

Bylaw Challenges during Disqualification Proceedings: *Dunn v. O'Reilly*, 2025 BCSC 966

Fulton recently represented the City of Kamloops in a Petition whereby ten Petitioners sought to disqualify a Council member by reason of conflict of interest and quash the bylaw on which the Council member had voted while allegedly under the conflict of interest.

Background

On September 24, 2024, Council for the City of Kamloops adopted the Arena Multiplex and Future Development Loan Authorization Bylaw No. 57-2, 2024, which permitted the City to borrow funds to construct a new Arena Multiplex. Councillor Mike O'Reilly voted in favour of adopting the Bylaw.

On October 31, 2024, ten Petitioners filed a Petition in the BC Supreme Court seeking to disqualify Councillor O'Reilly under s. 111 of the Community Charter. The Petitioners alleged that Councillor O'Reilly was under a conflict of interest stemming from his position as CEO of Comet Industries, which owned land in the area of town in which the Arena Multiplex would be constructed. The Petitioners sought to quash the Bylaw on the basis that Councillor O'Reilly's vote while under the alleged conflict had damaged "public faith in the democratic process."

Court's Decision

The Court dismissed the Petition in its entirety. In respect of the disqualification relief sought by the Petitioners, the Court found that the Petitioners' claim was precluded by the limitation period set out in s. 111(4) of the Community Charter, which required the Petitioners to bring their application to disqualify Councillor O'Reilly within 45 days of any of the Petitioners becoming aware of the alleged basis for disqualification. The Court found that one of the Petitioners knew about the alleged basis for disqualification more than 45 days prior to the filing of the Petition. As a result, the limitation period in which the Petitioners could seek the disqualification of Councillor O'Reilly had expired.

In respect of the bylaw relief sought by the Petitioners, the Court found that the relief sought was in fact an application to set aside the Bylaw under s. 623 of the Local Government Act. The Court noted that, pursuant to s. 623(4)(b) of the LGA, such an application could not be brought more than one month after adoption of the Bylaw. The Court held that the Petitioners had not brought their Petition within the one-month limitation period stipulated in the Act. As a result, the Court had no jurisdiction to consider the Petitioners' request to quash the Bylaw.

The Judge went on to say that even if the Petitioners had brought their Petition before the expiry of the respective limitation periods, he would not be able to conclude that the Petitioners had established that Councillor O'Reilly held a conflict of interest, or a basis on which the Bylaw should be set aside. The Court noted that the affidavit evidence submitted by the Petitioners was "inadequate" and "replete with speculation, inference and assumptions."

The Court went on to caution the Petitioners against making spurious allegations of conflict of interest, noting that "allegations of a conflict of interest made against an elected official are serious" and a conflict of interest cannot be "inferred out of thin air and in the absence of any evidence."

Takeaways

This decision highlights that where a disqualification petition seeks to quash the associated bylaw on which the elected official voted while under an alleged conflict of interest, the strict limitation periods from s. 623 of the LGA apply. Petitioners cannot skirt the one-month limitation by cloaking their application to quash a bylaw within a disqualification proceeding.

Moreover, this decision reiterates the warning to would-be-Petitioners that allegations of conflict of interest against elected officials are serious and should not be brought without a legitimate evidentiary foundation. Local Governments may wish to bring this case to the attention of anyone who may be considering launching such a legal challenge.

Questions? Contact a member of our experienced Local Government Law Team:



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