

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

KAREL PEKELSKY

Applicant

- and -

**NORTHLAND UTILITIES ENTERPRISES LTD. & GOVERNMENT OF THE
NORTHWEST TERRITORIES (REGISTRAR OF CORPORATIONS),**

Respondents

MEMORANDUM OF JUDGMENT

INTRODUCTION

[1] The Applicant Karel Pekelsky (Pekelsky) operates a business, Naka Electric, and has filed two applications (S-1-CV-2024-000130 and S-1-CV-2024-000282) for judicial review from the decisions of the Government of the Northwest Territories (Registrar of Corporations)(Registrar) to approve and register three business names for Northland Utilities (Yellowknife) Limited and Northland Utilities (NWT) Limited on S-1-CV-2024-000130 and Northland Utilities Enterprises Ltd. on S-1-CV-2024-000282 (collectively, Northland), all of which use “Naka” in the registered business name.

[2] Pekelsky claims that the Registrar’s decisions were unreasonable and unlawful and made in a manner contrary to the principles of natural justice

and procedural fairness.

- [3] The Registrar was named as a Respondent in the applications and counsel for the Registrar attended the hearing but did not file a brief or make submissions.
- [4] As the issues on each application are substantially similar, the parties agreed to have both applications heard together. The reasons in S-1-CV-2024-000282 will be the same as the issues and argument are essentially the same.

BACKGROUND

- [5] Pekelsky is a red seal electrician who operates Naka Electric. He had previously worked as an electrician at the Giant Mine remediation project but now operates his own business providing electrician services to customers in Yellowknife and surrounding areas. Pekelsky submitted his application to the Registrar on March 3, 2021, and his business name Naka Electric was registered on March 4, 2021.
- [6] Northland Utilities Enterprises Ltd. is located in the Northwest Territories and is the parent company of two subsidiaries, Northland Utilities (NWT) Limited and Northland Utilities (Yellowknife) Limited. The subsidiaries operate utilities in Yellowknife and elsewhere in the Northwest Territories including the generation, transmission, distribution, and retail of electricity to customers in the Northwest Territories.
- [7] In 2023, Northland began the process of rebranding and ultimately chose the name “Naka”. The intention was to use the names Naka Power or Naka Energy. On December 18, 2023, Northland filed an Application for Name Search and Reservation with the Registrar for Naka Power (NWT) Limited. That application was approved without conditions, and the name was reserved until March 17, 2024.
- [8] Later, it was decided that Northland, through the parent company and subsidiaries, would register several business names with the term Naka. On March 5, 2024, Northland filed four applications to reserve Naka Energy, Naka Power, Naka Power (NWT) and Naka Power (Yellowknife) with the Registrar.

- [9] For the applications to reserve Naka Energy and Naka Power, the application was conditionally approved until June 3, 2024, on the condition that the consent of Naka Electric be obtained. In addition, for the Naka Power application, the consent of Naka Energy was also required.
- [10] The application to reserve Naka Power (NWT) was denied as it had already been approved and reserved until March 17, 2024. On March 17, 2024, a new application to reserve Naka Power (NWT) was submitted which was approved without conditions and the name was reserved until June 25, 2024.
- [11] The application to reserve Naka Power (Yellowknife) was conditionally approved until June 3, 2024, on the condition that the consent of Naka Power, Naka Power (NWT) Limited and Naka Energy be obtained. The consent of Naka Electric was not required.
- [12] Northland sought the consent of Naka Electric by contacting Pekelsky and after communication with Northland officials, Pekelsky declined to provide his consent. The other required consents were obtained which is not surprising since they were names registered by Northland, through the parent company or subsidiaries.
- [13] Without the approval of Naka Electric, Northland decided to proceed with registering Naka Power (NWT) and Naka Power (Yellowknife) and decided against proceeding with the name Naka Power as Northland could not obtain Pekelsky's consent.
- [14] On March 27, 2024, Northland applied to register Naka Power (NWT) and Naka Power (Yellowknife) as a business name. In a letter dated April 5, 2024, Northland was advised by the Registrar's office that the names had been registered.
- [15] A letter was sent by Roberta Blake, Deputy Registrar of Companies on April 22, 2024, to Northland advising that Naka Power could not be used as it had not been approved but that Naka Power (Yellowknife) and Naka Power (NWT) could be used and must include the portions in parenthesis.
- [16] On May 8, 2024, Pekelsky filed an Originating Notice for Judicial

Review (S-1-CV-2024-000130) challenging the Registrar's decision to approve Naka Power (NWT) and Naka Power (Yellowknife) as business names for Northland.

[17] Matthew Yap, Deputy Registrar of Corporations and Director, sent a letter on May 15, 2024, to Northland warning that Naka Power could not be used as a business name, but that Naka Power (Yellowknife) and Naka Power (NWT) could be used.

[18] Following this, Northland decided to register new business names to continue with their rebranding. Applications to reserve the business names Naka Power Distribution, Naka Power Distribution (NWT), Naka Power Distribution (Yellowknife), Naka Power Utilities, Naka Power Utilities (NWT) and Naka Power Utilities (Yellowknife) were made by Northland. All applications were approved on the condition that consent was obtained from other registered users, all of which were controlled by Northland. No consent was required from Naka Electric.

[19] Northland applied to register Naka Power Utilities which was approved on August 29, 2024.

[20] On September 17, 2024, Pekelsky filed a second Originating Notice for Judicial Review (S-1-CV-2024-000282) challenging the Registrar's decision to approve Naka Power Utilities as a business name for Northland.

[21] Northland later applied to register the business names Naka Power Distribution, Naka Power Distribution (NWT), Naka Power Distribution (Yellowknife), Naka Power Utilities (NWT) and Naka Power Utilities (Yellowknife) and all applications were registered by the Registrar on either September 17, 2024, or October 31, 2024.

[22] Pekelsky has challenged the approval of three of the names approved by the Registrar:

- a) On file S-1-CV-2024-000130, the application is in relation to Naka Power (Yellowknife) registered by Northland Utilities (Yellowknife) Limited and Naka Power (NWT) registered by Northland Utilities (NWT) Limited; and

b) On file S-1-CV-2024-000282, the application is in relation to Naka Power Utilities registered by Northland Utilities Enterprises Ltd.

[23] No application for judicial review has been filed in relation to the Registrar's approval of the following business names:

- a) Naka Power Distribution;
- b) Naka Power Distribution (Yellowknife);
- c) Naka Power Distribution (NWT);
- d) Naka Power Utilities (Yellowknife); or
- e) Naka Power Utilities (NWT).

STATUTORY FRAMEWORK

[24] Under s 48(1) of the *Partnership and Business Names Act*, RSNWT 1988, c P-1, (*Act*), the Registrar is required to refuse to register a business name that the Registrar is of the opinion is similar to the name of another business and likely to confuse or mislead the public.

[25] The *Partnership and Business Names Regulations*, NWT Reg 095-2018 (*Regulations*) provides some guidance in s 19(2) about how to determine if a name is similar and likely to confuse or mislead the public which states:

(2) For the purposes of this section and subsection 48(1) of the *Act*, a name is similar to the name of another partnership or business entity and likely to confuse or mislead if it is:

(a) a name that would reasonably lead to the inference that the partnership or business entity proposing the name is associated or affiliated with the other partnership or business entity or holder of the registered trademark; or

(b) a name that would reasonably lead to someone who has an interest in dealing with the other partnership or business entity or holder of the registered trademark to deal with the partnership or business entity proposing the name, in the mistaken belief that he or she is dealing with the partnership or business entity or holder of the registered trademark.

[26] In making the determination whether a name is similar and likely to confuse or mislead the public, the Registrar can consider without limitation the following factors, set out in s 11 of the *Regulations*:

(a) the distinctiveness of the name or any element of it and the extent to which the

- name has become known;
- (b) the length of time the name has been in use;
 - (c) the nature of the business carried on under or associated with the name, including the likelihood of any competition among businesses using such a name;
 - (d) the nature of the trade with which a name is associated, including the nature of the goods or services and the means by which they are offered or distributed;
 - (e) the degree of similarity between the name and another name in appearance or sound;
 - (f) the geographic area in the Northwest Territories in which the name is likely to be used.

[27] The Registrar also had a webpage which provided general guidance on the name requirements for business names and partnerships. It advised applicants that proposed names should be distinctive and should not be too general. Among other things, it stated:

... [I]t is helpful to keep in mind that a name should be distinctive and descriptive and that a proposed name must:

- Not be “too general”. This means the name should contain descriptive and distinctive elements to meaningfully identify the business entity and distinguish it from other businesses. This requirement exists to ensure that two business names are not too similar, potentially leading someone to confuse them. It also prevents businesses from having exclusive use of common words.¹

ISSUES

[28] There are several issues raised by the parties which can be stated as follows:

- 1) What is the applicable standard of review?
- 2) Does the Applicant have standing to bring the judicial review application?
- 3) Did the Applicant file the judicial review application in time?
- 4) Is the Applicant’s second application (S-1-CV-2024-000282) frivolous and vexatious?
- 5) Was the Registrar required to provide reasons?
- 6) Was the Registrar’s decision reasonable?

[29] To the extent that other issues or sub-issues were raised by the parties,

¹ Department of Justice, Government of the Northwest Territories, “Business Names and Partnerships”, Record, Tab 10.

those have been addressed in these reasons where necessary.

STANDARD OF REVIEW

- [30] Pursuant to s 106.1(2) of the *Act*, a person may bring a judicial review of a Registrar's decision. The parties agree that reasonableness is the standard of review applicable to the Registrar's decision; however, they do not agree about the standard of review applicable to the issue of whether the Registrar was required to provide reasons.
- [31] Pekelsky's position is that for matters of procedural fairness, the standard of review is correctness citing *Aquatera Utilities v Aquaterra Water Management Inc*, 2018 ABQB 962. Pekelsky argues that the failure of the Registrar to provide reasons for its decision to register the Naka Power business names breached its duty to provide procedural fairness.
- [32] Northland argues that the standard of review applicable to all issues on the judicial review is reasonableness and that the Court is required to look at the decision as a whole and consider the entire decision-making process, not individual aspects of the process.
- [33] As this is a judicial review, the standard of review as confirmed in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] is generally reasonableness, and deference is shown to the administrative decision-maker.
- [34] In *Vavilov*, at paras 16-17, the Supreme Court of Canada held that judicial review of administrative decisions starts with a presumption of reasonableness which can be rebutted in two types of situations: where the legislature has indicated that a different standard applies; or where the rule of law requires that the correctness standard be applied. This will happen in situations where there are constitutional questions, general questions of law of central importance to the legal system and questions related to the jurisdictional boundaries of administrative bodies.
- [35] The presumption of reasonableness applies to the administrative decision maker's interpretation of its enabling statute, and it also applies more broadly to other aspects of the decision: *Vavilov*, para 25.

[36] It is presumed that reasonableness is the standard applicable to the analysis of all issues. There is no legislated standard of review under the *Act*. The issues raised by the parties are not constitutional questions, general questions of law of central importance to the legal system or questions related to the jurisdiction of the decision maker.

[37] In *Vavilov*, the Supreme Court of Canada considered how matters of procedural fairness could be addressed in the context of how a Court conducts a reasonableness review. The Court acknowledged that the requirements of the duty of procedural fairness, including whether the duty requires that reasons be provided, will impact on the reasonableness review.

[38] While there is a presumption of reasonableness applicable to the judicial review of an administrative decision, the Supreme Court appears to have recognized in *Vavilov* that the review of the duty of procedural fairness is distinct from the review of an administrative decision. The Court stated at para 23:

Where a court reviews the merits of an administrative decision (i.e., judicial review of an administrative decisions other than a review related to a breach of natural justice and/or the duty of procedural fairness), the standard of review it applies must reflect the legislature's intent with respect to terms both of whether it is procedurally fair and of whether it is substantively reasonable. [Emphasis added]

[39] *Vavilov* did not directly address the standard applicable to considering whether an administrative decision maker complied with the duty of procedural fairness. In *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196, the Federal Court of Appeal noted this and stated at para 35:

Neither *Vavilov* nor, for that matter, *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 (S.C.C.), have addressed the standard for determining whether the decision-maker complied with the duty of procedural fairness. In those circumstances, I prefer to rely on the long line of jurisprudence, both from the Supreme Court and from this Court, according to which the standard of review with respect to procedural fairness remains correctness: see *Khela v. Mission Institution*, 2014 SCC 24, [2014] 1 S.C.R. 502 (S.C.C.), at para. 79.... In fact, it is not at all clear to me why we keep assessing procedural fairness within the framework of judicial review, considering that

it goes to the manner in which a decision is made rather than to the substance of the decision, as Justice Binnie aptly observed in *C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539 (S.C.C.), at para. 102. What matters, at the end of the day, is whether or not procedural fairness has been met.

[40] Where the duty of procedural fairness has not been met, the impact is on the process reached to make a decision rather than the substance of the decision itself. The result of a breach of the duty of procedural fairness is usually that the decision cannot stand, and matter is often remitted back to the administrative decision maker.

[41] I conclude that the standard of review in this case is that the presumption of reasonableness applies to the Registrar's decision and to other aspects of the decision but that questions related to the duty of procedural fairness including whether the Registrar was required to provide reasons for the decision continue to be assessed on the correctness standard.

STANDING

[42] Standing is concerned with whether a person has the legal right to bring a judicial review application. It stems from various concerns such as whether a party has a genuine interest in the matter or is viewed as a "busybody", the need to conserve scarce judicial resources, making sure that courts have the benefit of opposing views from those most directly affected by disputes and ensuring that a legal proceeding is a reasonable and effective manner of resolving the dispute.

[43] Northland claims that Pekelsky lacks standing because he was not a party to the applications to the Registrar and lacks a direct or causal connection to the Registrar's decision. Northland acknowledges that the Registrar did require Naka Electric's consent to the Naka Energy and Naka Power registration but argues that those applications were not pursued when Northland could not secure the required consent. Further, the Registrar did not seek Naka Electric's consent on the applications that Pekelsky is challenging. The Respondent argues that Naka Electric's registration was not affected by the impugned registrations and that he is still able to operate Naka Electric.

[44] Pekelsky argues that he does have standing because, as a person, he is permitted to seek judicial review of the Registrar's decision, and he is directly affected by the Registrar's decision.

[45] Under the *Act*, a decision by the Registrar is final: s 106.1(1). However, s 106.1(2) permits judicial review of the Registrar's decisions:

(2) A person may seek a review of a decision by the Registrar within 21 days after receiving notice of the decision, by applying for a judicial review in accordance with Part 44 of the *Rules of the Supreme Court of the Northwest Territories*.

[46] The *Act* refers to a person seeking review of the Registrar's decision after receiving notice but does not otherwise specify who may seek judicial review of the decision.

[47] The test for private interest standing was articulated in *Imperial Oil Limited v Haseeb*, 2023 ONCA 364 at para 92:

The test applied by the courts for private interest standing requires that the applicant or plaintiff have a personal and direct interest in the issue raised in the proceeding. The interest must not be too indirect, remote, or speculative. Various formulations of this requirement are used in the jurisprudence, including that the person is "specifically affected by the issue", has a "personal legal interest", or has a "personal and direct interest" in the outcome of the proceeding. This type of standing is often referred to as "direct interest" or "private" standing to distinguish it from public interest standing (the latter having different requirements): *Canada (Minister of Finance) v Finlay*, [1986] 2 SCR 607, at pp 617-18; *Bedford v Canada*, 2010 ONSC 4264, 102 OR (3d) 321, at paras 44-47, aff'd on this point, 2012 ONCA 186, 109 OR (3d) 1, at para 50, rev'd in part on other grounds, 2013 SCC 72, [2013] 3 SCR 1101; *Carroll v. Toronto-Dominion Bank*, 2021 ONCA 38, 153 OR (3d) 385, at para 33; Thomas A Cromwell, *Locus Standi: A Commentary on the Law of Standing in Canada* (Toronto: Carswell, 1986), at p 5.

[48] In *Socanov Inc v Northwest Territories (Commissioner)*, 1993 CanLII 3412 (NWTSC), [1993] NWTR 364 [*Socanov*], the issue was whether a potential subcontractor had standing to challenge the government's decision in awarding a contract to another contractor. In concluding that the subcontractor did have standing, Justice Vertes stated at para 9, that "there is a directness or a causal relationship, a nexus, between the applicant's grievance and the challenged action."

[49] In this case, while the Registrar did not require Naka Electric’s consent for the registrations that Pekelsky is now challenging, Naka Electric’s consent was required for similar business names that also used the term “Naka”.

[50] Pekelsky also argues that he has been impacted by the Registrar’s decision and claims that the decision has resulted in confusion regarding the business names. Pekelsky has presented some evidence which he argues demonstrates that there is the potential for confusion and misleading of the public.

[51] In my view, as in *Socanov*, there is a directness or causal relationship, a nexus between Pekelsky’s grievance and the Registrar’s decision. Pekelsky has a direct interest in the Registrar’s decision because he is specifically affected by the issue and there may be an impact on his own registered business. I am satisfied that Pekelsky has standing to bring the judicial review application.

LIMITATION PERIOD

[52] As previously stated, s 106.1(2) of the *Act* permits a person to bring a judicial review application “within 21 days of receiving notice” of the Registrar’s decision.

[53] In the absence of formal notice, Northland argues that it should be deemed that Pekelsky received effective notice of the decision on April 12, 2024, when he heard about the press release announcing the name change. Pekelsky filed the first application (S-1-CV-2024-000130) on May 8, 2024, which was 26 days after Northland says he received effective notice of the Registrar’s decision. Northland claims that Pekelsky filed the application after the statutory deadline had passed and that, in this situation, neither the *Act* nor *Rules of the Supreme Court of the Northwest Territories*, R-010-96 [Rules] permit the Court to extend the time for filing a judicial review application.

[54] Pekelsky argues that he was never given notice of the Registrar’s decision by the Registrar or by Northland. He claims that he only learned of the specific names that were registered by Northland on May 6, 2024, when he was advised by the Minister of Justice in an email. He argues that if the

date that he learned of the specific names registered by Northland is used, his application was filed within the statutory timeline. Pekelsky argues, in the alternative, that the Court has the discretion to extend the timeline for filing the judicial review application and should do so.

[55] Section 108 of the *Act* addresses how notice generally should be provided under the *Act* and sets out when it is deemed to have been received but does not address to whom notice should be provided. Specifically, the *Act* does not prescribe a method by which the Registrar would provide notice of the registration of a business name to the public or potentially affected persons or businesses who are not involved in an application to register the name.

[56] There are other provisions in the *Act* where the Registrar is required to give notice. For example, when cancelling a registration, the Registrar is required to send notice of the cancellation, along with reasons, to the registrant: s 51(3). Similarly, when the Registrar believes that there has been a change of information in a registration, the Registrar can give notice to the registrant to amend the registration: s 50(3).

[57] When the Registrar approves an application for registration of a business name pursuant to s 49 of the *Act*, the Registrar is required to register the business name. There is no requirement that the Registrar give notice to anyone or publish information regarding the registration of a business name.

[58] The parties made submissions regarding whether it would be more effective to publish the registration of business names in the *Northwest Territories Gazette* or to bring registrations to the attention of the public through another form of publication. It is not the role of the Court to decide upon the form of notice that might be required. Regardless of whether the legislature made a deliberate choice in not specifying a formal method of providing notice of the registration of business names or whether it was an inadvertent gap in the legislation, the Court should not fill that gap and decide upon a method of providing notice when the legislature has not specified a method.

[59] It is generally recognized that courts lack the jurisdiction to fill a legislative gap. As stated in *Sullivan on the Construction of Statutes*:

The primary reason courts cannot cure gaps is that they are normally considered to lack jurisdiction to cure under-inclusive legislation. This is so regardless of the reasons for the under-inclusion.²

[60] It is assumed that the legislature's decision to not require publication or notice of the registration of business names was made after due consideration for good reasons and it is not the role of the courts to require publication or decide upon a method of bringing the registration of business names to the attention of the public when the legislature has seen fit not to do so. *R v Shublely*, 1990 CanLII 149 (SCC), [1990] 1 SCR 3 at 26-27.

[61] In the absence of a method of providing notice to the public regarding the registration of business names, there must be a way for a member of the public to become aware of the registration of business names. Currently, after approval by the Registrar, the business name is registered in the Corporate Registry Online System (CROS), which is operated by the Registrar, and is accessible to members of the public. A member of the public, or someone who is not involved in the application, could check CROS to determine if a business name has been registered.

[62] While checking CROS is a way that a person can find out about the registration of business names, it would be unreasonable for a person to be deemed to have notice of the registration of a business name when it is entered into CROS as it would require a person to search the database regularly.

[63] In *1664694 Alberta Ltd v Beljan Development Management*, 2021 ABCA 100, the Court considered when the 30-day period to seek permission to appeal in the context of a development decision began to run. In that case, the applicant had not received notice of the decision within 30 days of the decision. The applicant had become aware of the application when he checked the appeal board's website but did not know the hearing had already occurred and did not learn of the decision until the applicant contacted the appeal board to inquire about the application. The next day, the appeal board sent the applicant a link to the development decision. In that case, the Court concluded that the 30-day notice period began to run only after the applicant received actual notice of the decision.

² Sullivan, Ruth, *Sullivan on the Construction of Statutes*, 6th ed (Markham, Ont: LexisNexis, 2014) at p 381.

- [64] Other cases have concluded that that when an applicant did not receive notice of a decision, the notice period begins to run when the applicant ought to have known of it or became aware of it.³
- [65] Pekelsky was not notified by the Registrar of the registration of the business names but became aware of the registration of the business names by Northland through unofficial means. In this case, it would be reasonable to consider when Pekelsky received effective notice of the decision.
- [66] Pekelsky first became aware that Northland wanted to register business names using the word “Naka” in it in March 2024. Pekelsky was called by Darrell Beaulieu from Denendeh Investments on March 14, 2024, and they spoke briefly about the issue. They spoke again the next day, and Mr. Beaulieu told Pekelsky that they needed his consent to register the name Naka Power.
- [67] Following this conversation, Pekelsky received an email from Mr. Beaulieu regarding whether he would consent to the use of the name Naka Power. On March 22, 2024, Mr. Beaulieu sent a further email which included the consent forms and specified the business names Naka Power, Naka Power (Yellowknife) and Naka Power (NWT). It appears that this was the first reference to the specific business names being proposed by Northland as well as the Naka Power names that included Yellowknife and NWT in parentheses.
- [68] Pekelsky declined to provide consent to the use of the Naka Power names. Northland subsequently submitted their application to the Registrar to register the three business names on March 27, 2024.
- [69] The Registrar approved the registration of the business names Naka Power (NWT) and Naka Power (Yellowknife) on April 5, 2024, and notified Northland by letter that same day. The name Naka Power was not approved.
- [70] Northland formally announced the rebranding of Northland to the Naka Power names on April 11, 2024. This was reported by Cabin Radio in an article dated April 12, 2024, and was about Northland losing the Hay River power franchise. The article referred to the announcement of the rebranding

³ Brown, Donald JM and Evans, John, *Judicial Review of Administrative Action in Canada*, (Thomson Reuters, 2026) (Release No 1, April 2026), §5.23.

the day before and stated, “Northland will be rebranded as Naka Power.”⁴

[71] Pekelsky became aware of the registrations on April 12, 2024, through the Cabin Radio news article. He interpreted the article to mean that all three Naka Power names had been registered. He called Corporate Registries that same day to clarify the matter and he stated that he was told by someone at the Registrar’s office that “my company name was in good standing and noted that I may wish to consult a lawyer”.

[72] Pekelsky’s spouse Amanda Bradbury sent an email on Pekelsky’s behalf to their Member of the Legislative Assembly, Caitlin Cleveland, on April 24, 2024, regarding the issue. The Premier and Minister of Justice, R.J. Simpson, was cc’ed on the email.

[73] Pekelsky received an email sent on behalf of the Minister of Justice on May 6, 2024, explaining the decision and advising Pekelsky that the name Naka Power had not been approved for registration, but Naka Power (Yellowknife) and Naka Power (NWT) had been approved.

[74] The Originating Notice for Judicial Review was filed by Pekelsky on May 8, 2024.

[75] While Pekelsky became generally aware of the registrations on April 12, 2024, this was through an article in the media which left him with the misapprehension that all three Naka Power names for which Northland had sought his consent had been approved. The communication Pekelsky had with the Registrar’s office on April 12, 2024, and later, did not clarify the names which had been registered. It was only when he received the Minister’s email on May 6, 2024, that Pekelsky became aware of the specific names which had been registered and that Naka Power was not approved.

[76] The letter from the Minister of Justice, the Minister responsible for the Registrar’s office, was the first instance of actual notice provided to Pekelsky of the decision to register Naka Power (Yellowknife) and Naka Power (NWT). In the circumstances, it is reasonable to conclude that the 21-day limitation period began on May 6, 2024, when the email from the Minister of

⁴ Williams, Ollie. “Atco boss criticizes GNWT over Hay River power franchise loss” (April 12, 2024), online: [Atco boss criticizes GNWT over Hay River power franchise loss](#).

Justice was sent. As such, Pekelsky filed his application for judicial review within the limitation period.

[77] Given that I have concluded that Pekelsky filed the Originating Notice for Judicial Review within the 21-day limitation period, it is not necessary to consider whether the Court has the jurisdiction to extend the time for filing a judicial review application.

IS THE SECOND APPLICATION FRIVOLOUS AND VEXATIOUS?

[78] Pekelsky filed the second judicial review application (S-1-CV-2024-000282) after he received notice from counsel for Northland that the Registrar had approved the registration of the name Naka Power Utilities as well as other names. Northland argues that Pekelsky’s decision to pursue a second legal challenge of the Registrar’s decision-making process was unreasonable and the second application should be dismissed as frivolous and vexatious, pursuant to *Rule 129*.

[79] Pekelsky argues that the second application is not frivolous and vexatious and that he has a legitimate interest in ensuring that business names in direct conflict with his own are not registered.

[80] *Rule 129* permits the Court to dismiss or stay an action on the basis that it is scandalous, frivolous or vexatious:

129. (1) The Court may, at any stage of a proceeding, order that

(a) any pleading in the action be struck out or amended, on the ground that

...

(ii) it is scandalous, frivolous or vexatious... and

(b) the action be stayed or dismissed, or judgment be entered accordingly

[81] A proceeding is frivolous or vexatious when it is devoid of merit, instituted without reasonable grounds or seeks to revisit an issue which has already been decided. This was articulated in *Ash v Ontario (Chief Medical Officer)*, 2024 ONCA 398 at para 21:

... “frivolous” is defined in *Black’s Law Dictionary* as “lacking a legal basis or legal merit; not serious, not reasonably purposeful”. A proceeding has been held to be

frivolous and vexatious when it is instituted without any reasonable ground, or when it seeks the determination of an issue that has already been adjudicated. [Citations omitted].

[82] A proceeding should only be dismissed on the basis that it is scandalous, frivolous or vexatious in the clearest of cases: *Tsa Corporation et al v Reynolds Mirth Richards & Farmer LLP et al*, 2025 NWTSC 16 at para 102.

[83] In some circumstances, filing a second application on the same issue can be considered frivolous or vexatious. However, when that occurs, it is usually because the second application is seeking the reconsideration of an issue that has already been decided by the court and is *res judicata*.

[84] The issues in this matter had not been decided when Pekelsky filed his second application for judicial review. The circumstances leading to the filing of the second judicial review application came about because following the filing of the first judicial review application on May 8, 2024, Northland filed two additional applications on June 27, 2024, and October 11, 2024, to register an addition 6 business names. Those business names were different from the initial business names that Northland has sought to register but still included the term “Naka Power”. When learning of this, Pekelsky filed a judicial review challenging one of those names, Naka Power Utilities.

[85] In my view, the second application is not frivolous or vexatious. At the time the second judicial review application was filed, the first application had not been decided, and Northland had sought the registration of additional business names using the term “Naka Power” knowing that Pekelsky had objected to the registration of other business names which included the term “Naka Power”. Pekelsky’s position on both applications is that a business with the term “Naka Power” in it would likely confuse or mislead a member of the public with the business name “Naka Electric”. As such, it was reasonable for him to pursue filing the second application.

ARE REASONS REQUIRED?

[86] Pekelsky complains that the Registrar failed to provide reasons for its decision to register the “Naka Power” names and breached its duty of

procedural fairness. Northland argues that while it would be preferable to have reasons, the Registrar was not required to give reasons for the decision, that Pekelsky was not a party to the application and was not owed a duty of procedural fairness.

[87] The Registrar was aware of similarity in names between the proposed business names Naka Power and Naka Energy and Pekelsky’s business Naka Electric because the consent of Naka Electric was required to register those business names. Pekelsky argues that because the Registrar was aware of this issue, reasons should have been provided for the Registrar’s decision to approve the subsequent “Naka Power” names that Northland applied to register.

[88] In *Vavilov*, the Supreme Court of Canada recognized that reasons are not required for all administrative decisions, at para 77:

It is well established that, as a matter of procedural fairness, reasons are not required for all administrative decisions. The duty of procedural fairness in administrative law is “eminently variable”, inherently flexible and context-specific: *Knight v Indian Head School Division No 19*, [1990] 1 SCR 653 (SCC), at p 682; *Baker v Canada (Minister of Citizenship & Immigration)*, [1999] 2 SCR 817 (SCC), at paras 22-23; *Moreau-Bérubé*, at paras 74-75; *Dunsmuir*, at para 79. Where a particular administrative decision-making context gives rise to a duty of procedural fairness, the specific procedural requirements that the duty imposes are determined with reference to all of the circumstances: *Baker*, at para 21. In *Baker*, this Court set out a non-exhaustive list of factors that inform the content of the duty of procedural fairness in a particular case, one aspect of which is whether written reasons are required. Those factors include: (1) the nature of the decision being made and the process followed in making it; (2) the nature of the statutory scheme; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made by the administrative decision maker itself: *Baker*, at paras 23-27; see also *Congrégation des Témoins de Jéhovah de St-Jérôme-Lafontaine c Lafontaine (Municipalité)*, 2004 SCC 48, [2004] 2 SCR 650 (SCC), at para 5. Cases in which written reasons tend to be required include those in which the decision-making process gives the parties participatory rights, an adverse decision would have a significant impact on an individual or there is a right of appeal: *Baker*, at para 43.

[89] The *Act* does not specify that the Registrar is required to provide reasons to anyone regarding the decision to register a business name. There are other areas in the *Act* where the Registrar is required to provide reasons.

For example, when cancelling a registration, the Registrar is required to provide reasons to the registrant: s 51(3), *Act*.

[90] Considering the factors referred to in *Baker*, the decision being made by the Registrar in this case is an administrative decision, it is not an adjudicative decision. When applying to register a business name, the applicant is required to fill out a form and submit the application to the Registrar's office. There is no requirement to notify anyone of the application. The application is reviewed by the Registrar and a decision is made. There is no right of participation by the applicant or anyone else in the process; there is no hearing and there are no submissions made.

[91] The Registrar may require the applicant to obtain the consent of an existing registered business name if the Registrar is of the opinion that the proposed name is too similar to another registered business name potentially leading to confusion. However, there is no requirement that the Registrar notify the other registered business of the potential conflict. It is the responsibility of the applicant to obtain any required consents.

[92] The Registrar is guided by the *Act* and *Regulations* which provides fairly comprehensive criteria and factors to consider in making decisions regarding the registration of business names. The Business Names and Partnerships webpage of the Registrar also provides insight to applicants and the public into the business name requirements and what will be considered an appropriate business name.

[93] The Registrar's decision may be of personal importance to Pekelsky but it does not have a significant impact on him; the decision does not prohibit him from continuing to operate his business and to use the business name Naka Electric. While Pekelsky has claimed that the Registrar's decision to approve the business names has resulted in confusion, there is no indication that the decision has resulted in a significant impact on his business which he continues to operate.

[94] Overall, I conclude that the Registrar was not required to provide reasons for the decision in this situation. I would also note that the email from the Minister of Justice to Pekelsky sent on May 6, 2024 does include a review of the factors to be considered by the Registrar as well as a basis for the denial

of the business name Nak Power and the approval of Naka Power (Yellowknife) and Naka Power (NWT). To that extent, it provides some insight into the Registrar's decision.

REASONABLENESS OF THE REGISTRAR'S DECISION

[95] The focus of a reasonableness review is on the Registrar's decision as stated in *Vavilov* at para 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 the 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.

[96] *Vavilov* makes it clear that review of a decision can occur without reasons having been provided, at paras 137-138:

It is important to recall that a reviewing court must look to the record as a whole to understand the decision, and that in doing so, the court will often uncover a clear rationale for the decision: *Baker*, at para 44....

There will nonetheless be situations in which no reasons have been provided and neither the record nor the larger context sheds light on the basis for the decision. In such a case, the reviewing court must still examine the decision in light of the relevant constraints on the decision maker in order to determine whether the decision is reasonable. But it is perhaps inevitable that without reasons, the analysis will then focus on the outcome rather than on the decision makers' reasoning process. This does not mean that reasonableness review is less robust in such circumstances, only that it takes a different shape.

[97] The question that the Registrar was required to consider was whether the business names proposed by Northland were similar to the name of another business and likely to confuse or mislead the public.

[98] In considering this question, the *Regulations* provide non-exhaustive factors for the Registrar to consider such as the distinctiveness of the name,

the length of time the name has been in use, the nature of the businesses associated with the name, the degree of similarity between the names and the geographic area in which the names will be used.

[99] From a review of the Record, it is clear that the Registrar viewed that the proposed names Naka Power and Naka Energy were too similar to Naka Electric as those applications required Pekelsky's consent to be approved and were ultimately denied when he did not provide his consent.

[100] Following this, Northland submitted applications to register eight other business names with the term Naka Power in them. Each business name had additional modifiers such as (NWT) or (Yellowknife) or further described the business as Distribution or Utilities. These applications were approved by the Registrar without the need for the applicant to obtain consent from Naka Electric.

[101] As stated in the Minister's email to Pekelsky on May 6, 2024:

The business name "Naka Power" has not been approved for registration by the Registrar, as it was too similar to "Naka Electric". However, I am advised by the Registrar that the business names "Naka Power (Yellowknife)" and "Naka Power (NWT)" were both registered, as those names were sufficiently distinct from "Naka Electric", pursuant to section 49 of the *Partnership and Business Names Act*.

[102] On its webpage, the Registrar has also warned against the use of common names like "Aurora" as it is considered too general because it is a commonly used name in the Northwest Territories. Naka is described to be a word in Dene languages that is also used for the northern lights, and it also has the potential to be overused. As a matter of common sense and in line with the Registrar's advice, it would require additional terms added to "Naka" to make it distinctive and avoid potential confusion.

[103] The addition of further descriptive elements to the business name was obviously sufficient to allay the Registrar's concerns about the similarity between Naka Power and Naka Electric. This accords with the advice on the webpage which indicates that that business names should not be too general and should "contain descriptive and distinctive elements to meaningfully identify the business entity and distinguish it from other businesses".

[104] The Registrar is required to consider under s 19(2) of the *Act* whether it could reasonably be inferred that the proposed business name is associated or affiliated with another registered business name. While both businesses are associated with electrical services, that is a broad category and the businesses are very different. Naka Electric provides electrician services in Yellowknife and surrounding communities. The “Naka Power” entities are involved in the distribution of power throughout the Northwest Territories, and it is a regulated utility service. Naka Electric is a private business run as a sole proprietorship by Pekelsky while Naka Power is a corporation that is a publicly regulated utility company.

[105] The *Regulations* also require the Registrar to consider the length of use of a business name and the extent to which the name has become known: s 11(a), (b). Pekelsky registered Naka Electric in March 2021 but did not immediately begin promoting his business. He began creating a website for Naka Electric in 2022, but it was not completed until after the first judicial review application was filed in May 2024. As of November 29, 2024, he had not advertised Naka Electric through the radio, newspaper, or television but he had spent money on promotional materials like branded merchandise, business cards, and letterhead.

[106] Northland began the process of re-branding in 2023 and has been using a variant of Naka Power since September 2024. Vic Barr, a Manager of the Respondent, testified that he had not heard of Naka Electric prior to Northland applying to register the “Naka Power” business names.

[107] Neither party had been operating using the term “Naka” for a lengthy period of time. Pekelsky began operating Naka Electric before Northland but had not built up a significant business presence when Northland, a much bigger entity, began the re-branding process which involved publicizing the re-branding of the business to the Naka Power names.

[108] While Electric and Power are similar terms in the electrical industry, the full business names suggest there are differences in the nature of the businesses. Naka Electric operated by Pekelsky appears to be in line with the electrician services offered by Pekelsky. Naka Power (NWT), Naka Power (Yellowknife) and Naka Power Utilities operated by Northland are more suggestive of a power distribution company or company that supplies

electrical utilities to customers.

[109] In considering whether the similarity in business names was likely to confuse or mislead the public, it was held in *Aquatera Utilities Inc v Aquaterra Water Management Inc*, 2018 ABQB 962 at para 40 that “likely to confuse” was similar to probable confusion as opposed to possible confusion. In that case, the Registrar in making the decision that was under appeal, noted that there had been actual confusion citing 57 instances of confusion over a 12-month period.

[110] Pekelsky argues that the similarity in names has already resulted in confusion. This evidence would not have been before the Registrar and would not have factored into the decision. However, Pekelsky claims that he communicated with an acquaintance and also with a neighbour about the potential for conflict following Northland’s announcement of the re-branding to Naka Power. He also claims he received an email from a reporter regarding the issue but the evidence regarding that exchange is unclear. Since the announcement, Pekelsky also says he has received an unspecified number of phone calls from people confused about whether his business is connected with Naka Power. Overall, the evidence is vague, and it is unclear whether there has been confusion among the public or an impact on Pekelsky’s business as a result of the registration of the Naka Power names.

[111] A review of the Record supports a finding that the Registrar’s decision to register Naka Power (NWT), Naka Power (Yellowknife) and Naka Power Utilities was one of the possible reasonable conclusions available to the Registrar.

[112] Whether this Court would have decided otherwise at the first instance is not the basis for deciding a judicial review application. A reviewing judge starts from a position of restraint, respects the role of the decision maker and refrains from considering what decision they would have made. I am required to consider whether the Registrar’s decision fell within the range of acceptable outcomes.

[113] Considering these factors, there was a reasonable basis for the Registrar to form the opinion that Naka Power (NWT), Naka Power (Yellowknife) and Naka Power Utilities were distinctive enough from Naka Electric so that they

were not likely to create confusion or mislead the public. Having come to this conclusion, it was also reasonable that the Registrar did require the consent of Naka Electric for the registration of the business names. This is within the range of acceptable outcomes considering the evidence before the Registrar and the requirements of the *Act* and *Regulations*.

CONCLUSION

[114] For these reasons, the judicial review application is dismissed. The decision of the Registrar to register the business names Naka Power (NWT), Naka Power (Yellowknife) and Naka Power Utilities was reasonable.

[115] The Parties did not address costs in their submissions. Costs are normally awarded to the successful party. If the parties do not agree on costs or otherwise wish to make submissions on costs, they can contact the Registry within 30 days of this decision to arrange for the setting of filing deadlines for written submissions.

S.H. Smallwood
Chief Justice

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**IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES**

BETWEEN:

KAREL PEKELSKY

Applicant

- and -

**NORHLAND UTILITIES ENTERPRISES LTD. &
GOVERNMENT OF THE NORTHWEST
TERRITORIES (REGISTRAR OF
CORPORATIONS),**

Respondents

**MEMORANDUM OF JUDGMENT OF
THE HONOURABLE
CHIEF JUSTICE S.H. SMALLWOOD**
