors actively represent their constituents on all decisions, including, and perhaps especially, those that touch their areas most directly, up to the line where a clear and *material financial impact* on the councillor or her family comes into focus.

[66] That line is not crossed in this case. It is unclear on this record whether, to what extent, and in what manner the Development would affect Councillor Wright’s property value or home ownership costs. The MD’s professional planning staff had concluded that the Development was consistent with the MD’s plan for that region and met all the relevant standards. The CAO could not articulate any financial impact, positive or negative, on Councillor Wright’s property.

[67] More saliently, there is no reason to believe that the likelihood of the Development taking place was not already priced into the value of homes in the surrounding area, nor any reason to think its impact on the marketability or value of those adjacent properties would be significant or even measurable with any certainty. The Development is consistent with the publicly planned growth and evolution of the Bears paw community. This is neither a case where parkland is being altered to another, less desirable use, nor a case in which a derelict or contaminated property is being remediated. Some segment of the potential market for Councillor Wright’s home might prefer open land next door, even if it came with an enhanced risk of overland flooding. Others might prefer having more neighbours, in the form of high-end country-estate homes. There is simply no evidence what or how much the impact on her property value would be.

[68] Moreover, I find as a fact that any concerns she had about stormwater drainage impacts had been allayed by the consulting engineers and her reasonable reliance on the MD’s staff endorsement of the Development. As I read her evidence in cross-examination, she was satisfied that the storm water engineer had explained the meaning of the map that had precipitated her husband’s concern. The fact that the contentious map was labelled “Pre-development Catchment Areas” provides an indication why. I accept that she did not believe that the Development bore any special or different financial impact on her property than on the general surrounding community and that she had no pecuniary interest likely to impact her duties as a councillor.

[69] The applicant must present evidence as to how or why the matter before Council could benefit or harm the respondent's financial interests: *Fleet v Davies*, 2011 SKQB 159 at para 18. It has not done so. The MD's case fails as a matter of fact in this regard.

[70] As a neighbour, Councillor Wright was certainly interested in the Development to a unique extent. However, the financial dimension of that interest was too remote, speculative, and uncertain to be material. I find as a fact that, on this record, a reasonably informed member of the community would not have thought that Councillor Wright would likely be influenced in her vote by the Development's *financial* impacts on her and her family.

[71] Finally, I pause to note the irony that the MD is effectively left to argue that Councillor Wright was in conflict because its professional staff approved and advanced a development application that was defective and likely to harm surrounding properties. There is no evidence that this was the case, nor that Councillor Wright had any reason to believe that it was.

[72] Councillor Wright had no pecuniary interest in the Development within the meaning of the *MGA*. This facet of the MD's application to have Councillor Wright disqualified is dismissed pursuant to section 176(1)(c) of the *MGA*.

B. Removal for Pecuniary Conflict of Interest

[73] A finding that a councillor is disqualified by virtue of having voted on a matter in the face of a pecuniary interest does not result in their automatic removal from Council. Section 176(1)(b) of the *MGA* grants the Court discretion to declare that the councillor may remain in office, notwithstanding their breach of section 172: *Lac La Biche (County) v Bochkarev*, 2009 ABQB 400 at paras 17-30 [*Bochkarev*]. The parties fully argued how s 176(1) should be applied in this case. Therefore, it is appropriate for the Court to determine this issue in the event that I am mistaken in my decision on whether a pecuniary interest existed.

[74] This Court has identified five factors that inform the exercise of its discretion to remove a disqualified councillor or permit them to keep their seat: *Bochkarev* at para 39; *Stone v Crouse*, 2017 ABQB 833 at para 31 [*Crouse*]:

1. The obviousness of the conflict
2. The Councillor's subjective awareness of, and state of mind towards, the conflict.
3. Did other councillors raise the potential conflict of interest.
4. What procedures or policies existed to identify and address such pecuniary interests.
5. Does disqualification seem a harsh result.

[75] Applying these criteria, I conclude that Councillor Wright should be permitted to remain a councillor, even if she had a disqualifying pecuniary interest in the Development.

1. Obviousness of the conflict

[76] The first question is whether the conflict was "obvious". I find that an obvious question existed as to whether Councillor Wright had a disqualifying pecuniary interest, but that the answer to that question was far from obvious. She had no financial stake in the project. The CAO

was unable to articulate any basis on which to believe the Development would increase or decrease the value of Councillor Wright's home. She did not share her husband's concerns stormwater concerns and they appear to be a red herring in any event. No expert she consulted told her she had a clear-cut conflict of interest. And finally, this Court's own consideration of the question required an extensive interpretative exercise.

[77] For all these reasons, I find that the existence of a pecuniary interest, within the specific meaning of that term in the *MGA*, was far from obvious in this case. That militates against removing Councillor Wright from office.

2. Councillor Wright's subject state of mind towards the conflict

[78] I accept that Councillor Wright honestly concluded that she did not have a disqualifying pecuniary interest in the Development. The evidence shows that she consulted openly and extensively with the right people. She took all reasonable steps to inform her decision, short of funding a private legal opinion on the question. Her uncontradicted evidence is that none of these sources suggested that the circumstances presented an obvious pecuniary interest that precluded her from participating in the matter.

[79] At worst, Councillor Wright was honestly mistaken. This places her in a better position than the respondents in *Bochkarev* and on an equal footing with the respondent mayor in *Crouse*. Like Councillor Wright, Mayor Crouse had reviewed the *MGA* and taken advice on the nature of his interest. The Court found that he had acted mistakenly but in good faith, and that this weighed in favour of permitting him to remain in office: *Crouse* at paras 33-39. The same reasoning applies in this case.

3. Was the potential conflict raised by other councillors at the time?

[80] When the proponents of the Development raised the issue of whether Councillor Wright and another councillor had personal interests that should disqualify them at the January Hearing, the Reeve intervened to say the matter had been reviewed and they did not. No one else said anything to the contrary, and no one at all raised any concerns about Councillor Wright's participation in the September 2019 vote.

[81] I agree with Marceau J that this factor does not relieve the individual councillors of the onus to identify and prevent conflicts of interest: *Bochkarev* at para 46. However, it does suggest that other informed civic representatives did not think Councillor Wright was doing anything wrong: *Crouse* at para 35.

[82] Indeed, the timing and circumstances of the move to disqualify Councillor Wright suggest that it is not animated by a legitimate ethical concern about conflict of interest. The motion leading to this application came almost a year after the fact. In the intervening time, an internecine conflict had arisen between Councillor Wright and a majority of Council and the MD's administration. I have little trouble finding that the resurrection of this issue, and the motion to remove Councillor Wright, were driven by political hostility against her rather than by any genuine concern over the propriety of her votes on the Development.

[83] This conclusion does not bear on whether Councillor Wright's conduct ran afoul of her obligations under the *MGA*. It does, however, inform this Court's assessment of the severity of her breach by reference to her colleagues' state of mind about the issue. The MD's timing and conduct suggests that this application has more to do with removing a political adversary than upholding ethics in governance. This weighs against removing Councillor Wright.

4. Did the MD have procedures or policies in place to identify conflicts of interest?

[84] The MD had no process for identifying conflicts or assisting councillors with making the subtle assessments necessary to navigate their obligations under the *MGA*. This factor is more relevant in situations where the councillor's pecuniary interest is found in a complex series of contractual relationships or legislative cause-and-effect, as in *Bochkarev*. I find this factor to be of limited relevance in this case. Councillor Wright consulted with all the resources readily and reasonably available to her and the fact and results of that consultation are accounted for elsewhere in the analysis.

5. Is disqualification a harsh result?

[85] Integrity in government is essential to public confidence in the decisions our elected officials make about the communities we live in. The *MGA* quite properly guards against conflicts of interest and provides strong sanction – in the form of disqualification and removal – for ethical breaches. Nevertheless, I agree with the observation of this Court in *Bochkarev* at para 49 that removal of an elected representative is not a step to be taken lightly. While ethics should be jealously guarded, the democratic will and voice of voters should not be countermanded where the circumstances do not require it. That is the balance the court must strike in making a remedial choice under section 176(1).

[86] In this case, Councillor Wright approached the issue in good faith and with due diligence. Nothing was hidden from public view. Neither any of her fellow councillors nor the municipal administration voiced any concerns about her conduct. She has not profited in any way from the impugned decisions. At worst, Councillor Wright made an understandable mistake in judgment. On the other hand, the use of this pretense to remove her is transparently a function of a political feud on Rocky View's Council. These factors weigh against removing her.

6. Conclusion

[87] Even if Councillor Wright contravened the *MGA* by voting on the Development, I would not have ordered her removal from office, but rather exercised my discretion to declare her eligible to remain a councillor under section 176(1)(b) of the *MGA*.

C. Property Taxes

[88] Councillor Wright is the joint owner of a property in the MD. She has an independent, individual obligation to ensure that the taxes on that property are paid annually, on time. That did not happen. The taxes on her home for 2018 and 2019 went unpaid until January 2020, by which point they were substantially delinquent.

[89] Shortly before this hearing, Councillor Wright conceded that the overdue taxes on her home rendered her disqualified pursuant to section 174(1)(b) of the *MGA*. This issue was definitively settled by the recent decision of Leonard J in *Ryley (Village) v Lee*, 2021 ABQB 130 [*Lee*]. In *Lee*, the Court held at para 34 that remaining eligible for nomination is a continuing obligation of municipal officeholders, failing which they become disqualified:

The legislative scheme makes it clear that municipal councillors must remain eligible for nomination throughout their tenure. This ensures councillors are not in a conflict of interest with the municipality they are elected to serve.

[90] Municipal councillors must be current in their property tax obligations at the time they seek nomination for election and throughout their tenure. Councillor Wright failed in this obligation and is therefore disqualified. The question is whether this Court should confirm her disqualification and declare her seat vacant or exercise its discretion to permit her to serve the balance of her term, which expires with the municipal elections to be held in the fall of 2021.

[91] Section 177 of the MGA, which excuses inadvertence and errors in judgment in certain instances, does not apply to a failure to maintain one's election eligibility. As in *Lee*, however, the parties agree that this Court retains jurisdiction to permit Councillor Wright to remain on Council, notwithstanding her default.² It is also agreed that the choice of disposition in this case requires application of the principles animating the test articulated in *Bochkarev*.

[92] Modified to fit the context of indebtedness to the municipality, I find that this test calls for consideration of: (i) the nature and circumstances of the indebtedness; (ii) the councillor's state of knowledge and state of mind regarding the debt; (iii) the municipality's practices regarding debts of that nature; (iv) the handling of the issue by the council; and (v) whether removal from Council is an unduly harsh outcome in all the circumstances.

1. Nature and circumstances of the indebtedness

[93] Councillor Wright's property taxes on the home she jointly owns with her husband went unpaid for two fiscal cycles, with the 2018 taxes having been outstanding for over 18 months by the time they were paid. The indebtedness was large and prolonged. Timely payment of property taxes is a basic obligation of all residents, in particular elected officials. Councillor Wright failed in that obligation twice. These factors weigh in favour of removing her.

2. State of knowledge about the indebtedness

[94] Councillor Wright's evidence is that her husband is responsible for all household bills, including property taxes. She swore that she believed he had paid the property taxes on their behalf and that their account with the MD was current.

[95] While divisions of labour in domestic partnerships are both commonplace and understandable, Councillor Wright's personal arrangements with her husband in no way diminish her individual responsibility to pay taxes on the property as its co-owner. Where one delegates responsibility to pay taxes to someone else, the obligation is not fully discharged, but transforms into an obligation to reasonably check whether the delegate has done the job. If Councillor Wright had asked her husband if the taxes were paid, and been misled by false or negligent assurances, that would place the matter on a different footing.

² In *Bochkarev*, Marceau J describe this as an "equitable" jurisdiction. While nothing turns on it in this case, I respectfully disagree with this characterization. The power to permit a councillor to continue in office despite their disqualification is a statutory authority. It arose from the introduction of the third remedial option – that of declaring that the disqualified person is able to remain a councillor – to section 176(1) in the 1986 amendments to the *MGA: Municipal Government Amendment Act 1986*, s 32(3). There is no doubt that section 176(1) requires a finding of what is fair or, in common parlance "equitable", in the circumstances. This is not, however, an exercise of this Court's inherent equitable jurisdiction and does not import any of the requirements or constraints of equity.

[96] The evidence is that Councillor Wright asked her husband whether the taxes had been paid in 2017, when she was in the process of completing nomination papers that required her to swear a certification that she did not owe the municipality any money. She did not, however, repeat this inquiry annually after being elected. At a minimum, that is what section 174(1)(b) required of her. Councillor Wright was negligent about her tax obligations.

[97] Moreover, the evidence shows that the MD mailed out a total of four notices about the 2018 and 2019 taxes, addressed to Councillor Wright personally. Two of these were the ordinary assessment notices, each followed by an automated overdue notice. Councillor Wright denied ever having received these. She asks this Court to infer that, because her husband states that he holds the only key to their mailbox and wanted to shield her from financial stress, he kept these notices from her attention.

[98] After careful consideration of the affidavits, cross-examination transcripts, and all the surrounding evidence, I accept as a fact that Councillor Wright was genuinely surprised that her property taxes had gone unpaid. While I have some suspicions in this regard, the following factors persuade me to accept her evidence on balance of probabilities. First, neither she, nor her husband were significantly shaken, or shown to be untruthful, in their description of how the indebtedness arose and what she knew about it. Second, the 2019 tax bill would have been delivered shortly after Council voted to reduce Councillor Wright's salary by 30% as a sanction against her. This lends credence to Mr. Maerz's evidence that he had a heightened desire to shield his wife from the financial concerns that led him to put off paying their property tax. Third, the couple's discordant approaches to the Development application objectively confirms that they operate as two highly independent entities. Finally, Councillor Wright paid the outstanding tax amounts in full within hours of learning about the arrears, suggesting that she had no intention to avoid payment and was not concealing an inability to pay.

[99] It also does not make sense that Councillor Wright would consciously have allowed a situation to arise that made her vulnerable to automatic disqualification, given the highly contentious political climate that had developed on the Council. For these reasons, I find on balance of probabilities that Councillor Wright did not know her taxes were unpaid. Her lack of knowledge was a product of an honest, if negligent, reliance on her husband.

[100] Councillor Wright did not live up to the standard of due diligence expected of councillors. On the other hand, I find that she did not knowingly allow this state of affairs to arise and that her indebtedness consequently did not give rise to any actual conflict of interest between her and the MD.

[101] On these facts, I find some resonance with this Court's decision in *Primeau v Jensen*, 1998 ABQB 385, where a councillor was permitted to remain in office despite failing to file a required disclosure statement on time. The Court was led to this result in part by its characterization of the councillor's default, which it described in these terms, at para 43:

...the Respondent's conduct, although it amounted to a failure to exercise proper care and attention, was not intentional. It was conduct that could be fairly categorized as careless and irresponsible. I am, therefore, unable to say that the Respondent flouted the law. There was no evidence of corrupt intent or motive.

[102] The same can be said of this case. Therefore, I find that Councillor Wright's state of mind concerning her taxes is, at worst, a neutral factor.

3. Did the MD have any mechanism for identifying councillor indebtedness?

[103] At the time of these events, the MD had no mechanism to identify if councillors' taxes were at risk of slipping into disqualifying default. Municipalities have no responsibility to monitor, or issue reminders about, councillors' tax obligation. In this case, the MD repeatedly mailed tax notices to both Councillor Wright and Mr. Maerz. It bears no fault for their failure to pay. However, immediately in response to the present situation, the MD implemented an annual process to monitor councillor tax obligations. As the CAO testified, the MD now goes through "the records to ensure that all councillors are up-to-date on their tax records so we have no further surprises."

[104] I find that the MD's change in practice, which is prudent and in the public interest, carries with it an acknowledgement that councillors can make mistakes regarding their property taxes, with undesirable consequences flowing therefrom. This factor weighs slightly in favour of permitting Councillor Wright to remain in her position and diminishes any need to make an example of her.

4. Handling of the issue by Council

[105] The timing and conduct of the Special Meeting are striking. It was called, and held, less than 48-hours before this Court was to hear Councillor Wright's application for judicial review of the sanctions Council and the MD had imposed on her. It also came just six days after Council had voted to bring a judicial application to have her declared disqualified and removed for her alleged conflict of interest.

[106] The conduct of the Special Meeting fell below the expected standards of democratic due process. It was called on very short notice and without any advance warning to Councillor Wright about its nature or purpose. I accept her evidence that she was caught by surprise by the subject matter of the Special Meeting and find that this was intentional.

[107] At the meeting, Councillor Wright was given no opportunity to mount a response to an assault on her eligibility to serve on Council. Her request for a brief adjournment was reasonable. The MD was at no risk of prejudice if she had been given an opportunity to prepare and present a factual and legal response to the motion to declare her disqualified and demand her resignation. The denial of this request, without debate or justification, colours the entire enterprise.

[108] Counsel for the MD sought to explain the timing of the meeting by reference to the fact that its automated systems would have brought the tax debt to the attention of its administrators shortly prior to January 20. Indeed, on January 17, 2020, a personal letter was prepared by the Manager of Financial Services for the MD to Councillor Wright, notifying her that her taxes were two years in arrears and that a Tax Notification would be registered at Land Titles on April 1, 2020 if the balance were not cleared prior to March 11, 2020. This letter arrived at Councillor Wright's house on January 22, 2020.

[109] I accept that this explanation answers the otherwise-available inference that Councillor Wright's political enemies were trolling for bases to have her removed. It does not, however, account for the failure to tell Councillor Wright about the problem prior to the Special Meeting, rather than ambushing her. It equally fails to account for the refusal to provide her with a meaningful opportunity to be heard on a motion of such importance. This is especially so since the MD's own collection letter called for payment by March 11th. There was simply no urgency.

[110] I find as a fact that the conduct of the Special Meeting, at which this application was authorized, was the product of political animus towards Councillor Wright and a desire to remove her for reasons unrelated to the tax debt. This conclusion is inescapable given that none of the Councillors who voted in favour of the motion expressed the slightest interest in hearing her full explanation for the situation.

[111] Oblique motives for enforcing the integrity requirements contained in section 174 of the *MGA* neither excuse ethical lapses nor attenuate their severity. However, a transparent attempt to recruit this Court into a politically motivated ouster, largely unmoored from any actual ethical concerns, weighs against removing the subject councillor.

5. Is disqualification a harsh or disproportionate result?

[112] Paying one's property taxes is a common obligation shared by all citizens, and one to which elected officials are particularly bound. Failing to exercise due diligence on this issue for two years is a serious lapse and one for which removal is not a disproportionate sanction. Losing one's elected seat is, however, a severe consequence for an act of negligence committed in good faith. In the particular circumstances of this case, I find this to be a neutral factor.

6. Conclusion

[113] There is relatively little guidance on the application of section 176(1)(b) in cases of unpaid property taxes. In *Lee*, Leonard J decided to disqualify and remove the councillor. Her reasons for doing so were informed by two factors that distinguish that case. First, Mr. Lee admitted that he knew his taxes were outstanding. His defence was that he did not know that timely payment was a continuing obligation under the *MGA*. Beyond that, he was asked but refused to explain why he did not pay. Thus, he did not advance an innocent explanation. Councillor Wright has offered such an explanation and I have accepted it.

[114] Second, Mr. Lee argued that the Village brought the application to remove him in retaliation for his attempt to demonstrate that the Mayor had acted in conflict of interest on another matter before Council. The Court rejected this argument, expressly finding that "[t]here is no evidence that the villages application is retaliatory": *Lee* at para 47. In this case, I have reached the opposite conclusion.

[115] The MD urges me to find that find that Councillor Wright's non-payment of taxes is part of a pattern of ethical failings, commencing with her choice to vote on the Development. Given my finding on the pecuniary interest issue, there is no cumulative series of failings by Councillor Wright and I do not give effect to this argument.

[116] In the end, this is a close call. There is no evidence of a corrupt motive or any actual conflict of interest. What we are left with is a careless and irresponsible mistake, of some magnitude and duration, relating to a basic and significant civic obligation, albeit one that ultimately did no harm.

[117] The factor that tips the scales in the exercise of my discretion is the hasty, unfair, and extrinsically motivated manner in which Council treated Councillor Wright's tax issue at the Special Meeting. Put bluntly, basic procedural fairness was abandoned when the MD and Council were presented with an opportunity to remove Councillor Wright, who had by that point become their political *bête noire*.

[118] Irrespective of the merits of the underlying case against Councillor Wright, the Court should avoid lending its authority to unfair and politically motivated processes or being seen as an instrumentality of political retribution.

[119] The 2021 municipal election is nigh. The voters will pass judgment on the entirety of Councillor Wright's performance, along with that of her colleagues. That is the outcome most consistent with the interests of democratic integrity and the proper administration of justice in this particular case.

VI. Conclusion

[120] Notwithstanding Ms Agrios' excellent advocacy on behalf of the MD, I declare that Councillor Wright is eligible to remain on Council and the MD's application to have her disqualified and her seat declared vacant is dismissed.

[121] The parties may speak to costs within 30 days if those cannot be agreed.

Heard on the 17th day of May, 2021.

Dated at the City of Calgary, Alberta this 31st day of May, 2021.

N.E. Devlin
J.C.Q.B.A.

Appearances:

Janice Agrios, QC
for the Applicant Rocky View County

Michael Niven, QC and Michael Custer
for the Respondent Samantha Wright