



Press Release

On October 5, 2020, the Town of Rosetown received the decision of the Honourable Madam Justice M.R. McCreary of the Court of Queen's Bench (the "**Decision**"). The Decision will be made available at the Town office upon request for anyone who wishes to review it.

The Decision concerned the two Applications brought by Subhas Maharaj on July 17, 2020:

- 1) The Originating Application brought pursuant to s. 358 of *The Municipalities Act*; and
- 2) The Originating Application for Judicial Review.

(the "**Applications**")

Through the Applications, the Mayor sought:

1. An Order quashing all resolutions of the Council of the Town of Rosetown purportedly passed at its meeting on June 2, 2020, and without limiting the generality of the forgoing those identified as 206/20, 207/20, 208/20, 209/20; and
2. An Order that the Town of Rosetown indemnify the Applicant for his legal costs and disbursements on a solicitor and client basis in relation to this proceeding. Alternatively, costs on a solicitor and client basis, or such other basis as the Court may allow.

The Applications related to the procedure followed by the Council of the Town of Rosetown, the *Code of Ethics Bylaw*, the Code of Ethics complaints against the Mayor and Councillor Darcy Olson, and the related resolutions. The Originating Application does not deal with other governance issues.

The Applications related to two separate Code of Ethics complaints. The first complaint was made against Councillor Olson by the Mayor. The complaint alleged Councillor Olson had made comments about the Mayor which cast aspersions on his professional competence and credibility and had contravened the *Code of Ethics Bylaw*.

The second complaint related to two harassment complaints that were made in the workplace regarding the Mayor. The harassment complaints were investigated by an external investigator and the investigator confirmed harassment by the Mayor had occurred in both cases. Councillor Olson then filed a Code of Ethics complaint against the Mayor alleging that the Mayor's conduct had contravened the *Code of Ethics Bylaw*.

The Code of Ethics complaints were investigated by Council. Following that investigation, on June 2, 2020, Council convened a special meeting to consider the complaints. By way of resolution, it first dismissed the complaint against Councillor Olson and then found that the Code of Ethics

complaint against the Mayor was substantiated. As a result, Council issued remedial action that required the Mayor to apologize to the two employees, to attend mediation with the rest of Council, and to take educational training with the rest of Council.

The Mayor then brought the Applications challenging Council's findings. The Mayor argued that Council followed improper procedures, that Council acted with bad faith or an improper purpose and that Council breached its duty of procedural fairness to him.

In the Decision, the Mayor was unsuccessful with his allegations that Council followed improper procedures. While there was one technical error in calling the June 2, 2020 special meeting, Justice McCreary found that this did not result in any prejudice or unfairness to the Mayor. Otherwise, Justice McCreary found that the Town had not followed any improper procedures in its approach to the two complaints.

No bad faith or improper purpose

One significant argument advanced by the Mayor was that the Town acted in bad faith and with "improper political motive" in determining the two complaints. This argument was completely rejected by Justice McCreary, who wrote as follows:

[35] In this case, there is no evidence to suggest that the Town acted in bad faith or with an improper purpose in relation to the resolutions in question. From my review, I am satisfied that the Town acted in accordance with the public interest in its passing of the resolutions.

Ultimately, though, Justice McCreary found that Council had not provided reasons for its findings on the two complaints. On that basis, she quashed the resolutions regarding the two complaints and ordered that the complaints be remitted back to the Town for reconsideration employing a procedurally fair process.

In addition to quashing the resolutions, Justice McCreary also provided the parties with permission to make arguments respecting their legal fees. As can be seen above, in the Applications, the Mayor has sought an order requiring the Town to indemnify him for his legal costs and disbursements, and Justice McCreary has yet to decide whether the Town will be required to do so.

Council understands and accepts the Decision of the Honourable Madam Justice McCreary. Council has at all times acted in accordance with the public interest, and Council shall do so going forward. Pursuant to the Decision of Justice McCreary, the two Code of Ethics complaints have now been remitted to the Town for reconsideration. As required by that Decision, Council will reconsider these complaints using a procedurally fair process.