

Court of Queen's Bench of Alberta

Citation: Stone v Crouse, 2017 ABQB 498



Date:
Docket: 1603 19152
Registry: Edmonton

Between:

Steve Stone

Applicant

- and -

Nolan Crouse

Respondent

**Reasons for Judgment
of the
Honourable Mr. Justice B.R. Burrows**

[1] Steve Stone, a resident of St. Albert, Alberta, seeks a declaration that Nolan Crouse, a Councillor and the Mayor of the City of St. Albert, violated the provisions of the *Municipal Government Act* which apply when a member of a city council has a pecuniary interest in a matter before the council. Further, Mr. Stone seeks a declaration that because of the violations, Mayor Crouse has ceased to be qualified to remain in the office of councillor and mayor and that he must vacate those positions.

[2] Mr. Stone alleges that Mayor Crouse violated the relevant statutory provisions by participating in discussions and decisions of the City Council of St. Albert in relation to:

- a. *Expense Claim Audit Motion:* A May 25, 2015 motion proposing that the City retain an independent auditor to perform a forensic audit of Mayor Crouse's expenses to the City of St. Albert and the Capital Region Board from March 1, 2012 to December 31, 2014.

- b. *Defamation Action Funding Limit Motion*: A November 16, 2015 motion proposing a limit of \$25,000 on City funding of a defamation action commenced by the City's Chief Administrative Officer, in which action the defendant had issued a Third Party Claim against Mayor Crouse.
- c. *Environmental Concern – 80 Salisbury Ave.*: Council response in 2016 to the concerns of a property owner about possible environmental consequences of activity on property immediately adjacent to his own, both properties being in the vicinity of property owned by a corporation owned by Mayor Crouse.

[3] The relevant provisions of *Municipal Government Act*, RSA 2000, c M-26, are in ss 170, 172, 174 and 176. They provide:

Section 170:

- (1) Subject to subsection (3), a councillor has a pecuniary interest in a matter if
 - (a) the matter could monetarily affect the councillor . . .
- (2) For the purposes of subsection (1), a person is monetarily affected by a matter if the matter monetarily affects
 - (a) the person directly,
 - (b) a corporation, other than a distributing corporation, in which the person is a shareholder, director or officer,

...
- (3) A councillor does not have a pecuniary interest by reason only of any interest
 - (d) that the councillor may have with respect to any allowance, honorarium, remuneration or benefit to which the councillor may be entitled by being a councillor,

...

 - (i) of the councillor . . . 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,

...

Section 172

- (1) When a councillor has a pecuniary interest in a matter before 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.
- (2) If the matter with respect to which the councillor has a pecuniary interest is the payment of an account for which funds have previously been committed, it is not necessary for the councillor to leave the room.

...

Section 174

- (1) A councillor is disqualified from council if

...

- (g) The councillor contravenes section 172;

...

Section 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.

...

Expense Claim Audit Motions

[4] In addition to being mayor of St. Albert, Mayor Crouse is the Chairman of the Capital Region Board. In October 2014 it was suggested that Mayor Crouse had claimed for reimbursement of the same expenses from both the City of St. Albert and the Capital Region Board. It was in that context that Council considered a proposal that the Mayor's expense claims be subjected to an independent audit.

Council Meeting of October 27, 2014:

- [5] The following motion was made at the October 27, 2014 Council Meeting:

That the City Manager be directed to obtain an independent auditor to perform a full audit of Mayor Crouse's expense claims to the City of St. Albert and the invoices submitted to the Capital Region Board through Crouse Developments Inc. from 2012 to 2014 to determine the extent and exact amount of duplicate billing, over billing, or other improper billing that has occurred for expenses and/or per diems to either organization, with the audit to be paid from the stabilization reserve.

- [6] The minutes record that before this motion was made, Mayor Crouse recused himself "due to a pecuniary interest as the discussion was regarding his finances" and that he left the Council Chambers.

[7] The six remaining members of the Council voted three for and three against the motion and, by the procedural rules of the City, it was deemed defeated.

[8] Mayor Crouse resumed the chair. A second motion was made:

That Administration perform an audit of the expense claims of all Councillors including the Mayor; that following the audit, Administration consult with the RCMP to determine whether an investigation is warranted; that Administration review the processes and controls for the reimbursement of Council expenses; that the Administration report to Council the conclusions of the audit and consultation with the RCMP and if appropriate recommend to Council amendments to processes and controls for the reimbursement of Council expenses.

[9] A motion was made to amend that motion to require that instead of the Administration performing the audit, the City Manager would retain an independent auditing firm to perform it. This proposed amendment was defeated.

[10] A motion to postpone consideration of the matter for two weeks was defeated.

[11] A councillor requested that the main motion be split into two parts. It was, and both parts were adopted by Council unanimously.

Council Meeting of May 25, 2015

[12] At the May 25, 2015 Council Meeting the following motion was made:

That an independent auditor be contracted to perform a 100% forensic audit of Mayor Crouse's expenses to the City of St. Albert and the Capital Region Board from March 1, 2012 to December 31, 2014 and provide a written evaluation of the city's expense claim review final report and process change recommendations, with funding of up to \$15,000 from the stabilization reserve.

[13] A councillor requested that the motion be split. In response to that request, the mover of the motion presented the following motion as the first part of the split:

That an independent auditor be contracted to perform 100% forensic audit of Mayor Crouse's expenses to the City of St. Albert and the Capital Region Board from March 1, 2012 to December 31, 2014.

[14] The Mayor "ruled" that this motion was in order and said:

And as far as recusing myself, I have reviewed the MGA; I have reviewed this with others, and I do not have to recuse myself.

[15] The councillor who requested that the motion be split then moved:

That the Mayor's ruling be overturned.

[16] The transcript of the relevant part of the meeting indicates that the "ruling" being challenged was the Mayor's ruling that the first part of split motion was in order. The "overturning motion" challenged that ruling on the basis that Council had already defeated a motion similar to the "audit motion" on October 27, 2014. The City's Procedural Bylaw provides that a defeated motion cannot be renewed before the same Council until a year has

passed since the motion was defeated unless, by a two thirds majority, Council agrees to its renewal.

[17] The “overturning motion” carried by a vote of 4 to 2, with Mayor Crouse voting in favour of it. The first part of the split motion was thereby determined to be out of order.

[18] The second part of the split of the original motion was then moved:

That an independent auditor provide a written evaluation of the city’s expense claim review final report and process change recommendations, with funding of up to \$15,000 from the stabilization reserve.

[19] That motion was defeated by a vote of 4 to 2, with Mayor Crouse voting against it.

[20] Mr. Stone submits that having declared a pecuniary interest and recused himself when a motion calling for an independent audit of his expenses was considered on October 27, 2014, Mayor Crouse ought to have done the same when the same subject was before the Council on May 25, 2015. The May 25, 2015 motion calling for an independent audit of the Mayor’s expense claims was a matter that could monetarily affect Mayor Crouse. He therefore had a pecuniary interest in it.

[21] Furthermore, Mr. Stone submits that Mayor Crouse had the same pecuniary interest in the motion challenging his ruling that the “audit motion” was in order. The effect of the passing of that motion was that the “audit motion” was ruled out of order and was not considered further. The effect was the same as a defeat of the “audit motion”. That Mayor Crouse had a personal interest in the matter might have influenced his vote on that motion.

[22] Mayor Crouse’s position is that the question that was before Council on May 25, 2015 was not whether or not there should be an independent audit of his expense claims. Rather the subject was whether or not the proposal for an audit could be decided, given that the proposal for an independent audit had been before Council less than a year earlier and had been defeated. The subject was not whether to have an audit – it was whether or not the motion proposing an audit was in order. It was a procedural motion. Mayor Crouse could not have had a monetary interest in a process.

[23] The materials include the Agenda Report that had been prepared by the City Administration more than a month before the May 25, 2015 meeting in response to the notice of motion which the councillor who moved that May 25, 2015 “audit motion” had submitted. The Agenda Report noted that a motion similar to the proposed motion had been defeated on October 27, 2014 and that, “. . . if Council deems the proposed motion to be significantly similar to defeated Motion C496-2014, the proposed motion cannot be considered until at least October 27, 2015.”

[24] The Agenda Report also mentioned the internal review that had been performed pursuant to the motion for a review of the expenses of all Councillors and the Mayor which had been adopted on October 27, 2014:

The review that was completed by Administration was comprehensive and did not exclude review of any expense category. Every individual expense line item was documented, reviewed and assessed against policy. All potential issues were presented in the final report either as general findings or specific findings for each Council member.

Did Mayor Crouse have a pecuniary interest in the May 25, 2015 motions concerning an independent audit of his expense claims?

[25] In *Calgary Roman Catholic Separate School District No. 1 v. O'Malley*, 2007 ABQB 574, Clark J. set out the principles upon which statutory pecuniary interest prohibitions are based:

- (a) The provisions prescribe the standard of conduct expected of an elected official and are intended to maintain integrity in the discharge of public duty;
- (b) There is no need to find corruption or actual loss on the part of the elected official. The issue is whether the member failed to honour the standard of conduct prescribed by the statute;
- (c) The conflict-of-interest rules are based on the moral principle, long embodied in our jurisprudence, that no man can serve two masters;
- (d) Public office is a trust. The principle of law which underlies these provisions is that an official must not put himself in a position where his private interest might be opposed to the unbiased performance of his official duty;
- (e) The principle should be applied with unabated rigour and there should be no erosion of the principles, if confidence is to be maintained in the electoral process;
- (f) Integrity in the discharge of public duties is, and remains, of paramount importance, and when the question of private interest arises, the Court will not weigh its extent nor the amount in determining the issue – the breach does not change its character merely because it is of small extent;
- (g) Whether a person has a pecuniary interest in a matter is evaluated on an objective, reasonable standard, not the [councillor's] personal view; and
- (h) The outcome of the vote is not relevant, nor is the effect of the operation of the resolution if passed.

[26] The subject of the May 25, 2015 “audit motion” was Mayor Crouse’s expense claims to the City of St. Albert and the Capital Region Board. If the audit were conducted and it determined that Mayor Crouse had received unwarranted reimbursement it is likely that he would have been called upon to pay the overpayment back to the City. Since that was a possible result, the motion could have monetarily affected Mayor Crouse. He therefore had a pecuniary interest in the subject matter of the motion.

[27] In my view, Mayor Crouse also had a pecuniary interest in the motion challenging his ruling that the audit motion was in order. It makes no difference whether the motion in question was substantive, as was the audit motion, or procedural, as was the motion to challenge the Mayor’s ruling that the motion was in order. The procedural motion raised a question in relation to the matter of an audit: Can the Council revisit the subject of an independent audit having decided less than a year ago not to authorize one? Passing the procedural motion prevented further consideration of the substantive motion. It had the same effect as defeating the substantive motion. The procedural motion had the same monetary significance to Mayor Crouse as the substantive motion.

[28] I conclude that Mayor Crouse had a pecuniary interest in the expense claim audit motions and by not recusing himself violated *MGA* s. 172(1).

Consequence of Mayor Crouse's violation of the pecuniary interest rules in relation to the expense claim audit motions

[29] *MGA* s. 176 authorizes me to do either of two things having found that Mayor Crouse's violated the pecuniary interest rules in relation to the expense claim audit motion:

- a. declare Mayor Crouse to be disqualified and a position on Council to be vacant,
- b. declare Mayor Crouse able to remain a councillor.

[30] In *Lac La Biche v. Bochkarev*, 2009 ABQB 400, Marceau J. held that the second option requires the court to determine whether disqualification is an appropriate consequence for the particular violation of the pecuniary interest rules found to have occurred. Marceau J. said (para. 28):

It [the second option] can be seen as providing the judge with the ability to enable the person to remain a member of council notwithstanding the fact that they have technically breached one of the conflict of interest rules enumerated in s. 174. This allows relief from hardship where the breach is slight, or where it would be just to do so in the circumstances.

[31] Marceau identified several relevant considerations:

- a. How obvious was the pecuniary interest?
- b. Was the Councillor actually aware of the pecuniary interest? Was the Councillor wilfully blind or lacking good faith?
- c. Was the possibility of a pecuniary interest suggested by another Councillor at the time?
- d. Did the municipality have procedures or policies in place for the purpose of identifying addressing and reconciling pecuniary interest conflicts?
- e. Does disqualification seem a harsh result?

[32] I have concluded that it is just and appropriate for me to declare that despite his violation of the pecuniary interest rules in relation to the expense claim audit motion, Mayor Crouse should remain a councillor.

[33] Prior to the motion being presented to Council on May 25, 2015 it was anticipated in the pre-meeting materials prepared by the City Administration, the Agenda Report, that the motion might not be in order because a similar motion had been defeated less than a year earlier. In these circumstances, Mayor Crouse had reviewed the *MGA* and taken advice as to whether he had a pecuniary interest in the motion. He had concluded that he did not have one. I am satisfied that he came to that conclusion in good faith, though it was incorrect.

[34] In good faith he concluded that whereas in October it had been appropriate for him to recuse himself since he had a pecuniary interest in the motion proposing an independent audit, he did not have a pecuniary interest in May because the matter had been decided in October and could not, without the approval of a two thirds majority of Council, which nobody had indicated they would seek, or indeed actually sought, be reconsidered. I am satisfied that it was a conclusion he reached in good faith.

[35] There is no evidence before me that any other Councillor or any member of the Administration staff suggested that Mayor Crouse had a pecuniary interest in the matter at the time.

[36] The fact that the motion was potentially out of order was alive at all times. Mayor Crouse chose, reasonably in my view, not to rule the motion out of order himself, but to have Council as a whole decide whether or not it was out of order.

[37] That he did not recognize that passing the procedural motion had the same practical effect as defeating the substantive motion, and was therefore one in which he had a pecuniary interest, is understandable.

[38] In my view, given the context in which the motion arose, which included, as I understand the evidence, that the Administration had audited the expense claims of all councillors including Mayor Crouse, had reported and, I assume, had found nothing inappropriate, Mayor Crouse's violation of the pecuniary interest rules on May 25, 2015 was a technical violation.

[39] In my view, disqualification in these circumstances would be unreasonably harsh, unjust, and entirely inappropriate.

[40] I declare that despite his violation of the pecuniary interest rules in relation to the expense claim audit motions, Mayor Crouse is able to remain a councillor.

Defamation Action Funding Limit Motion

[41] Sometime in late 2014, St. Albert City Council agreed to fund a law suit to be brought by the City Manager, Patrick Draper, against parties he alleged had published defamatory statements about him. Mr. Draper commenced the defamation action. In October 2015, one of the defendants issued a third party claim alleging that if the Plaintiff in the defamation action had sustained damages as a result of the publication of defamatory statements, those damages were caused by actions of Mayor Crouse. The defendant claimed contribution and indemnity from Mayor Crouse.

[42] At the November 16, 2015 meeting of St. Albert City Council, a councillor moved the following motion:

That the agreement to fund the lawsuit between Patrick Draper [the Plaintiff], John Doe, ABC Corporation, Gord Hennigar [the Defendants] and Nolan Crouse [the Third Party] be modified to limit the cities (*sic*) funding to a maximum of \$25,000 from the current arrangement of unlimited funding. After this point each party involved will pay their own costs and damages, the city will no longer request any potential awards from the city manager and he will be free to collect whatever damages are awarded if there are any.

Further to this the City should reaffirm its indemnity from any damages or costs that arise from this lawsuit. These risks were never agreed to by the city and should be the sole responsibility of the city manager and the respective parties to pay for.

[43] Mayor Crouse proposed that the motion be split into three motions. The first split motion would consist of the first paragraph of the original motion with the words "and Nolan Crouse" omitted. The second split motion would consist of the first paragraph of the original motion with no changes. The third split motion would consist of the second paragraph of the original motion.

[44] The transcript of the Council Meeting indicates that Mayor Crouse explained that the split “basically splits myself out of it.” He said:

... we would have three components. The first one is to deal with Gord Hennigar now, John Doe, and Patrick Draper. And then in this second one, which would be myself, which would be split out of that, and I would then have to recuse myself. And then the third split is further to this, if the City would reaffirm it, which is – I’d also have to ---.

[45] I infer that Mayor Crouse’s position was that he could participate in the Council’s deliberations on the first of the split motions which would not mention his name, but would recuse himself from Council’s deliberations on the second and third split motions.

[46] The councillor who moved the original motion objected, on a point of order, to the proposed splitting of the motion on the basis that the split would fundamentally change the nature of the motion.

[47] Another councillor drew attention to the fact that she had submitted notice of an amendment to remove Mayor Crouse’s name from the motion. She suggested that Council vote on that and if it failed, then split the original motion.

[48] The councillor who moved the original motion maintained his point of order.

[49] Another councillor, on a point of order, suggested that the Mayor should pass the chair to the deputy mayor because the Mayor was participating in the debate of a matter in which he was personally involved. The Mayor responded:

So I have a question of Mr. Draper [the City Manager]. Mr. Draper, the matter that’s in front of us right now, the way that it’s worded in your backgrounder that you’ve provided, I – I will decide whether I have a pecuniary interest. At this point I haven’t accepted the motion. So I had – I don’t have pecuniary interest, but I do have Q and A.

[50] The question Mayor Crouse then asked related to the relationship between the 2014 funding motion and the motion now proposed. Mr. Draper answered:

Mr. Mayor, the original motions approved by Council authorized and supported a personal lawsuit in my name against the Third Floor News did not involve the Mayor at all in those motions. The attempt of this motion to cap the funding is in reference to those original motions. And while there is a – an action that was served against the Mayor in connection, it is actually a separate matter. And the Mayor is covered by director’s liability insurance, which is a completely separate matter from the motion relative to maximum of \$25,000. . . . But as I read it, the intent of the motion is in this lawsuit involving myself and – and others that Councillor MacKay wants to cap it at \$25,000. Mayor Crouse is not involved in that action.

[51] At that point another Councillor moved that Council go into an *in camera* session. When that motion was made, Mayor Crouse asked, “So did I need to accept the motion first by Councillor MacKay.”

[52] Mr. Belke, the City’s Chief Legislative Officer responded:

You could accept the motion questioning – the question phase, the clarification and questioning that Council does before debate might provide you additional information in determination of any potential pecuniary interest. If at any point you felt that you or other member of Council feels that you have a pecuniary interest, that would be the point where you could recuse yourself – and take the appropriate steps.

[53] Mayor Crouse responded:

I'm actually not worrying about the recuse myself. I have – I've legal opinion on recusing myself. I'm clear on recusing. I totally understand recusing, and I totally have – I know where I'm at legally. What I'm trying to do is procedurally. I think I need to accept Councillor MacKay's motion, which take it into the public record. And then I can take Councillor – then I think I should take Councillor Osborne's motion to be *in camera*.

[54] Prior to the vote on the motion to go into an *in camera* session, another councillor expressed the view that the Mayor should not participate in the *in camera* discussion of a matter in which he held a pecuniary interest. Another councillor said:

. . . I would caution you. By splitting a motion, if you do have a pecuniary interest, you are putting yourself to have a great degree of liability in this matter. And simply by attempting to split the motion change the intent, you're embedding yourself in it.

[55] The Council agreed unanimously to go into *in camera* session. At the end of the *in camera* session, Council agreed unanimously that discussion in the *in camera* session would remain confidential.

[56] Mayor Crouse resumed debate on the motion, now split into three parts as previously described.

[57] Another councillor moved to amend the motion to remove the Mayor's name from it, among other things. Mayor Crouse split the amendment motion into three separate motions, each dealing with a single amendment.

[58] Before the amendment could be dealt with, another councillor moved that the matter be postponed to the end of the first quarter of 2016. Another councillor moved that the postponement instead be to January 25, 2016. That proposal was defeated, Mayor Crouse voting against it.

[59] The motion to postpone to the end of the first quarter of 2016 was carried, Mayor Crouse voting in favour.

[60] The evidence also includes the minutes of the March 7, 2016 meeting of St. Albert City Council. At that meeting, when the subject of the defamation lawsuit arose, Mayor Crouse declared a pecuniary interest and left the meeting. The remaining councillors went into an *in camera* session to receive a lawsuit update. When the meeting resumed in public, the councillors unanimously agree that the *in camera* discussion would remain confidential.

Did Mayor Crouse have a pecuniary interest in the defamation action funding limit motion?

[61] Mr. Stone submits that the motion to limit the City's funding of the defamation action was a matter in respect of which Mayor Crouse had a pecuniary interest.

[62] The late 2014 Council decision to fund Mr. Draper's defamation action did not contemplate any funds being used to pay for the defence of the third party claim because the third party claim did not exist at the time. The November 16, 2015 motion to place a limit on the previously unlimited funding similarly did not contemplate any funds being used to pay for the defence of the third party claim. The motion might have affected Mr. Draper monetarily if his legal fees and costs exposure in the litigation exceeded \$25,000. But limiting the funding available to Mr. Draper could not directly affected Mayor Crouse monetarily.

[63] Mr. Stone submits, however, that the motion could have monetarily affected Mayor Crouse in a less direct way. He observes that the Third Party Claim put the Mayor in a different position with respect to Mr. Draper's lawsuit than he had been in at the time of the original funding decision. It was now against the Mayor's monetary interest for Mr. Draper's lawsuit to succeed. If Mr. Draper was awarded damages, and the Defendant pursued the third party claim, Mayor Crouse might be ordered to contribute to the payment of Mr. Draper's damages. Limiting the funding available to Mr. Draper to finance his lawsuit might affect whether or how Mr. Draper proceeded with the lawsuit and whether or not the third party claim against Mayor Crouse would proceed.

[64] In my view, the concern would exist even if Mayor Crouse's name did not appear in the motion, as in the first part of the split motion. The problem did not arise because the motion mentioned his name. It arose because Mayor Crouse had a pecuniary interest in the subject of the continued funding of Mr. Draper's action. Whether or not that funding was unlimited or limited could affect Mayor Crouse monetarily.

[65] The materials indicate that Mayor Crouse was covered under the City's insurance for legal costs. There are suggestions in the evidence that he had personal insurance that would cover an award of damages, but the point is left unclear. In any event, however, it was Mayor Crouse who was exposed to the obligation to pay legal costs and the possibility of having to pay damages. That he had, or may have had, a resource, insurance, from which he might seek reimbursement of those costs or damages does not change the nature of his obligations or their character as matters which could monetarily affect him.

[66] Indeed, if the availability of insurance was relevant, it would preclude Mayor Crouse having the pecuniary interest he acknowledged in the second and third parts of the split motion.

[67] I conclude that Mayor Crouse had a pecuniary interest in the defamation funding limit motion.

Consequence of Mayor Crouse's violation of the pecuniary interest rules in relation to the defamation funding limit motion

[68] Again in this context, I am satisfied that it is just and appropriate to declare that Mayor Crouse should remain a councillor despite his violation of the pecuniary interest rules in relation to the defamation funding limit motion.

[69] In my view, that Mayor Crouse had a pecuniary interest was not obvious. He did not have any entitlement to the funding the City was providing to the Plaintiff in the action. That fact probably served to obscure the less direct pecuniary interest that I have found he did have.

[70] It is clear that Mayor Crouse was trying to be careful to not pass the point in the meeting when he should declare the pecuniary interest he recognized and recuse himself. Much of the discussion was procedural and occurred before Mayor Crouse accepted the motion. He had express advice from the Administration, given to him openly during the meeting, that it was appropriate for him to permit questions and answers in the process of gathering information upon which to base his decision as to whether he should recuse himself.

[71] It is clear in the evidence that Mayor Crouse had considered whether or not he had a pecuniary interest. He had determined that in fact he had one in relation to certain aspects of the motion. He concluded that he did not have one in relation to the question of whether the Plaintiff's funding should be limited. Though in my view he was wrong in that regard, I am satisfied that he was not wilfully blind in reaching that conclusion. I am satisfied that he reached it entirely in good faith.

[72] Other members of Council stated that in their view, he should not participate further in the discussion – that he had a pecuniary interest. But the warnings did not include any assessable explanation as to why those who gave them believed the Mayor had a pecuniary interest and were inconsistent with the advice openly expressed at the meeting by the City's Chief Legislative Officer.

[73] I am satisfied that disqualification of Mayor would be out of all proportion to the seriousness of his violation of the pecuniary interest rules. That violation was in the circumstances technical. Disqualification would be unjustly harsh.

[74] I declare that despite his violation of the pecuniary interest rules in relation to the defamation action funding limit motion, Mayor Crouse is able to remain a councillor.

Environmental concern – 80 Salisbury Avenue

[75] The third allegation of violation of the pecuniary interest rules concerns motions that came before St. Albert City Council in 2016 regarding the concerns of Craig Skarupa about leakage and leaching of hazardous materials from underground sump tanks on the property next door to his residence. Mr. Skarupa's property is #1 Sorrel Crescent. The next door property is 80 Salisbury Avenue.

[76] Mr. Skarupa filed an affidavit in this application. He deposes that 80 Salisbury Avenue had been used for many years as a commercial automobile repair shop and hazardous materials were stored in underground storage tanks on the property.

[77] Mayor Crouse is the principal of a company that owns a residence in the neighborhood of #1 Sorrel Crescent and 80 Salisbury Avenue. Mayor Course's company's property is 86 Salisbury. It is separated from 80 Salisbury Avenue by 82, 84 and 84A Salisbury Avenue and by a street, Swallow Crescent. Mr. Skarupa deposes that 86 Salisbury Avenue is about 150 feet from 80 Salisbury Avenue.

[78] Mr. Skarupa presented his concerns about leakage from the sump pumps on 80 Salisbury Avenue to Council on March 7, 2016. The minutes of that Council meeting indicate that Council

held an *in camera* session “to receive land matter update and the advice of officials regarding 80 Salisbury Avenue”. When Council reconvened in public, the following motion was made:

That the confidential recommendation be approved, as amended, and the details of the *in camera* discussion remain confidential in accordance with Sections 24, and 27 of FOIP.

[79] That motion was carried by a vote of 6 to 1, Mayor Crouse having cast the only vote against it.

[80] On May 21, 2016 Mr. Skarupa wrote to the Mayor and Council advising of further developments concerning 80 Salisbury Ave. He also inquired why the City considered the matter confidential. Mayor Crouse responded on May 22, 2016. He advised Mr. Skarupa that the matter remained confidential, that when the discussion could be made public, it would be, and that the reason for the confidentiality “relates to land and land values.”

[81] On September 26, 2016, a councillor submitted notice that he intended to move at the October 3, 2016 Council Meeting as follows:

I move that we extend the offer to perform phase 2 environmental assessments to the property owners of the two adjacent properties to 80 Salisbury avenue.
Funded with \$10,000 from the stabilization reserve.

Whereas: The results of the phase 2 environmental will be shared with the city and the property owners if the offer is accepted.

[82] As the procedural rules governing motions require that at least 13 days notice be given of a motion, the councillor also gave notice that he would move that the time be abridged to permit the motion to be dealt with on October 3, 2016.

[83] On September 27, 2016, Mr. Ron Dinning, a property appraiser, wrote to Mr. Skarupa regarding Mr. Skarupa’s request that Mr. Dinning appraise #1 Sorrell Crescent. The letter is an exhibit to Mr. Skarupa’s affidavit. In it, Mr. Dinning expresses the following opinions:

- a. Since the underground tanks on 80 Salisbury Ave. were unmonitored and concrete, there is a significant probability that they have been leaking and that the fluids they contained leaked over an extended period of time.
- b. The “negative adjustment” to an appraisal of #1 Sorrell Crescent would be the cost of a clean phase 2 environmental report assuming there is no leakage from the tanks on 80 Salisbury Avenue.
- c. “If in the event the tanks did leak, considering the water table, soil conditions of the area. The leakage could include your entire lot (surrounding lots, and maybe even the properties across the roadways.)”
- d. If there was leakage which contaminated #1 Sorrell Crescent, “the value of your property could be negative due to the costs required to reclaim the site and acquire a clean environmental report.”
- e. “Further to your specific request could the contamination have migrated to 86 Salisbury Avenue, St. Albert, the basic answer is yes, as water etc. does migrate significantly, below grade.”
- f. “Would/could an owner of such property know about the contamination, while there are visible signs of the commercial operation. They may not know, it was an unmonitored operational commercial operation.”

[84] Mr. Skarupa deposes that on October 3, 2016, the Interim City Manager advised him by telephone that “the subject matter and essence of that *in camera* motion was that the City of St. Albert offered to have a Phase 2 Environmental Assessment completed for 80 Salisbury Avenue, St. Albert, Alberta, but the owner of 80 Salisbury Avenue refused that offer. . .”

[85] At the Council meeting of October 3, 2016, the motion to abridge the time to hear the motion proposing that the City offer to perform environmental assessments on the two properties adjacent to 80 Salisbury Avenue was defeated, by the unanimous vote of all members of the Council, including the Councillor who moved it and Mayor Crouse.

[86] Mayor Crouse, in his affidavit, says:

Certain members of council questioned whether I would have a pecuniary interest in a motion related to [80 Salisbury Avenue]. I indicated that I would like to have time to obtain legal advice as to whether I had a pecuniary interest. As such, all 7 councillors, voted against abridging time as put forward in the October 3, 2016 Procedural Motion, which allowed me to obtain a legal opinion regarding my pecuniary interest.

[87] Mayor Crouse deposes further that the legal opinion he obtained was that he did not have a pecuniary interest in the matter.

[88] Mr. Skarupa deposes that he was present at the Council meeting on October 17, 2016. The motion that the City offer to perform the environmental assessments was not moved at that meeting. Mr. Skarupa deposes that Mayor Crouse informed Council that the matter had been adjourned by the agenda committee “in order that he could retain legal counsel”.

[89] The minutes of the October 17, 2016 meeting do not contain any mention of the matter.

[90] The matter was considered in an *in camera* session of Council on October 24, 2016. When the Council reconvened in public, the attending members of Council, including Mayor Crouse, approved the following motion unanimously (one member of Council being absent):

That the matter of 80 Salisbury Avenue be postponed until administration obtains a legal opinion for presentation to Council.

[91] On November 7, 2016, the Council again went *in camera* “to receive a land matter update regarding 80 Salisbury Avenue.” When the Council reconvened in public, the following motion was moved:

That we extend the offer to fund phase 2 environmental assessments to the property owners of two adjacent properties (1 Sorrell Crescent and 82 Salisbury Avenue) to 80 Salisbury Avenue to a maximum of \$5000 each. Funded with \$10,000 from the Stabilization Reserve, if accepted by March 31, 2017.

Whereas: the results of the Phase 2 Environmental will be shared with the City and the property owners if the offers are accepted.

[92] The motion was carried by a vote of 4 to 2 (one member of Council being absent). Mayor Crouse voted against the motion.

[93] Mayor Crouse deposes that he voted on this motion “based on the information that I had received from my lawyer that I did not have a pecuniary interest in the matter.”

Did Mayor Crouse have a pecuniary interest in the motions relating to the environment concerns about 80 Salisbury Avenue?

[94] Mr. Stone alleges that as the principal of the company which owned 86 Salisbury Avenue, a property about 150 feet away from 80 Salisbury Avenue, Mayor Crouse had a pecuniary interest in the question of how Council should react to those concerns. Mayor Crouse ought to have declared his pecuniary interest and should not have participate in Council's deliberations concerning the matter on March 7, October 3, or November 7, 2016.

[95] Mr. Stone's position is founded on the opinion of Mr. Dinning that the possible leaching of hazardous materials from the storage tanks on 80 Salisbury Avenue could have reached 86 Salisbury Avenue and could affect the value of that property. Mr. Stone submits that Mayor Crouse therefore had a pecuniary interest in determining whether or not 80 Salisbury Avenue was environmentally contaminated – the question that the motions asked Council to investigate.

[96] In my view, the evidence does not satisfactorily establish the foundation of Mr. Stone's position. The evidence is the opinion of Mr. Dinning. Mr. Dinning is a property appraiser. His opinion is offered in a letter exhibited to Mr. Skarupa's affidavit. Mr. Dinning's opinions have not been sworn to. More significantly, there has been no assessment of Mr. Dinning's qualifications to offer an opinion on the matters he addressed in his letter. It is far from obvious to me that a property appraiser is qualified to offer opinions on the likelihood of hazardous materials having escaped from concrete storage tanks, the possibility that such leaks if they occurred would have contaminated Mr. Skarupa's entire property, or the possibility that leaks from 80 Salisbury Avenue could have migrated to 86 Salisbury Avenue.

[97] I reject Mr. Stone's submission that Mr. Dinning's opinion reliably establishes that the environmental concerns relating to 80 Salisbury Avenue could have affected the value of 86 Salisbury Avenue.

[98] It has not been proved that leaks of hazardous materials from 80 Salisbury Avenue could have monetarily affected Mayor Crouse. It has not been proved that he had a pecuniary interest in the matters considered by Council in that context.

Disposition

[99] I have concluded that Mayor Crouse violated the pecuniary interest rules by not recusing himself from Council's deliberations concerning the expense claims audit motion, and the defamation action funding limit motion. He did not violate the pecuniary interest rules in relation to the environmental concerns regarding 80 Salisbury Avenue.

[100] I have determined that it would be entirely unjust and disproportional to the seriousness of the violations to declare Mayor Crouse disqualified and his position on St. Albert City Council to be vacant.


[101] Rather, I declare the despite the violations, Mayor Crouse is able to remain a St. Albert City Councillor.

[102] I dismiss Mr. Stone's application as it relates to the 80 Salisbury Avenue environmental concerns.

[103] If necessary Counsel may arrange to speak to costs.

Heard on the 26th day of July, 2017.

Dated at the City of Edmonton, Alberta this 10th day of August, 2017.



B.R. Burrows
J.C.Q.B.A.

Appearances:

Brent Rathgeber, Q.C.
for the Applicant

Dennis L. Picco, Q.C. and David R. Sommerfeldt
for the Respondent