

Discipline Imposed On Mayor Overturned As Unreasonable

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In a recent judicial review decision, the Court of King's Bench of Alberta has provided guidance on the limits of municipal council authority when imposing sanctions on elected officials. The case, *Clark v Medicine Hat (City)*, [2024 ABKB 321](#), involves a review of sanctions imposed on Mayor Clark by the Medicine Hat City Council for an alleged breach of their Code of Conduct. The decision provides for a unique overlap of administrative law principles in a non-unionized employment setting.

This is an employment law decision because it deals with the reasonableness of discipline imposed on a Mayor, who is a municipal employee.

Facts

The following is a summary of the key facts:

- In 2023, the Medicine Hat City Manager, Ms. Mitchell, suggested and made several administrative changes resulting in staff reorganization. The changes were implemented without the approval of Council, which was a requirement under the City's statutory governance structure.
- Ms. Mitchell and Mayor Clark had discussed the requirement of Council approval prior to implementing the changes. Mayor Clark had understood Council approval was required before implementation, but Ms. Mitchell did not agree.
- The situation was reviewed at an in-camera meeting of Council on July 4, 2023 ("**July Meeting**") and the necessary approval was set (after the changes had already been implemented) on the agenda for an August 21, 2023 Council meeting ("**August Meeting**").
- At the August Meeting, several Council members spoke in support of the administrative changes. Mayor Clark discussed the issues that had been raised in the July Meeting, namely, that the changes had been implemented without Council approval. Mayor Clark and Ms. Mitchell had an initial exchange, with Ms. Mitchell conceding that the error was hers. Mayor Clark eventually circled back to the issue and explained that she had commissioned a private legal opinion, which outlined that Council approval was now required or the changes would be deemed null and void.
- After the exchange, Ms. Mitchell expressed that she felt the questioning was inappropriate. Council then voted and approved the administrative changes.
- After the August meeting, a Councilor made a formal complaint under the *Code of Conduct Bylaw* 4492 ("**Code**"), alleging that Mayor Clark had violated the *Code* in (1) obtaining a personal legal opinion and disclosing it to the Council in public at the August Meeting ("**First Violation**"); and (2) failing to treat Ms. Mitchell with dignity, courtesy and respect and injuring her professional or ethical reputation ("**Second Violation**"), contrary to section 8 of the *Code*.

- The *Municipal Government Act* (“**MGA**”) outlines the general duties of councilors, which include adherence to the *Code*. Per the procedure set out in the *Code*, a formal investigation was conducted (the “**Kingsgate Report**”). The Kingsgate Report found that there was insufficient evidence to establish the First Violation but found that the Second Violation was substantiated. During a Council meeting in March of 2024, Council voted in favor, based on the Second Violation, to impose six sanctions against Mayor Clark, including suspending her presiding duties, removing her as official spokesperson, prohibiting her from entering the administration area of City Hall and attending meetings, and reducing her salary by 50%.
- Section 8 of the *Code* sets out the requirement that Council Members treat one another with courtesy, civility and respect. The Kingsgate Report found that Mayor Clark breached this duty in her interactions with Ms. Mitchell during the August Meeting, noting that she was determined to make her point publicly that Mitchell had broken the law. The Report recognized that Ms. Mitchell was clear at the outset of the August Meeting that she had made an error, and that given the circumstances, Mayor Clark did not have a duty to shine a public light on Ms. Mitchell’s non-compliance as it had already been addressed.
- In her Application for Judicial Review, Mayor Clark argued that (1) the decision was colored by bias; (2) the decision was patently unreasonable; (3) the decision was contrary to *Charter* values; (4) the procedure was procedurally flawed and failed to provide Ms. Clark with a fair opportunity to respond to the allegations; and (5) the sanctions imposed were unreasonable.

Analysis/Conclusion

As noted, the decision involved application of the *MGA*, which sets out a framework for municipal governance in Alberta, including the duties of councilors and mayors and the requirement for the *Code*. The *Code* outlines specific expectations for council members’ behavior, including treating others with respect. The *Code* also establishes a formal complaint process and potential sanctions, with the crucial caveat that sanctions must not prevent councilors from fulfilling their legislated duties under the *MGA*.

Justice Hollins affirmed that the issues of procedural fairness were to be reviewed on correctness standard. The substantive issues (the unreasonableness of the sanctions and the City’s decision to implement them) triggered the application of section 539 of the *MGA*, which provides that “*no bylaw or resolution may be challenged on the ground that it is unreasonable.*” After a review of recent authority discussing section 539, Justice Hollins found that assessing bylaws or resolution requires the Court to consider the facts and evaluate whether “*the decisions to enact the bylaws or resolutions were aberrant, overwhelming, or decisions that no reasonable municipality would have taken.*”

Justice Hollins found that the decision-making process was procedurally fair, that there was no bias, and that the decision that Mayor Clark breached the *Code* based on the findings of the Kingsgate Report was reasonable. Justice Hollins reasoned that the crux of the issue was the inappropriateness of Mayor Clark’s comments about Ms. Mitchell in a public forum. As Ms. Mitchell had acknowledged her own fault, per section 8 of the *Code*, Mayor Clark questioning Ms. Mitchell was deemed unreasonable and unnecessary, as the issue had already been resolved.

Concerning the sanctions, Justice Hollins upheld the letter of reprimand and request for an apology, but struck down the suspension of presiding duties, removal as official spokesperson, prohibition from attending administration committee meetings, and the 50% salary reduction, reasoning as follows:

.... the suspension of Clark's presiding duties under section 154 of the *MGA*, that she no longer be the official spokesperson for Council, that she no longer can attend meetings of the administration committee or that her salary is reduced by 50% (with no limit in time, effectively a financial penalty of over \$50,000) are hard to justify. There is no indication the issue was her inability to deal with other staff, or with governance issues. After the intervention of a Councillor at the August meeting, Clark continued to chair the meeting appropriately, to call for a vote on the question calmly and competently. There was no suggestion she was unable to chair the meeting or represent the City. Clark was elected Mayor of the City, these latter sanctions in essence strip her of a significant portion of her role as Mayor.

[66] The breach of the *Code* would appear to be in relation to a conflict of opinion about governance issues. It does not appear to deal at all with Clark's ability to be a spokesperson for the City, or her ability to preside at Council meetings. To prohibit her from entering the administrative area at City Hall, or having contact with City staff is hard to relate to what was said and done, or the tone in which it was said and done at the August meeting. Clark continues to be bound by the *Code* in terms of her interaction with any staff member of the City. The background of the friction that developed between Mitchell and Clark over the governance issue is not frivolous, it was an important governance matter. It is hard to reconcile what was said and done in the August meeting with the sanction that Clark cannot attend committee meetings, or with the magnitude of the financial penalty.

[67] When I review the extent of the sanctions, particularly 2, 3, 5, 6 and portions of 4, I find that they are overwhelmingly disproportionate to the breach of the *Code* and no reasonable municipal council would have taken that decision.

Concerning Remedy, Justice Hollins noted that the typical process is to send the matter back to the administrative body to reconsider the decision with directions. However, this may be inappropriate in certain circumstances, particularly where there is a risk of "*endless merry-go-round of judicial reviews.*" In the current case, Justice Hollins noted:

[69] Remitting the matter back in this case would mean sending the issue of sanctions for the conduct back to Council, whose members appear to have no sense of proportionality in crafting sanctions and have imposed sanctions that have no rational connection with the breach of the Code. In fact, it appears at first blush that Council went down the Sanctions that may be imposed as enumerated in 17.4 of the Code and ticked a box for each sanction (a) through (g).

My Take

This decision serves as an important reminder about the importance of proportionality when imposing sanctions on elected officials. Several key points emerge:

1. **Procedural Fairness:** The decision underscores the importance of following proper procedures when [investigating](#) and deciding on Code of Conduct complaints. Councils should ensure that accused officials have adequate opportunity to respond to allegations.
2. **Reasonableness of Findings:** Courts will show deference to a council's findings of Code breaches if they are based on a reasonable interpretation of evidence and the Code itself.
3. **Proportionality of Sanctions:** The most significant aspect of this decision is the Court's emphasis on proportionality. Sanctions must be rationally connected to the breach and should not unduly interfere with an elected official's ability to perform their statutory duties. Councils should carefully consider the impact and necessity of each sanction they impose.
4. **Charter Considerations:** the *Charter* argument in this case was brief. Mayor Clark alleged that the *Charter* overrode the application of the *Code*, as she was engaging in “expressive comment” (commenting on a matter of public interest). Justice Hollins dismissed the argument as the August Meeting was intended to address the issue of staff reorganization, not the performance concerns of Ms. Mitchell. However, the decision serves as a reminder that expressive rights can be a factor in these disputes, particularly when sanctions impact an elected official's ability to speak on matters of public interest.
5. **Judicial Remedies:** This case demonstrates the Court's willingness to strike down unreasonable sanctions rather than simply remitting the entire matter back to council, particularly where the basis for the sanctions seemed to lack any sense of proportionality. This approach can provide more immediate relief to affected officials and prevent prolonged disputes.

Municipal councils should view this decision as a caution against overreaching in their [disciplinary actions](#). While codes of conduct are important tools for maintaining decorum and respect in municipal governance, they should not be wielded in a way that effectively neutralizes duly elected officials or prevents them from fulfilling their democratic mandate.

Councils would be well-advised to seek legal advice when considering significant sanctions, especially those that impact core mayoral or councilor functions. They should also clearly document their reasoning for imposing specific sanctions to demonstrate the rational connection between the breach and the penalty.



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