SUPREME COURT OF NOVA SCOTIA
Citation: *Annapolis (County) v. E.A. Farren Limited*, 2021 NSSC 327

Date: 20211207
Docket: Hfx No 503924
Registry: Halifax

Between:

Municipality of the County of Annapolis

Applicant

v.

E. A. Farren, Limited

Respondent

DECISION

Judge:	The Honourable Justice Scott C. Norton
Heard:	November 15, 2021, at Halifax, Nova Scotia
Decision:	December 7, 2021
Counsel:	Kevin Latimer, Q.C. and Kelcie White, for the Applicant Barry Mason, Q.C., for the Respondent

By the Court:

Background

[1] This Application in Court arises from the acquisition by the Respondent, E. A. Farren, Limited ("EAF"), of certain lands from the Applicant Municipality of the County of Annapolis ("Annapolis") on which EAF intended to build and operate a private school. Following a municipal election on October 17, 2020, the outgoing Annapolis municipal council ("Former Council") passed resolutions approving the conveyance and lease of real property to EAF. Annapolis, by its newly elected Council, seeks a declaration that the resolutions were illegal and that the warranty deed and lease are void *ab initio*. EAF asserts that the resolutions were lawful, the transactions were valid, and the Application should be dismissed.

[2] By correspondence dated October 1, 2021, the Applicant advised the Court that it was the original intent of the parties that the Court would deal with the Applicant's two primary arguments, namely (1) the Former Council's failure to adhere to statutory requirements in passing resolutions on November 4, 2021, and (2) the sale of municipal lands for less than fair market value contrary to the *Municipal Government Act*. In support of the second argument, the Applicant filed an expert appraisal report. Unfortunately, the author of the report was not able to participate in the scheduled hearing due to health issues. To make use of the scheduled court time, with my concurrence, the parties agreed to proceed with the hearing of the first issue, reserving the ability (if necessary) to return on a subsequent date for a determination of the second issue with expert appraisal evidence.

[3] Prior to the hearing, the Applicant brought a Motion by Correspondence seeking to have parts of the affidavits filed by the Respondent struck as inadmissible. My decision ruling on the evidentiary objections and redacting the affidavits is reported at 2021 NSSC 304.

[4] The evidence of Annapolis consisted of the Affidavit of Carolyn Young, Municipal Clerk for Annapolis since March 2010, sworn on April 20, 2021. Ms. Young was cross-examined at the hearing. The evidence of EAF consisted of the redacted Affidavits of Edward Farren, owner and principal of EAF, sworn June 21, 2021; John Ferguson, former CEO of Annapolis, sworn June 21, 2021; and Timothy Habinski, former Warden for Annapolis, sworn June 18, 2021.

Facts

[5] Annapolis is a municipality pursuant to the *Municipal Government Act*, S.N.S. 1998, c. 18 (the "MGA"). The Respondent, EAF, is a business incorporated in New

Brunswick. It operates as a land development company. Edward Farren is its principal.

[6] In 2017, Edward Farren entered discussions with Annapolis's former Warden (Timothy Habinski) and former Chief Administrative Officer (John Ferguson) respecting EAF's plan to establish a branch of Gordonstoun School, a Scottish private school, in Annapolis County.

[7] In December 2018 the project was announced to the public.

[8] In late 2019 or early 2020, the site of the former Upper Clements theme park in Upper Clements, Annapolis County, was identified as the location for the proposed school.

[9] Beginning in May 2019, the parties entered into a series of formal agreements as follows:

1. A Letter of Intent dated May 15, 2019, whereby Annapolis stated its intention to borrow $7.2 million to acquire title to suitable property and to finance the building and infrastructure to carry out the purposes of the school. Annapolis would secure its loan after the completion of construction and investments from outside parties were raised.
2. A contract between Annapolis and EAF dated August 5, 2020, incorporating a Document of Guarantee, whereby EAF would invoice Annapolis from time to time to a maximum of $7.2 million for payment for the development of the land. The money was to be used for the sole purpose of developing the school campus. Annapolis would own the land on which the school was built (due to a legislative requirement that Annapolis had to own the land in order to obtain development financing) but the school would have the indefeasible right of use of the property. Annapolis would receive a 1.2% economic return on gross revenue from the school commencing in the fourth (4^{th}) year of operation and thereafter in perpetuity. The project was to be complete in September 2021.
3. The impugned Lease dated November 11, 2020, by which EAF would pay back the entire $7.2 million plus interest over a period of 40 years.

[10] In March 2020, Annapolis agreed to purchase three parcels of land, bearing PID numbers 5094297, 5304084, and 5304100 (the "Upper Clements Lands") from the Upper Clements Park Society for the purpose of furthering the school project.

[11] Of the $600,000 purchase price paid for the Upper Clements Lands, Annapolis allocated $250,000 to PID 5094297, $65,000 to PID 5304084, $150,000 to PID 5304100, $134,999 to the buildings, and $1.00 to the chattels, including the amusement rides. The transaction closed on April 8, 2020, with the execution and delivery of a warranty deed conveying the Upper Clements Lands to Annapolis.

[12] After acquiring the Upper Clements Lands, Annapolis took steps to subdivide PID number 5094297 into two separate parcels, ultimately described as Lot 101 and Lot 102. It was intended that Lot 101 would be conveyed to EAF outright and Lot 102, on which the buildings would be constructed, would be leased to EAF (so as to maintain ownership of the land for financing requirements as previously described).

[13] Due primarily to the COVID-19 pandemic, the subdivision process took longer than anticipated.

[14] The proposed school was a contentious issue in the municipal election of October 17, 2020. In that election, ten of the eleven incumbent Councillors sought re-election to Municipal Council, including then-Warden Timothy Habinski. However, six of the eleven incumbent Councillors, including Mr. Habinski, were not returned to office.

[15] The period for requesting a recount of ballots cast in the election expired on October 27, 2020. There were no requests for a recount.

[16] The Former Council, including those who had been defeated, met to transact business three times following the October 17 election. The first was a regularly scheduled meeting, while the latter two were special meetings convened on one- or two-days notice. The Councillors-elect were not notified of, or present for, these meetings.

[17] Due to the COVID-19 pandemic, all Council meetings were held virtually using the Zoom videoconference platform. There was no live feed of the meetings for public participation. A video recording of the Zoom meeting was posted on the Annapolis web site very soon after the conclusion of each meeting.

[18] The first of the three meetings occurred on October 20, 2020. It was a regularly scheduled meeting in accordance with the Annapolis' Council Meetings Policy, which calls for a regular meeting on the third Tuesday of every month.

[19] On October 26, 2020, Annapolis' Chief Administrative Officer, John Ferguson, directed the Municipal Clerk, Carolyn Young, to notify the former Council of a special meeting to be held on October 28, 2020. The special meeting proceeded as scheduled. Ten of the eleven members of the Former Council were

present. At this meeting the Former Council rescheduled the next Committee of the Whole ("COTW") meeting from November 10, 2020, to November 12, 2020, so that the new Council could be sworn in before the COTW meeting.

[20] Another special session of the Council occurred on November 4, 2020. Ms. Young notified the members of the Former Council one day in advance of the meeting at Mr. Ferguson's request. While there was no agenda for this meeting, the transfer of Lots 101 and 102 to EAF was the main order of business.

[21] At the outset of the November 4, 2020 meeting, the Former Council discussed its authority to meet and transact business. Several Councillors indicated that constituents had voiced concern about the fact that the outgoing Council was continuing to meet. Annapolis's solicitor advised the Former Council that it had authority to meet and make decisions as usual until the swearing-in of the new Councillors. The Former Council then went in camera to consider proposed contractual negotiations in accordance with s. 22(2)(e) of the MGA.

[22] Following the in camera session, it was moved that the Warden and Clerk execute a lease of Lot 102, a portion of the property formerly identified as PID 5094297, in favour of EAF, as presented to the Former Council in camera. The motion carried, 7 in favour, 4 against.

[23] It was then moved that Annapolis convey Lot 101, another portion of the property formerly identified as PID 5094297, to EAF. The motion carried, 6 in favour, 5 against. As of the November 4, 2020, meeting, there was no Agreement of Purchase and Sale with respect to the conveyance of Lot 101 to EAF, nor was there any other obligation.

[24] The Former Council approved the conveyance and the lease without obtaining an independent appraisal report or staff report with respect to the value of the lands under consideration and the procedure to be followed in disposing of or otherwise encumbering those lands. There is no evidence that the Former Council formally considered whether Lot 101 was required for municipal purposes following its acquisition and prior to the sale.

[25] On November 4, 2020, the Deputy Clerk, Wanda Atwell, and the former Warden, Timothy Habinski, executed a warranty deed conveying Lot 101 to E.A. Farren in fee simple for $1.00.

[26] On November 4, 2020, Mr. Habinski and Ms. Atwell executed a lease of Lot 102 to E.A. Farren for a term of 99 years, with a right of renewal for a further 99 years at a ground rent of $1.00 per year.

[27] The final subdivision plan was not completed until November 9, 2020. The subdivision plan establishing the parcels conveyed and leased was registered on November 10, 2020.

[28] Another special session of Council was held on November 10, 2020. This meeting had been scheduled by Council on July 21, 2020, well prior to the election, for the purpose of swearing in the new Council. It was at this meeting, the third meeting following the expiry of the recount period, that the Councillors-elect were declared elected, and their oaths administered. The Former Council did not transact any business at this meeting before the new Councillors assumed office. Upon being sworn in, the new Councillors immediately elected a Warden and Deputy Warden.

[29] The first regular meeting of the newly elected Council took place on November 19, 2020. At this meeting, the new Council resolved to seek clarification on the validity of the special meetings held on October 28 and November 4, 2020.

[30] On January 19, 2021, the new Council unanimously resolved to bring this Application to quash the resolutions authorizing the conveyance of Lot 101 to EAF and the lease agreement with respect to Lot 102. The new Council also resolved to issue a Request for Proposals for a feasibility study of the Gordonstoun School project.

Issues

[31] The Application raises the following issues for determination:

1. Did the Former Council breach the *Municipal Elections Act*, RSNS 1989, c.300, (the "MEA") or the MGA by meeting and transacting business on November 4, 2020?
2. Did the Former Council breach its obligation to ascertain fair market value of the lands under consideration before voting on the transactions?
3. If the Former Council did breach its duty or duties, how do these breaches impact the impugned resolutions and associated land transactions?

As agreed by counsel, a fourth issue of whether the lands were transferred for less than fair market value will be determined at a subsequent hearing, if necessary.

Law

[32] The Application was brought pursuant to s. 189 of the MGA, which provides

> **Procedure for quashing by-law**
>
> **189** **(1)** A person may, by notice of motion which shall be served at least seven days before the day on which the motion is to be made, apply to a judge of the Supreme Court of Nova Scotia to quash a by-law, order, policy or resolution of the council of a municipality, in whole or in part, for illegality.
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> **(2)** No by-law may be quashed for a matter of form only or for a procedural irregularity.
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> **(3)** The judge may quash the by-law, order, policy or resolution, in whole or in part, and may, according to the result of the application, award costs for or against the municipality and determine the scale of the costs.
>
> **(4)** No application shall be entertained pursuant to this Section to quash a by-law, order, policy or resolution, in whole or in part, unless the application is made within three months of the publication of the by-law or the making of the order, policy or resolution, as the case may be.

[33] Illegality is not defined by the statute. Charron J., in *London (City) v. RSJ Holdings Inc.*, 2007 SCC 29, stated that: "In its ordinary meaning, it is a broad generic term that encompasses any non-compliance with the law". In *Fortin v Sudbury (City)*, 2020 ONSC 5300, Justice Ellies, at para 72, noted that courts have quashed by-laws or considered doing so where there has been statutory procedural non-compliance; procedural unfairness; a party's reasonable expectation to be heard has not been met; a by-law has been passed for an improper purpose; council has suffered from disqualifying bias; or, a by-law was passed "in bad faith".

[34] The onus is on the person challenging the by-law or resolution to prove illegality: *Ottawa (City) v Boyd Builders Ltd*., [1965] S.C.R. 408, at p. 413.

<u>Issue 1: Did the Former Council breach the MEA or the MGA by meeting and transacting business on November 4, 2020?</u>

Standard of Review

[35] Annapolis asserts that the standard of review is correctness. The Respondent asserts that the standard is reasonableness.

[36] The Applicant relies on the reasoning in *Fortin*, *supra*. Reviewing the decision of the Supreme Court of Canada in *RSJ Holdings*, Justice Ellies wrote, at para 64:

64 In my view, the decision in *RSJ Holdings* does not stand for the proposition that correctness is the standard to apply in every case in which a municipal by-law or resolution is being attacked. *RSJ Holdings* was a case in which the attack on the by-law was based on statutory non-compliance, raising a legal question akin to the question of jurisdiction, which the court was at least as well-equipped to decide as was the municipality. In *RSJ Holdings*, the question before the Supreme Court was whether an interim control by-law passed under the *Planning Act* in secrecy during two closed meetings of council should be quashed under s. 273. Section 239 of the *Municipal Act*, 2001 requires that meetings be open to the public unless one of the statutory exemptions applies. One of those exemptions permitted closed meetings where they were allowed under another statute. The municipality argued that council was entitled to meet secretly because an interim control by-law could be passed under the *Planning Act* without prior notice and without holding a public meeting.

65 The Supreme Court disagreed. In delivering the court's decision, Charron J. made it clear that the question before the court was a purely legal one. She wrote (at para. 37):

> [T]he City argues that the overarching principle which should govern the court on a s. 273 review of a municipal by-law is one of deference. While this approach may be appropriate on a review of the merits of a municipal decision, in my view, the City's argument is misguided here. Municipalities are creatures of statute and can only act within the powers conferred on them by the provincial legislature: *Shell Canada Products Ltd. v. Vancouver (City)*, 1994 CanLII 115 (SCC), [1994] 1 S.C.R. 231, at p. 273. On the question of "illegality" which is central to a s. 273 review, municipalities do not possess any greater institutional expertise than the courts — "[t]he test on jurisdiction and questions of law is correctness": *Nanaimo (City) v. Rascal Trucking Ltd.*, [2000] 1 S.C.R. 342, 2000 SCC 13, at para. 29.

66 However, as McLachlin J. pointed out in *Shell Canada*, and as we shall see, courts have quashed municipal by-laws for many reasons going beyond those relating only to jurisdiction. As Charron J. explained, this power to quash a by-law under s. 273 that is not *ultra vires* is a discretionary one (at para. 39):

> The power to quash a by-law for illegality contained in s. 273(1) of the *Municipal Act*, 2001 is discretionary. Of course, in exercising its discretion, the court cannot act in an arbitrary manner. The discretion must be exercised judicially and in accordance with established principles of law. Hence, when there is a total absence of jurisdiction, a court acting judicially will quash the by-law. In other cases, a number of factors may inform the court's exercise of discretion including, the nature of the by-law in question, the seriousness of the illegality committed, its consequences, delay, and mootness.

67 Thus, there are differing standards of review depending on whether the question is one of *vires* or not: *Wpd Sumac Ridge Wind Inc. v. Kawartha Lakes (City)*, 2015 ONSC 4164 (Div. Ct.), at paras. 20-21. I believe that what can be safely gleaned from the decision in *RSJ Holdings* is that the degree of deference to be shown to municipal acts will depend on the extent to which the illegality in question

> involves a question of law and the extent to which it affects the democratic legitimacy of its decision.

[37] The Respondent relies on the decision of the Nova Scotia Court of Appeal in *Colchester County (Municipality) v. Colchester Containers Limited*, 2021 NSCA 53. On the issue of the standard of review, Justice Scanlan, writing for the Court of Appeal, said:

> [30] In order for this Court to consider whether the hearing judge applied the correct standard of review, it is helpful to identify what standard the matter before the hearing judge required.
>
> [31] There is no doubt that in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 the Supreme Court of Canada pushed a reset button on the judicial review of administrative decisions. Prior to the Court adopting a revised framework for determining the standard of review for administrative decisions, the judicial review of municipal by-laws attracted a two-stage analysis that often resulted in two differing standards of review being applied. Determining whether a municipality possessed the legislative authority to pass a by-law was assessed through the lens of correctness. However, challenges to how a municipality exercised its power was afforded deference. (See *Nanaimo (City) v. Rascal Trucking Ltd*., 2000 SCC 13; *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19; *Halifax (Regional Municipality) v. Ed DeWolfe Trucking Ltd*., 2007 NSCA 89.)
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> [32] *Vavilov* served to compress the former two-stage analysis into one for the vast majority of municipal decisions. The single inquiry is now whether a challenged decision is unreasonable (at para. 83). The Court also provided assistance in the application of the reasonableness standard:
>
> > [68] Reasonableness review does not give administrative decision makers free rein in interpreting their enabling statutes, and therefore does not give them licence to enlarge their powers beyond what the legislature intended. Instead, it confirms that the governing statutory scheme will always operate as a constraint on administrative decision makers and as a limit on their authority. **Even where the reasonableness standard is applied in reviewing a decision maker's interpretation of its authority, precise or narrow statutory language will necessarily limit the number of *reasonable* interpretations open to the decision maker — perhaps limiting it one. Conversely, where the legislature has afforded a decision maker broad powers in general terms — and has provided no right of appeal to a court — the legislature's intention that the decision maker have greater leeway in interpreting its enabling statute should be given effect. …**
> >
> > (Italics in original; bolding added by Scanlan J.A.)
>
> [Underlining added]
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> [33] Earlier in *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2 the Supreme Court specifically addressed the application of the reasonableness

standard to the review of municipal by-laws. It is clear that assessing a by-law for reasonableness is a contextual exercise, and one in which the decision-maker is owed significant deference. Writing for the Court, Chief Justice McLachlin said:

> [19] The case law suggests that review of municipal bylaws must reflect the broad discretion provincial legislators have traditionally accorded to municipalities engaged in delegated legislation. Municipal councillors passing bylaws fulfill a task that affects their community as a whole and is legislative rather than adjudicative in nature. Bylaws are not quasi-judicial decisions. **Rather, they involve an array of social, economic, political and other non-legal considerations**. "Municipal governments are democratic institutions", per LeBel J. for the majority in *Pacific National Investments Ltd. v. Victoria (City)*, 2000 SCC 64, [2000] 2 S.C.R. 919, at para. 33. In this context, reasonableness means courts must respect the responsibility of elected representatives to serve the people who elected them and to whom they are ultimately accountable.
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> [20] The decided cases support the view of the trial judge that, historically, courts have refused to overturn municipal bylaws unless they were found to be "aberrant", "overwhelming", or if "no reasonable body" could have adopted them (para. 80, per Voith J.). See *Kruse v. Johnson*, [1898] 2 Q.B. 91 (Div. Ct.); *Associated Provincial Picture Houses, Ltd. v. Wednesbury Corp.*, [1948] 1 K.B. 223 (C.A.); *Lehndorff United Properties (Canada) Ltd. v. Edmonton (City)* (1993), 146 A.R. 37 (Q.B.), aff'd (1994), 157 A.R. 169 (C.A.).
>
> [21] This deferential approach to judicial review of municipal bylaws has been in place for over a century. As Lord Russell C.J. stated in *Kruse v. Johnson*:
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> > … courts of justice ought to be slow to condemn as invalid any by-law, so made under such conditions, on the ground of supposed unreasonableness. Notwithstanding what Cockburn C.J. said in *Bailey v. Williamson* [(1873), L.R. 8 Q.B. 118, at p. 124], an analogous case, I do not mean to say that there may not be cases in which it would be the duty of the Court to condemn by-laws, made under such authority as these were made, as invalid because unreasonable. <u>But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires."</u> But it is in this sense, and in this sense only, as I conceive, that the question of unreasonableness can properly be regarded. A by-law is not unreasonable merely because particular judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied

> by a qualification or an exception which some judges may think ought to be there.

These are the general indicators of unreasonableness in the context of municipal bylaws. It must be remembered, though, that what is unreasonable will depend on the applicable legislative framework. …

(Underlining of Chief Justice; bolding added)

[34] The Chief Justice added:

> [24] It is thus clear that courts reviewing bylaws for reasonableness must approach the task against the backdrop of the wide variety of factors that elected municipal councillors may legitimately consider in enacting bylaws. **The applicable test is this: only if the bylaw is one no reasonable body informed by these factors could have taken will the bylaw be set aside.** The fact that wide deference is owed to municipal councils does not mean that they have *carte blanche*.
>
> [25] **Reasonableness limits municipal councils in the sense that the substance of their bylaws must conform to the rationale of the statutory regime set up by the legislature**. The range of reasonable outcomes is thus circumscribed by the purview of the legislative scheme that empowers a municipality to pass a bylaw.
>
> (Emphasis added)

[35] The fact municipal decisions often do not result in written reasons was noted by the Chief Justice, and guidance given as to how a reviewing court should assess for reasonableness in those instances:

> [29] It is important to remember that requirements of process, like the range of reasonable outcomes, vary with the context and nature of the decision-making process at issue. Formal reasons may be required for decisions that involve quasi-judicial adjudication by a municipality. But that does not apply to the process of passing municipal bylaws. To demand that councillors who have just emerged from a heated debate on the merits of a bylaw get together to produce a coherent set of reasons is to misconceive the nature of the democratic process that prevails in the council chamber. The reasons for a municipal bylaw are traditionally deduced from the debate, deliberations and the statements of policy that give rise to the bylaw.
>
> [30] Nor, contrary to Catalyst's contention, is the municipality required to formally explain the basis of a bylaw. **As discussed above, municipal councils have extensive latitude in what factors they may consider in passing a bylaw. They may consider objective factors directly relating to consumption of services. But they may also consider broader social, economic and political factors that are relevant to the electorate.**
>
> (Emphasis added)

[38] As the Court of Appeal in *Colchester* has noted, *Vavilov* has made reasonableness the presumptive standard of review when considering the decision-maker's interpretation of their enabling statute. But it is subject to the important limitation that: "[e]ven where the reasonableness standard is applied in reviewing a decision maker's interpretation of its authority, precise or narrow statutory language will necessarily limit the number of reasonable interpretations open to the decision maker — perhaps limiting it one".

[39] It is also important to recognize that the first issue addresses the interpretation of the MEA. That legislation is not the enabling statute for the decision-making body, but rather provides for the democratic constitution of that body. In contrast to the deference owed to municipal councillors in passing by-laws that engage broader social, economic, and political factors that are relevant to the electorate, they hold no particular expertise in the interpretation of election legislation and are accordingly, in my opinion, owed little or no deference.

[40] Applying a standard of reasonableness, I conclude, for the reasons that follow, that the resolutions of the Former Council were illegal and as such should be quashed pursuant to s. 189 of the MGA.

[41] Before addressing the statutory requirements for transition of power following a municipal election, it is helpful to consider the applicable principles of statutory interpretation. In the seminal text on the subject, Ruth Sullivan, *Construction of Statutes*, 6th edition (Markham: Lexis Nexus, 2014), the author notes, at p. 7:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[42] And further, at p. 337:

> It is presumed that the provisions of legislation are meant to work together, both logically and teleologically as parts of a functioning whole. The parts are presumed to fit together logically to form a rational, internally consistent framework …
>
> The presumption of coherence is also expressed as a presumption against internal conflict. It is presumed that the body of legislation enacted by a legislature does not contain contradictions or inconsistencies, that each provision is capable of operating without coming into conflict with the other.

[43] "Ordinary meaning" means the "natural meaning which appears when the provision is simply read through". *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Assn.*, [1993] 3 S.C.R. 724 at p. 735.

[44] In *Northern Construction Enterprises Inc. v. Halifax (Regional Municipality)*, 2015 NSCA 44, Chief Justice MacDonald, citing Binnie J. in *RSJ Holdings*, *supra*, said, at para 15:

> I start with this basic premise. No approach to statutory interpretation, however benevolent, purposive and contextual, can create authority that does not exist. It must either be expressed or implied from the bestowing legislation. After all, without provincial delegation, municipalities, as creatures of statute, would have no authority.

And at para 24:

> But, when I view the legislative scheme in its entire context and apply a purposeful approach, I cannot reasonably stretch the interpretation that far. After all, as *Sullivan,* supra, reminds us, a purposive and contextual approach calls for a reasonable result at the end of the day:
>
> > 2.9 At the end of the day, after taking into account all relevant and admissible considerations, the court must adopt an interpretation that is appropriate. An appropriate interpretation is one that can be justified in terms of (a) its plausibility, that is, its compliance with the legislative text; (b) its efficacy, that is, its promotion of legislative intent; and (c) its acceptability, that is, the outcome complies with accepted legal norms; it is reasonable and just.
> >
> > [Emphasis added]

[45] The MEA and the MGA govern the orderly transition of power following a municipal election. Section 131(1) of the MEA provides that any candidate or any elector may apply to a judge for a recount of the ballots in any or all polling districts at any time within ten days after ordinary polling day. Time periods under the MEA are calendar days. In this case that recount application had to be made by October 27, 2020. No such applications were made.

[46] The language in the MEA and MGA governing transition of power uses mandatory language. Section 129 of the MEA requires that the Councillors-elect be declared elected at the first regular or special meeting following the expiry of the recount period:

> **Declaration of elected candidate**
>
> **129 (1)** Where a poll is held, the clerk shall, at the first regular or special meeting of the council after the time for applying for a recount has expired, declare

elected the candidate, or candidates if more than one is to be elected, having the largest number of votes with the term of office of each candidate from each polling district where there has been no application made pursuant to this Act for a recount of the ballots cast in that polling district.

(2) Where there has been a recount, the clerk shall, at the first regular or special meeting of the council after the recapitulation sheet has been received from the judge, declare elected the candidate, or candidates if more than one, having the largest number of votes according to the recapitulation sheet, with the term of office of each candidate.

[Emphasis added]

[47] Consistent with s. 129 of the MEA, s. 147 of the MEA provides for the taking of the oath by each Councillor following election:

Oath of councillor

147 (1) A councillor shall, before entering upon the duties of his office, be sworn by taking the oath of allegiance and of office in prescribed form.

(2) The oath shall be administered by a judge, justice of the peace, the mayor or warden, or the clerk.

(3) The clerk shall enter a certificate of the taking of the oath in the minutes.

(4) The oath shall be taken and subscribed by each councillor at the first meeting of the council after his election, or within such extended time as the council allows.

(5) A councillor who refuses or fails to take the oath shall be deemed to have forfeited his office as councillor.

[Emphasis added]

[48] Section 12 of the MGA is also consistent with the above passages in stating:

Selection of mayor for county or district municipalities

12 (1) The warden of a county or district municipality shall be chosen by the council members from among themselves.

(2) The term of office of the warden expires when the term of office of the council expires, unless prior to the selection of a warden, the council adopts a shorter term of office for the warden.

(3) The warden shall be chosen

(a) at the first meeting of the council in a regular election year after the time for applying for a recount has expired; or

(b) at the first meeting of the council after the expiration of the term of a warden or when the office of warden otherwise becomes vacant.

> **(4)** The clerk shall preside at the meeting of the council at which the warden is to be elected, until the warden is elected
>
> [Emphasis Added]

[49] In my view, a plain and ordinary reading of these statutory provisions requires that at the first meeting after the recount period the Municipal clerk is obligated to declare elected the candidate and their term of office pursuant to s-s. 129(1) of the MEA. There is no statutory language allowing the council that existed before the election to ignore this requirement.

[50] Subsection 147 of the MEA requires the councillors declared elected to take their oath at the same first meeting or within such extended time as council "allows". With due respect to the able argument of counsel for EAF, the word "allows" in this subsection does not grant the pre-election Council the power to delay the taking of the oath of all new councillors.

[51] The definition of the word "allow" in *The Concise Oxford Dictionary* (9th. edition) includes "to permit ... a person to do something ..." In *The Shorter Oxford English Dictionary*, the word is defined as "to approve of, sanction." *Roget's Thesaurus* uses the words "tolerate, approve, authorize, to okay", and to "go along with."

[52] In its ordinary meaning, "allow" should be read as providing for a case where a councillor, for good reason, is unable to take their oath as required at the first meeting. It should be read in conjunction with the requirement in subsection 147(5) that a councillor who refuses or fails to take the oath shall be deemed to have forfeited his office as councillor. Had the legislature intended to provide the Former Council with the power to delay the declaration and taking of oaths of all of the newly elected councillors it would have done so in clear and plain language, as such an act would be contrary to the outcome of the democratic election.

[53] Subsection 12(3)(a) of the MGA is also consistent with this interpretation by requiring that the warden "shall" be chosen at the first meeting of the council in a regular election year after the time for applying for a recount has expired. Again, with due respect to counsel for EAF, the alternative provision in s-s. 12(3)(b) that the warden may be chosen "at the first meeting of the council after the expiration of the term of a warden or when the office of warden otherwise becomes vacant", when read in context is clearly directed to the situation, considered in s-s. 12(2), when the council adopts a shorter term of office for the warden from the term of office of the council. In fact, Annapolis had adopted a two-year term for its Warden and would be authorized by s-s. 12(3)(b) to renew or select a new warden after two years.

[54] My interpretation of the plain and ordinary meaning of the provisions is consistent with the MEA and MGA working together, both logically and teleologically as parts of a functioning whole. The parts fit together to form a rational, internally consistent framework. Read in this way, the legislation does not contain contradictions or inconsistencies, with each provision capable of operating without coming into conflict with the other.

[55] With due respect, the Respondent's interpretation of these provisions is tortured and produces confusion and inconsistency. If the outgoing Council has discretion to extend the timeline for swearing in the new Councillors beyond the first meeting – and exercises that discretion – it becomes impossible for the new Councillors to select a Warden and Deputy Warden within the timeframe mandated by the legislation.

[56] Read as a whole, the legislative scheme calls for a predictable and timely transition of power at the earliest opportunity following the recount period. Although s. 12 of the MEA provides that a Councillor's term of office continues to run "until their successor has been sworn in", the MGA and MEA mandate that this transition occur at the first meeting. Had the outgoing Council complied with these explicit legislative requirements, their successors would have been declared and sworn in to conduct the business of the municipality as of October 28, with the outgoing Council's term concluded as of that date. Instead, the former Council, in breach of its statutory obligations, purported to unilaterally extend its term of office beyond what is prescribed by the legislation and to transact the business that is now challenged.

Conclusion

[57] In summary, the Former Council acted in violation of the applicable provisions of MGA and MEA. Read together, the MGA and MEA require that the declaration of the newly elected councillors, administration of the oaths, and election of the new Warden and Deputy take place at the first meeting after the recount period. The Former Council contravened these requirements by continuing to meet and transact business when, according to the plain wording of the provisions and the clear intention of the legislative scheme, swearing-in the newly elected Councillors should have been the first order of business.

[58] In my view, no reasonable interpretation of the MEA and MGA could have determined that they had authority to proceed with the resolutions after the recount period without first declaring the new councillors elected, having them take their oaths, and selecting a warden.

[59] I find that the Former Council's unreasonable disregard for these statutory requirements renders any decision made during that violation illegal pursuant to s. 189 of the MGA. The resolutions providing for the land transfers are quashed and the resulting conveyances are void.

[60] I order the Registrar General of Land Titles to cancel EAF's interest in the affected parcels and record the interests of the Municipality.

[61] Having decided that the resolutions were void *ab initio,* it is unnecessary to decide the fair market value issue.

[62] The Respondent, EAF, did not cause this issue to come before the court. It was named as Respondent as it was the recipient of the conveyances. EAF bears no fault for the failings of the Former Council to act legally. EAF is not responsible for costs. I will hear from the parties as to whether EAF should be entitled to costs. If the parties are unable to resolve that issue, I direct that they file their written submissions as follows: EAF on or before 30 calendar days from receipt of my decision, the Applicant's response on or before 10 calendar days after receipt of EAF's submissions, and EAF's reply 5 calendar days thereafter.

Norton, J.