Court of King's Bench of Alberta

Citation: Terrigno v Farrell, 2023 ABKB 170

Date:
Docket: 1701 06436
Registry: Calgary

Between:

Rocco Terrigno, Mike Terrigno, Antonietta Terrigno and Maurizio Terrigno

Plaintiffs/Applicants

- and -

Druh Farrell

Defendant/Respondent

Endorsement of the
Honourable Justice M.H. Bourque

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[1] Druh Farrell was a municipal councillor in Calgary. The Plaintiffs and Applicants filed a statement of claim in May 2017 against her for defamation and breach of the pecuniary interest provisions of the ***Municipal Government Act***, RSA 2000 c M-26 (the "**MGA**"). The Plaintiffs filed an application seeking relief under the MGA (the "**Disqualification Application**"), and in the Amended Application filed July 31, 2018, they sought the following declarations and relief:

A. A determination that the Respondent has ceased to be qualified to remain a Councillor for the City of Calgary;

B. A declaration that the Respondent is disqualified from council and is required to vacate her position as Councillor for the City of Calgary;

C. A declaration that the Office of Councillor for Ward 7 for the City of Calgary is vacant; and,

D. Costs on a full indemnity basis or such other heighted cost basis as this Honourable Court deems fit to grant.

(collectively, the "**MGA Relief Sought**")

[2] Ms. Farrell ceased to be a councillor in or around October 2021, after the last municipal election was held, as she did not run in that election.

[3] The focus of the litigation has been on the pecuniary interest claims, which has proceeded separately from the defamation action. Antonio J. (as she then was), in her capacity as case management Justice, directed the parties to move forward first with the Disqualification Application. A three-day hearing was scheduled for February 2019 to determine whether Ms. Farrell should be disqualified from holding municipal office and running in the next municipal election. That application never proceeded. A judicial dispute resolution ("**JDR**") session took place in April 2021, as ordered by Hall J. (who replaced Antonio J. as case management Justice), and he presided over the JDR. The JDR was unsuccessful. Hall J. then directed that the Amended Application be determined by way of a three-day special chambers hearing to be scheduled as soon as practicable.

[4] The Applicants now seeks a declaration that the pecuniary interest claims are moot on the basis that the MGA Relief Sought cannot be achieved as the Defendant did not seek re-election to municipal office and, as such, there is no live controversy except as to costs. The only matter that I am required to decide is whether the Amended Application is moot.

Analysis

[5] The Applicants claim that the pecuniary interest application under the MGA is extinguished and has become "moot" because Ms. Farrell has left office. I disagree. I find that the legislation expressly provides otherwise, and the pecuniary interest claim should be allowed to continue, should the Applicants wish to do so.

[6] A review of the relevant provisions of the MGA is required to put the Disqualification Application into its proper statutory context.

[7] Under section 170 of the MGA, a councillor has a pecuniary interest in a matter if either the matter could monetarily affect the councillor or an employer of the councillor, or the councillor knows or should know that the matter could monetarily affect the councillor's family. That section also provides specific rules for what constitutes a pecuniary interest and what does not constitute a pecuniary interest.

[8] Subject to exceptions enumerated in subsections (2) and (3), subsection 172 (1) requires a councillor with a pecuniary interest in a matter before council to disclose the matter prior to discussion, abstain from voting on any question relating to the matter, abstain from any discussion of the matter, and leave the meeting room until discussion and voting on the matter is complete.

[9] Section 174 of the MGA sets out circumstances in which a councillor becomes disqualified from council, including disqualification because of a contravention of the pecuniary interest rules set out in section 172.

[10] Lastly, sections 175 to 178 of the MGA set up enforcement mechanisms where a councillor has been disqualified from council. Subsection 175(1) sets out the basic premise of disqualification, namely that a councillor must resign immediately where they are disqualified. Where a disqualified councillor does not resign, subsection 175(2) permits either council or an elector to seek an order declaring the person to be disqualified from council. Where an elector seeks the declaration, they are required to file an affidavit showing reasonable grounds for

believing that the councillor ceased to be qualified from councillor and are required to pay $500 as security for costs. Moreover, an application is required to be made within 3 years of the date the disqualification is alleged to have occur.

[11] Subsection 175(4) is an important provision relevant to the determination of this application. It provides that an application commenced under subsection 175(2) does not become moot simply because an intervening election takes place and the councillor in respect of whom the application is made resigns before or after the election, is re-elected, has completed their term in office, was not re-elected or, as in this case, did not run in the election. In essence, the provision contemplates a broad range of circumstances that might be otherwise relied on to defeat an application of this nature based on mootness.

[12] Courts are to take a "broad and purposive approach to the interpretation of municipal legislation" consistent with the modern approach to statutory interpretation (***United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)***, 2004 SCC 19, at paragraph 8).

[13] The parties were unable to provide authority interpreting subsection 175(4).

[14] In ***Fairbrass v. Hansma***, 2009 BCSC 878, aff'd 2010 BCCA 319, electors petitioned the Supreme Court of British Columbia to disqualify the mayor of a township on the basis that the mayor had a direct or indirect pecuniary interest in a proposed amendment to that municipality's community plan and, by participating in the council discussion and voting on the proposal, had become disqualified from office. Several of the applicant electors, who were unsuccessful in the Supreme Court, appealed to the Court of Appeal. By the time the matter was heard in the Court of Appeal, a general local election had taken place. Despite this, the Court of Appeal determined that it should hear and decide the appeal. The Court stated (at para 10):

> The potential period of disqualification in this case has long since lapsed, there having been a general local election in November 2008. Nonetheless, the petitioners brought the petition promptly. It raises a serious issue which was considered by the Supreme Court of British Columbia. Were we to refuse to hear the appeal as moot, it would be a rare case that could be advanced through the court process, given the election cycle in municipal governance. The issue in this case is serious, the allegations are of consequence, in particular to the respondent, and the issue has the potential to arise again in another guise. Upon these considerations we determined this appeal should be resolved on its merits.

[15] In my opinion, the same reasoning applies to this case. The Applicants raise important and serious issues worthy of consideration, the allegations are of consequence, particularly to Ms. Farrell, and the issues raised have the potential to arise again in the future. Unlike the legislation at issue in ***Fairbrass***, the MGA specifically provides that a disqualification application may be continued despite the holding of an intervening election, whether or not the councillor who is the subject of the application seeks re-election or does not run again.

[16] In my view, subsection 175(4) signals that the legislative assembly intended not only that allegations of disqualification should be treated seriously, but that their resolution should not be defeated because of an intervening election or a decision of a councillor to resign or not seek re-election. In a sense, subsection 175(4) operates to defeat a claim of mootness.

[17] Because the subsection 175(4) of MGA specifically provides for the continuation of an application even after a municipal councillor leaves office, I am satisfied that the pecuniary

interest allegations present a live controversy. Even though Ms. Farrell has left municipal office and is not running for re-election, "a live controversy exists which affects the rights of the parties" under the legislation, and therefore the issue is not academic (***Borowski***, [1989] 1 SCR 342 at page 353, see also, ***Hiles v Hiles***, 2021 ABCA 57 at note 13, and ***Chartier Estate v. Saskatoon (City)***, 2022 SKQB 104, at paragraphs 28-29).

[18] In my view, the underlying premise of the Applicants' position in this application is that the matter is moot because their preferred relief – resignation – is no longer possible, and therefore the whole of the Disqualification Application is moot. Paraphrasing and adapting Justice Veit's comments remarks in ***Bellerose v. Patenaude***, 2004 ABQB 627, at paragraph 5, to the present circumstances, the importance of democratic governance for the City of Calgary (and other municipalities, for that matter) would be undermined if rules surrounding pecuniary interests were not tested when an elector raises concerns about their application. This is neither a hypothetical nor abstract question (***Borowski***,*ibid*).

[19] The Applicants, and Mr. Terrigno in particular, emphasized the public interest aspects of this application brought as "elector[s]" under the MGA. They argue that such a litigant will be very reluctant to come forward when the relief they seek becomes ineffective, in this case through resignation. By bringing this application for leave to discontinue based on mootness, they seek recovery of their costs of this litigation (see, ***Vukelich v Mission Institution***, 2002 BCSC 495, aff'd 2005 BCCA 75, cited in ***Fairway Developments Ltd. v Hong***, 2011 ABCA 70). However, the public has a strong interest in having this matter determined by ensuring "that an important question which might independently evade review be heard . . ." (***Borowski***, at page 360). I need not consider the costs implications of this ruling, other than to observe that, should a party seek to discontinue a claim, the ordinary rule is that that party may pay the costs of the other unless the parties agree or the court otherwise orders (see, ***Real Estate Council of Alberta v Moser***, 2021 ABQB 787, at para 16). As I have stated throughout these reasons, there is a strong public interest in promoting and strengthening municipal governance by ensuring that the pecuniary interest allegations are heard and determined once they are raised. A declaration that Ms. Farrell has breached the pecuniary interest provisions of the MGA remains available, and so a live controversy exists which affects the public, and Ms. Farrell, in particular.

[20] Based on all of the foregoing, I find that the Disqualification Application is not moot because a declaration remains available under the MGA. .

Disposition

[21] This application is dismissed.

Heard on the 23rd day of November, 2022.
Dated at the City of Calgary, Alberta this 22nd day of March, 2023.

Michel Bourque

M.H. Bourque
J.C.K.B.A.

Appearances:

Christopher Souster
for the Applicants other than Mike Terrigno

Mike Terrigno
on his own behalf

David Pick
for the Respondent