

NOVA SCOTIA COURT OF APPEAL

Citation: *Goldie v. Kings County (Municipality)*, 2024 NSCA 37

Date: 20240327

Docket: CA 523820

Registry: Halifax

Between:

Brian Thomas Goldie, Margaret Ann Goldie, Central Valley Aircraft Incorporated,
Greenwood Flight Centre, and GFC Aircraft Maintenance

Appellants

v.

Municipality of the County of Kings

Respondent

Judge: Bryson, Van den Eynden, Beaton, JJ.A.

Appeal Heard: March 19, 2024, in Halifax, Nova Scotia

Subject: Disclosure of records, *Municipal Government Act*, contempt, costs

Summary: The appellants appealed a ruling that determined the Municipality did not fail to disclose records requested by the appellants. There was one noted exception which the judge ordered the Municipality to remedy forthwith. The appellants also sought to have the Municipality held in contempt. The impugned actions or inactions related to the disclosure sought by the appellants. The judge dismissed the contempt motion and ordered the appellants to pay costs of \$5000.

Issues: The appellants assert the judge's ruling are flawed and should be set aside. They advanced fourteen grounds of appeal alleging errors of law, mixed fact and law, fact and "judicial principles".

Result: Appeal dismissed. No error in law has been established nor is any apparent on the record. The judge identified and applied the correct law to the matters she had to determine. Her factual findings are well g rounded in the record. Appellants are to pay costs in the amount of \$1,000.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 13 paragraphs.

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Written Release: March 27, 2024

Held: Appeal dismissed with costs per reasons for judgment of the
Court

Counsel: Appellants self-represented; with submissions from Margaret
Ann Goldie
Peter D. Nathanson and MacKenzie Anderson, Articled
Clerk, for the Respondent

Reasons for judgment:

- [1] The proceedings in the court below relate to two matters:
- (1) an appeal filed by the appellants under s. 494(1) of the *Municipal Government Act*, S.N.S. 1998, c. 18 (*MGA*) to determine whether the Municipality failed to disclose records requested by the appellants¹; and
 - (2) a motion for contempt filed by the appellants. They alleged the respondent Municipality was in contempt. The impugned actions or inactions relate to the disclosure sought by the appellants.
- [2] Justice Gail L. Gatchalian of the Nova Scotia Supreme Court was the presiding judge in both matters. The parties agreed the evidence in one hearing could be used as evidence in the other.
- [3] In her decision (2022 NSSC 343), the judge addressed the s. 494 (1) matter first. With one exception, she determined the Municipality did not withhold records. She concluded:
- [49] ...
- Conclusion re: Appeal – Withheld Records?***
- With the exception of the unapproved redactions in the records from 2012 and 2013 in File 18-00123, the Goldies have not established, with evidence, a reasonable basis to conclude that the records they seek from the Municipality exist.
- [4] Earlier in her comprehensive decision, the judge set out the relevant background and applicable legal framework, and clearly explained why she reached this conclusion. Regarding the exception, the judge ordered the Municipality to provide redaction-compliant records forthwith.
- [5] As to the appellants’ contempt motion, the judge found the numerous grounds of contempt were vague and fell short of what was required. She said:

¹ Several access to information requests were made requesting the Municipality provide records related to the Municipality’s decision to close an Airport and create a business park. The requests traversed a number of other required steps under the *MGA* before the appellants could avail themselves of the s. 494(1) appeal process. Section 495(1) permits a judge of the Supreme Court of Nova Scotia to determine the matter *de novo*.

[53] The grounds for contempt in the Notice of Motion for Contempt, while numerous, are vague. For the most part, the grounds are not connected to the terms of an order of the court. The Notice of Motion did not, in my view, provide the Municipality with clear, precise and unambiguous notice of the specific contempt offences alleged by the Goldies.

...

[58] In my view, the Goldies failed to define their grounds of contempt with sufficient particularity.

[6] This finding was fatal to the appellants' contempt motion. However, out of caution that her ruling on the lack of sufficient particularity might be argued to be in error, the judge went on to decipher, as best one could, and then analyse the contempt allegations to determine whether the appellants had proven them to the requisite standard of proof beyond a reasonable doubt. The judge explained why they did not and dismissed the contempt motion. The judge also ordered the appellants to pay costs of \$5000 to the Municipality on the unsuccessful contempt motion.

[7] On appeal to this Court, the appellants assert the judge's rulings on the disclosure of records, contempt motion and costs are flawed and should be set aside. The appellants advanced fourteen grounds of appeal alleging errors of; law, mixed fact and law, fact, and "judicial principles".

[8] An appeal is not an opportunity to relitigate. To succeed on appeal the appellants must establish the judge erred. With respect, they have not done so. No error in law has been established nor is any apparent on the record. In our view the judge identified and applied the correct law to the matters she had to determine. Her factual findings are well grounded in the record.

[9] We are unanimously of the view the grounds of appeal are without merit and the appeal must be dismissed for the foregoing reasons.

[10] Although the appeal is dismissed, we note the appellants' pursuit of records in the lower court spanned approximately six years. It is worth observing that the judge admonished the Municipality for its sluggish response. In addition to noting the Municipality missed various statutory response timelines set out in the *MGA* during the disclosure process, the judge found that the provision of some records "took far too long" and the delay "inordinate" (see para. 42 and 44 of decision).

[11] The judge also referenced a report from the Information and Privacy Commissioner, in which the reviewing officer said, among other criticisms, that

“the actions of the Municipality suggested that its officials failed to appreciate the importance of the access rights granted under the *Act*” and the . . .Municipality did not “devote sufficient resources to fulfill its duty” under the *MGA* (see para. 7 of decision).

[12] Given this record and the judge’s well-placed comments, it is important for the Municipality to remain mindful of its responsibilities to make every reasonable effort to assist applicants seeking records and “to respond without delay” “openly, accurately and completely” as set out in s. 467(1)(a) of the *MGA*.

[13] The parties did not make specific submissions on what the amount of costs on appeal should be; rather, they left this to the Court’s discretion. In the circumstances of this case, a modest award is appropriate. Costs on appeal are awarded to the Municipality in the amount of \$1,000, inclusive of disbursements.

Bryson, J.A.

Van den Eynden, J.A.

Beaton, J.A.