IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Besler v. Summerland (District),* 2025 BCSC 1978

Date: 20251009
Docket: S50660
Registry: Penticton

Between:

Bradley H. Besler

Petitioner

And

The Corporation of the District of Summerland

Respondent

Before: The Honourable Justice Giaschi

Reasons for Judgment

The Petitioner, appearing in person:	B. Besler
Counsel for the Respondent:	S.S. Manhas N.S.A. Falzon
Place and Date of Trial/Hearing:	Penticton, B.C. June 12, 2025
Place and Date of Judgment:	Penticton, B.C. October 9, 2025

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Introduction

[1] Pursuant to the *Judicial Review Procedure Act*, R.S.B.C.1996, c. 241 [*JRPA*], the petitioner seeks to set aside Loan Authorization Bylaws no. 2024-035 and 2024-036 (the "bylaws") approved by the District of Summerland (the "District") on March 4, 2025.

[2] The petitioner submits that, during the process of obtaining the approval of the electors to the bylaws, the District either provided incorrect financial information to voters or withheld significant financial information. He says that, as a consequence, the bylaws are subject to be quashed on the grounds that they are unreasonable or the process was procedurally unfair.

[3] For the reasons that follow, the petition is dismissed.

Facts

Bylaws 035 and 036

[4] On November 5, 2024, among several other items, the District Council considered two bylaws: Loan Authorization (Victoria Road South Upgrades) Bylaw 2024-035 ("Bylaw 035"); and Loan Authorization (Wharton Street Upgrades) Bylaw No. 2024-036 ("Bylaw 036"). Bylaw 035 was to allow the District to borrow up to $2,693,470 to finance road upgrades to Victoria Road South. Bylaw 036 was to allow the District to borrow up to $3,365,080 to finance road upgrades to Wharton Street. Under both bylaws, the amounts borrowed were to be paid back over a period of no more than 25 years.

[5] The agenda and documents before the District Council at the meeting held on November 5, 2024 are attached as Exhibit "A" to the affidavit of Kendra Kinsley, the Corporate Officer for the District. Amongst other things, the documents disclose the District Council was informed that:

a) it needed to obtain the approval of the electors before considering the approval of the bylaws;

b) the approval of electors could be obtained through a referendum or an alternative approval process;

c) the process for an alternative approval process required,

   i. publication of a notice once a week for two consecutive weeks,

   ii. electors be given the opportunity to indicate they oppose the bylaws by signing and submitting an elector response form,

   iii. the setting of a deadline, for the submission of response forms opposing the bylaws, at least 30 days after the second publication of the notice, and

   iv. if 10% of electors submitted response forms, then Council could not proceed with adoption of the bylaws unless a referendum was held;

d) District staff recommended the alternative approval process with a schedule of,

   i. January 16, 2025, for the first notice,

   ii. January 23, 2025, for the second notice,

   iii. February 25, 2025, for the deadline, and

   iv. March 4, 2025, for the corporate officer to report on the results to Council at a special meeting;

e) District staff recommended the total number of electors at 10,029, being the number of electors in the District as determined by Elections BC as of October 2024; and

f) Approval of the electors to the bylaws would be obtained if no more than 1,002 (10% of 10,029) elector response forms were received by the deadline.

[6] The elector response forms are included in Exhibit “A” to Ms. Kinsley’s affidavit. The forms informed voters that, if they opposed the bylaws and qualify as an elector of the District, they could sign and return the forms by February 25, 2025. The voters were also informed that they did not need to submit the form, if they were not opposed to the bylaws. The reverse side of the forms advised voters that the completed forms could be submitted by hand delivery, mail, fax, or email. A physical address, fax number and email address were provided for the submission of the forms.

[7] The minutes of the November 5, 2024, meeting are attached as Exhibit “B” to Ms. Kinsley’s affidavit. The minutes indicate that:

a) The bylaws received first, second, and third readings;

b) Council authorized the approval of the electors be obtained by the alternative approval process;

c) Council approved the elector response forms;

d) Council approved 1,002 as the number of electors who needed to submit response forms to prevent further consideration of the bylaws; and

e) Council directed the Corporate Officer to report on the results of the alternative approval process at a meeting to be held on March 4, 2025

[8] Pursuant to the decisions of the District Council made at the November 5, 2024 meeting, the first and second notices of the Bylaws were published on January 16 and 23, 2025.

[9] On February 25, 2025, the deadline for the elector response forms expired.

[10] On February 26, 2025, the Corporate Officer certified the results of the alternative approval process. She certified that 7.66% of voters submitted valid response forms in relation to bylaw 035 and 9.26% submitted valid response forms

in relation to Bylaw 036. Accordingly, she certified that the approval of the electors to the bylaws had been obtained.

[11] On March 4, 2025, the District Council received the Corporate Officer's report on the alternative approval process and adopted the bylaws.

Sewage Treatment Plant/Pump Gallery

[12] Meanwhile, the District was addressing a different project, namely, expenditures on a sewage treatment plant. On January 27, 2025, a special council meeting was held to address of this project.

[13] The petitioner addresses the January 2025 meeting in his first affidavit as follows:

> 3. On January 27, 2025 the District held a Special Council Meeting regarding previously undisclosed costs to upgrade the sewage treatment plant. Councillor Doug Patan was visibly angry with senior District staff because costs related to a new "pump gallery" were never presented, and therefore not discussed, during the recent 2025 budget deliberations. The District's Director of Utilities Jeremy Storvold confirmed the new pump gallery was not included at budget time. The pump gallery added more than $2.1 million to the overall costs of the project. David Lycon, senior wastewater process engineer with Aecom Engineering, told Council the decision to add the pump gallery was made around late spring of 2024. Council was also informed about an anticipated cost of $4.8 million to install of a "bio reactor" at the sewage treatment plant, which was previously undisclosed. Councillor Martin Van Aiphen asked if the District would be issuing a press release regarding the over $2 million cost increase, and Mayor Holmes said they would discuss it during the closed meeting.
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> 4. On January 29, 2025 the Penticton Herald published an article titled "Patan blasts staff, calls for behind-closed doors meeting" regarding the District's Special Council Meeting from two days prior. Attached and marked hereto as Exhibit "B" to this my affidavit is a true copy of that article. This was the first time I became aware of the additional $2.1 million cost for the pump gallery.

[14] In his second affidavit, the petitioner provides a lengthy narrative of the January 27, 2025 meeting. In summary, he deposes that concern was expressed over the fact that the cost of the pump gallery was not included in the original estimates and questions were raised about when the increased costs became apparent.

[15] Ms. Kinsley also addresses the January 27, 2025 meeting at paras. 12-14 of her affidavit and attaches the agenda and minutes of that meeting as exhibits to her affidavit. At paras. 12-13 she deposes that this was an unrelated project and that any expenditures for a new pump gallery would result in higher sewer fees rather than an increase in property taxes.

> 12. Finally, I also attended the Special Council Meeting held on January 27, 2025 (the "January 27th Meeting") in relation to sewage treatment plant upgrades. I can confirm that this project is entirely unrelated to the loan authorization bylaws.
>
> 13. The borrowing limit and financial impact of the two loan authorization bylaws and associated AAPs remain unchanged by the sewage treatment plant upgrades. Any expenditures relating to a new pump gallery would result in higher sewer fees for affected residents, rather than an increase in property taxes for all residents.

[16] The minutes of the January 27, 2025 meeting indicate that various adjustments to the 2025-2029 sewer capital 5-year plan were carried including an increase of approximately $2.3 million in the budgeted costs of the "Primary Clarifier Upgrade", which the parties have referred to as the pump gallery.

[17] The petitioner deposes that on February 5, 2025, he attended Municipal Hall and asked Ms. Kinsley if the District would be issuing a press release regarding the increased costs of the pump gallery. He was told that it was up to the District's CAO Graham Statt and the Director of Utilities, Jeremy Storvold. He deposes he spoke with Graham Statt the next day and asked him if a press release would not be issued. He was informed that a press release would not be issued.

Positions of the Parties

[18] The petitioner submits that Bylaws 035 and 036 should be set aside on the grounds that they are unreasonable and their approval was procedurally unfair. More particularly, he submits:

a) District staff were aware that a new pump gallery was required in May 2024 and intentionally withheld this information from District Council;

b) The District Council ought to have issued a press release or otherwise informed voters of the increased costs of the sewage treatment plant before or during the alternative approval process for Bylaws 035 and 036; and

c) By failing to inform voters of the increased cost of the pump gallery, the District deliberately withheld significant financial information from voters on Bylaws 035 and 036.

[19] The petitioner also raises allegations of bad faith. Paragraphs 11-12 of the petition state:

> 11. The District's Director of Utilities Jeremy Storvold was aware the new pump gallery was required at the sewage treatment plant in or around May 2024; further, Jeremy Storvold knew the pump gallery was critical infrastructure. However, he intentionally withheld information regarding this project from Council until after budget deliberations ended and the MP voting period started. The Petitioner alleges this was done in bad faith.
>
> 12. And further, Jeremy Storvold has a documented history of suspicious decisions as Director of Utilities. In 2020, Jeremy Storvold and the District's HR Manager Marnie Manders were involved in a wrongful firing case of a long-time District employee *(Corporation of the District of Summer/and v Local 213 of the International Brotherhood of Electrical Workers,* 2020 Canlll 108144 (BC LA)). In that decision, independent arbitrator Paul Love described the actions of Jeremy Storvold and Mamie Manders as:
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> • "Unreasonable and arbitrary" -paras. 247,254,263,281,289,296,305,308,316;
>
> • "Suspicious" - para. 219; and
>
> • "Extremely suspicious" - para. 278.

[20] I pause to note that the allegations of bad faith are in relation to Jeremy Storvold, not District Council. Further, in my view, para. 12 of the petitioner's affidavit is wholly inadmissible on this petition. It is character evidence of a non-party that is not material to the issues before me. I give this evidence no weight.

[21] The respondent submits that the District Council followed the applicable statutory scheme and that the petitioner has not shown the decision was substantively unreasonable. The respondent says the pump gallery project is wholly unrelated to Bylaws 035 and 036 and to the alternative approval process used to secure the voters' approval to those bylaws. The respondent also submits the

decisions of the District Council approving the bylaws are legislative in nature and there is no duty of procedural fairness.

Admissibility of Evidence not Before Council

[22] Before I address the issues, the respondent has raised a preliminary issue concerning the admissibility of the affidavits of the petitioner. It submits that the evidence on a judicial review is limited to the material that was considered by the decision maker, in this case, the District Council. It says the affidavits of the petitioner do not comprise part of the record and should not be considered.

[23] I agree that the evidence on a judicial review is generally confined to the record before the decision maker. However, there are exceptions to this general rule as outlined in *Air Canada v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 BCCA 387, at para. 39:

> [39] In determining whether an affidavit is admissible on judicial review, the key question is whether the admission of the evidence is consistent with the limited supervisory jurisdiction of the court. Evidence that was before the tribunal is clearly admissible before the court. Evidence that casts light on the manner in which the tribunal made its decision will also be admissible within tight limits. Factual evidence setting out the procedures followed by the tribunal, or providing information showing that the tribunal was not impartial will also be admissible.

[24] In my view, in the unique circumstances of this case, the petitioner's evidence falls within the exception, as does the evidence of Ms. Kinsley at paras. 12-14 of her affidavit. The petitioner submits that it is the failure of District Council to consider the increased costs of the pump gallery that rendered the decision unreasonable and the failure to advise voters of these increased costs that rendered the vote and decision procedurally unfair. The impugned evidence is necessary to address these issues and for this court to properly exercise its supervisory jurisdiction.

Issues

[25] The issues to be addressed are:

a) Were the decisions of the District Council to adopt Bylaws 035 and 036 unreasonable?

b) Was there a Duty of Fairness owed in Relation to the Decisions of the District Council to Adopt Bylaws 035 and 036 and, If so, was it breached?

Analysis

Standard of Review

[26] The parties are agreed that the standard of review is reasonableness in relation to the first issue. I agree that this is the appropriate standard of reviews as set out in *Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at paras. 17 and 25 [*Vavilov*].

[27] *Vavilov* also provides guidance as to how to conduct a reasonableness review, at paras. 82-83:

> [82] Reasonableness review aims to give effect to the legislature's intent to leave certain decisions with an administrative body while fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law: see *Dunsmuir*, at paras. 27-28 and 48; *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 10; *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, 1997 CanLII 317 (SCC), [1997] 3 S.C.R. 3, at para. 10.
>
> [83] It follows that the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The role of courts in these circumstances is to review, and they are, at least as a general rule, to refrain from deciding the issue themselves. Accordingly, a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a de novo analysis or seek to determine the "correct" solution to the problem. The Federal Court of Appeal noted in *Delios v. Canada (Attorney General)*, 2015 FCA 117, 472 N.R. 171, that, "as reviewing judges, we do not make our own yardstick and then use that yardstick to measure what the administrator did": para. 28; see also *Ryan*, at paras. 50-51. Instead, the reviewing court must consider only whether the decision made by the administrative decision maker — including both the rationale for the decision and the outcome to which it led — was unreasonable.

The Statutory Framework

[28] It is common ground that the *Community Charter*, S.B.C. 2003, c. 26, applies to the respondent and the subject bylaws.

[29] Pursuant to s. 180 of the *Community Charter*, subject to certain exceptions not relevant here, a loan authorization bylaw may only be adopted with the approval of electors.

> 180 (1) Subject to subsection (2), a loan authorization bylaw may only be adopted with the approval of the electors.

[30] The two ways in which the approval of the electors is obtained are set out in s. 84 of the *Community Charter*, namely, by referendum or an alternative approval process.

> 84 If approval of the electors is required under this Act or the Local Government Act in relation to a proposed bylaw, agreement or other matter, that approval may be obtained either by
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> (a) assent of the electors in accordance with section 85, or
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> (b) approval of the electors by alternative approval process in accordance with section 86.

[31] Section 86 of the *Community Charter* sets out the detailed procedure that must be followed for obtaining the approval of electors using the alternative approval process. It provides:

> 86 (1) Approval of the electors by alternative approval process under this section is obtained if
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> (a) notice of the approval process is published in accordance with subsection (2),
>
> (b) through elector response forms established under subsection (3), electors are provided with an opportunity to indicate that council may not proceed with the bylaw, agreement or other matter unless it is approved by assent of the electors, and
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> (c) at the end of the time for receiving elector responses, as established under subsection (3), the number of elector responses received is less than 10% of the number of electors of the area to which the approval process applies.
>
> (2) Notice of an alternative approval process must be published in accordance with section 94 [public notice] and must include the following:

(a) a general description of the proposed bylaw, agreement or other matter to which the approval process relates;

(b) a description of the area to which the approval process applies;

(c) the deadline for elector responses in relation to the approval process;

(d) a statement that the council may proceed with the matter unless, by the deadline, at least 10% of the electors of the area indicate that the council must obtain the assent of the electors before proceeding;

(e) a statement that

(i) elector responses must be given in the form established by the council,

(ii) elector response forms are available at the municipal hall, and

(iii)the only persons entitled to sign the forms are the electors of the area to which the approval process applies;

(f) the number of elector responses required to prevent the council from proceeding without the assent of the electors, determined in accordance with subsection (3);

(g) other information required by regulation to be included.

(3) For each alternative approval process, the council must

(a) establish the deadline for receiving elector responses, which must be at least 30 days after the second publication of the notice under subsection (2),

(b) establish elector response forms, which

(i) may be designed to allow for only a single elector response on each form or for multiple elector responses, and

(ii) must be available to the public at the municipal hall from the time of first publication until the deadline, and

(c) make a fair determination of the total number of electors of the area to which the approval process applies.

(3.1) If the notice under subsection (2) is published in accordance with a bylaw adopted under section 94.2 [bylaw to provide for alternative means of publication], the second publication is considered to occur on the date when the notice has been published by 2 of the means of publication specified in the bylaw.

(4) The council must make available to the public, on request, a report respecting the basis on which the determination under subsection (3) (c) was made.

(5) For the purposes of this section, the electors of the area to which an alternative approval process applies are the persons who would meet the qualifications referred to in section 172 (1) (a) [who may vote at assent

> voting] of the Local Government Act if assent of the electors were sought in respect of the matter.
>
> (6) Elector responses may be made on an elector response form obtained under subsection (3) or on an accurate copy of the form.
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> (7) For an elector's response to be considered for the purposes of this section, the elector must
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> (a) sign an elector response form that includes
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> (i)the person's full name and residential address, and
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> (ii)if applicable, the address of the property in relation to which the person is entitled to register as a non-resident property elector, and
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> (b) submit the elector response form to the corporate officer before the deadline established for the alternative approval process.
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> (8) After the deadline for an alternative approval process has passed, the corporate officer must determine and certify, on the basis of the elector response forms received before that deadline, whether elector approval in accordance with this section has been obtained.
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> (9) A determination under subsection (8) is final and conclusive.
>
> (10) A person must not sign more than one elector response form in relation to the same alternative approval process, and a person who is not an elector for the area of the approval process must not sign an elector response form.

Were the Decisions of the District Council to Adopt Bylaws 035 and 036 Unreasonable?

[32] Importantly, the petitioner does not allege that the District failed to comply with the provisions of the *Community Charter*. Nevertheless, the petitioner submits that the approval of the bylaws was unreasonable because voters were not informed by press release or otherwise of the increased costs of the sewage treatment plant or pump gallery. I have difficulty with the petitioner's submission for several reasons.

[33] First, the sewage treatment project is completely unrelated to Bylaws 035 and 036. Those bylaws are to finance road upgrades to Victoria Road South and Wharton Road. They have nothing to do with upgrading the sewage plant. Ms. Kinsley deposed to the separate nature of these projects at paras. 12-13, as set out above.

[34] Second, and relatedly, the relevance of the increase in the budget for the sewage treatment project to Bylaws 035 and 036 is far from clear on the evidence

before me. The petitioner assumes that the increase in the budget for the sewage treatment project is somehow material to the passage of the bylaws. However, this assumption has no basis in fact. I have no evidence that the increased costs of the sewage treatment project are material to the financial health of the District generally or to the road upgrade projects specifically. This is especially so when the different expenditures are funded in different ways.

[35] Third, there is nothing in the *Community Charter* that suggests the District must notify or inform voters of budget deficits or other general financial considerations when seeking approval for a loan authorization bylaw. All that is required is a general description of the proposed bylaw and a description of the area to which the approval process applies. To impose a requirement that the District must notify voters of its current or changing financial position would be to go far beyond what the *Community Charter* requires. In this regard, I observe that the *Community Charter*, the governing statutory scheme, is the most salient aspect of the legal context relevant to a particular decision: *Vavilov*, at para. 108.

[36] Fourth, in my view, courts should be very reluctant to interfere with decisions of a municipality concerning loan authorization bylaws that otherwise comply with the requirements of the *Community Charter*. These are decisions that directly engage the public interest and a wide array of political, economic and social factors. They are decisions that should properly be made by the elected body. Courts should not interfere in such decisions where the elected body has complied with the governing legislation.

[37] In *Auer v Auer*, 2024 SCC 36, the Supreme Court of Canada has cautioned against using the reasonableness standard to adjudicate on policy considerations, as follows:

> [55] Justice Pentelechuk was of the view that applying Vavilov's reasonableness standard when reviewing the vires of subordinate legislation would violate the principle of separation of powers because the court would be examining the policy merits of the subordinate legislation (paras. 58-59 and 63; see also S. Blake, Clarity on the standard of review of regulations, December 20, 2022 (online)).

> [56] With respect, this concern is misplaced. As Paul Salembier explains, "[t]he reasonableness standard does not assess the reasonableness of the rules promulgated by the regulation-making authority; rather, it addresses the reasonableness of the regulation-making authority's interpretation of its statutory regulation-making power" (Regulatory Law and Practice (3rd ed. 2021), at p. 159). A court's role is to review the legality or validity of the subordinate legislation, not to review whether it is "necessary, wise, or effective in practice" (*Katz Group*, at para. 27, citing *Jafari*, at p. 604; see also Keyes (2021), at pp. 186-88). "It is not an inquiry into the underlying 'political, economic, social or partisan considerations'" (*Katz Group*, at para. 28, citing *Thorne's Hardware*, at pp. 112-13). [Emphasis added.]

[38] Justice Groves expressed similar ideas in *Wunderlich v. Kamloops (City)*, 2025 BCSC 555, a case involving a loan authorization bylaw.

> [10] First off, municipal governments, in this case before me the City of Kamloops, are created by statutes passed by the Province. The earlier-cited *LGA* and *CC* are examples of legislation passed in Victoria which city councils, such as the City of Kamloops, must follow. If these pieces of legislation set parameters for a city council to follow in making a decision and the city does not follow those prescribed rules as set out in the statute, the actions of the city can be challenged in court on that basis. Some successful challenges in the past have been that a local government did not give proper notice when required, missed a deadline, acted too early in light of a timeline set within the *LGA* or *CC*, or other procedural errors of a similar nature.
>
> [11] Additionally, a decision of the city that on the face of it follows the rules, in other words the letter of the law, can be challenged on the basis that the decision does not meet what is known in law as a reasonableness standard. Again, on this point, I emphasize that it is not the role of the court to determine whether or not politicians, in making the decisions they do, made the correct decision or the right political decision in the view of the court. The threshold to meet a successful challenge to an act of local government is whether the government acted in a reasonable or unreasonable way.
>
> [12] The case of *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, and cases that have come after it, confirm that the standard of review to be applied to an application to set aside a municipal bylaw is that of reasonableness. It is not for the court to substitute its decision on what in this case city council decided. The only basis on which the court can set aside a decision of a municipal government, other than missing a deadline or not following a prescribed statute, is by applying the test of whether or not the municipal government, in adopting the bylaw it did, made a reasonable decision. [Emphasis added.]
>
> [13] In determining whether a decision to adopt a bylaw is reasonable, the court has to ask itself, as noted in para. 99 of *Vavilov*, whether the decision bears the hallmarks of reasonableness, justification, transparency, and intelligibility, and whether it is justified in relation to the relevant factual and legal constraints that bear on that decision. That is the only basis for judicial

> review if the City is making a decision it did following a process that was correct.
>
> [14] Essentially, in reviewing the actions of the City in passing the bylaws it did, the court must ask itself whether, considering all the circumstances, considering the rules that are in place, did they follow the rules. Secondly, and the heart of this challenge relates to this second point, again related to the alternative approval process, whether in purporting to comply with the government legislation related to the alternative approval process, the City acted in a reasonable way in passing bylaws which met the notice requirement to citizens called for in the *CC* related to publication.
>
> [15] Judges do not substitute their decision for political decisions of elected representatives.

[39] Accordingly, the District strictly complied with the prescribed procedures for the alternative approval process set out in the *Community Charter* and its decision to approve the bylaws was not unreasonable.

Was there a Duty of Fairness owed in Relation to the Decisions of the District Council to Adopt Bylaws 035 and 036 and, If so, was it breached?

[40] I now address whether a duty of procedural unfairness was owed in relation to the decisions of the District Council to adopt Bylaws 035 and 036 and, if so, whether that duty was breached.

[41] The petitioner submits that the decisions of the District Council to adopt Bylaws 035 and 036 were procedurally unfair because it failed to inform voters of the increased cost of the pump gallery, and thereby withheld from voters significant financial information.

[42] The respondent submits there is no duty of fairness owed as the bylaws are legislative in nature.

[43] I agree with the respondent.

[44] In *Ironclad Developments Inc. v. West Kelowna (City)*, 2025 BCCA 191, at para. 12, Justice Gomery observed that “it is settled law that no duty of fairness is owed in respect of legislative decisions”. However, at para. 14, he further noted:

> [14] What makes a decision legislative is not always clear. It is not necessarily the identity of the decision-maker, or the ambit or form of the decision, although these features may sometimes bear on the classification.

[45] After reviewing the relevant jurisprudence, Justice Gomery outlined the features that point towards a legislative decision as follows:

> [25] I think that both Brown and Evans' exegesis of the concept of a legislative decision and *de Smith's* recent analysis offer helpful insight. In my view, while there is no bright-line test, the following features cumulatively point towards a determination that a decision by an authority other than a sovereign legislator is legislative, and not subject to a requirement that it be made fairly:
>
> 1. The decision is general in nature;
> 2. The decision is based on broad considerations of public policy;
> 3. Mechanisms of political accountability exist in respect of the decision; and
> 4. Adversely affected interests are numerous, diverse, or diffuse.
>
> None of these considerations, taken individually, is necessarily determinative.

[46] In my view, all of these features are present here. The bylaws are general in nature as opposed to administrative decisions. The decisions to adopt the bylaws are based on broad consideration of public policy relating to the needs and finances of the District. There is a mechanism for political accountability, namely, through the election of the District Council. Finally, the interests affected by the decisions are numerous in that the decisions affect all electors and not just a smaller group.

[47] Accordingly, the decisions to enact the bylaws are legislative in nature and are not subject to a duty of fairness.

[48] Although this is sufficient to dispose of the procedural fairness issue, I add that even if a duty of fairness was owed, it was not breached.

[49] As addressed above, the statutory scheme under which the impugned bylaws were approved, the *Community Charter*, does not require that the District inform voters of budget deficits or other financial considerations when seeking approval for a loan authorization bylaw. The petitioner seeks to impose an additional procedural requirement that is not in the statutory scheme.

[50] Additionally, it is not correct to say, as the petitioner does, that the District deliberately withheld financial information from voters. Based on the evidence before

me, including the petitioner's own evidence, it is apparent that the increase in the costs of the sewage treatment project was not withheld from voters. The January 27, 2025 meeting of District Council, where the increased costs of the pump gallery was discussed, was open to the public. Significantly, it was also the subject of a detailed article in the local newspaper. That article was published on January 29, 2025, four weeks before the deadline for the submission of response forms. Any interested voter had access to the information.

[51] The petitioner submits that the District ought to have prepared a press release disclosing the increased costs of the pump gallery. Although I do not agree that a press release was required by the nature of the decision or the underlying statutory scheme, I also fail to see how a press release would have disseminated the information any broader than the newspaper article already had.

Other Submissions

[52] Concerning the petitioner's allegations of bad faith, I observe that the petitioner's submissions improperly conflate the alleged knowledge of Jeremy Storvold with that of the District Council. There is simply no evidence of bad faith on the part of District Council. They openly discussed the increased costs of the pump gallery and did not attempt to mislead voters.

[53] Finally, the petitioner submits that the procedure for the collection of response forms was somehow unfair. In particular, he says there was no secure box for the collection of forms, no scrutineers and no verification. I reject these submissions. The procedures described by the petitioner are common for elections but there is nothing in the *Community Charter* to suggest that similar procedures are to be adopted for loan authorization bylaws. In fact, the formal process suggested by the petitioner would unnecessarily complicate the alternative approval process.

Order

[54] Accordingly, the petition is dismissed.

[55] The parties have leave to speak to me regarding the costs of this petition, if necessary.

"Giaschi J."