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**CASE SUMMARY: SMALL TOWN POLITICS
GONE ASTRAY – MAYOR DENIED
PROCEDURAL FAIRNESS AFTER VEILED
ATTEMPTED BY COUNCIL TO CENSURE**

The petitioner sought to quash resolutions passed by Council that removed her from the Council’s portfolio positions. She argued that she was denied procedural fairness, had no notice of the resolutions, and was ambushed at the Council meeting. The petitioner had received criticism because of controversial comments she posted on Facebook.

This appears to have been the impetus behind the resolutions. The court found that the petitioner was denied her right to procedural fairness and quashed the resolutions. The court concluded that the resolutions were a veiled attempt at censoring the petitioner.

Administrative law – Municipalities – Decisions reviewed – Municipal council – By-laws – Judicial review – Procedural requirements and fairness – Remedies – Mandamus

Michetti v. Pouce Coupe (Village), [2022] B.C.J. No. 505, 2022 BCSC 472, British Columbia Supreme Court, March 22, 2022, S.C. Fitzpatrick J.

The petitioner, Lorraine Michetti, was the Mayor of the respondent, Village of Pouce Coupe (the “Village”), a small town in Northeastern British Columbia. Earlier in 2021, Ms. Michetti posted certain comments on Facebook that attracted controversy and negative media attention. Subsequently, Council passed certain resolutions censoring the petitioner in relation to her Facebook posts and sought to remove her from all public duties. The petitioner challenged those decisions. The parties eventually agreed to a consent order confirming the resolutions were invalid and set aside. However, this did not end the matter.

In September 2021, the Village held a by-election to fill two vacancies. The Village claimed that the petitioner’s previous comments continued to attract negative attention. A Council meeting was held on October 6, 2021. One of the agenda items was for Council to review the Council’s portfolios (there were about 15 different ones) and assign Council members to each. This was, in part, necessitated by the by-election that resulted in the filling of the previous vacancies.

During the October 6, 2021, meeting, when it came to addressing the portfolio agenda item, a separate resolution was put forward to remove the petitioner from all portfolio positions that she currently held. The resolution was adopted. Council then passed separate resolutions filling the portfolio position to the exclusion of the petitioner. In the words of the petitioner, she was “ambushed”.

The petitioner sought judicial review of the resolutions on that basis that she was denied procedural fairness. She also contended that the resolutions were unreasonable, but ultimately the court did not need to address this point.

The Village's position was that it owed no duty of procedural fairness to the petitioner. It contended that the resolutions were not resolutions to "censure" the petitioner but merely related to addressing the portfolio positions. The court disagreed. Although the court noted that the resolutions – the removal resolution in particular – was not described as a motion to "censure" the petitioner, the overall circumstances suggest otherwise. In this regard, the court was influenced by the earlier February motions that, in fact, sought to censure the petitioner. The court concluded that, based on the evidence, these sentiments persisted through to the time the resolutions were passed in October. In other words, this appeared to be a second (although veiled) attempt at censuring the petitioner.

The court held that the decision to "spring" the resolutions on the petitioner at the October meeting contravened her right to be notified and respond to what were "really allegations of misconduct". The petitioner was entitled to be notified of her alleged misconduct in a timely manner, the evidentiary basis and the rationale for the allegations, and to provide a meaningful opportunity to address the alleged misconduct. None of this occurred given how the resolutions were put forward at the meeting.

The court rejected the Village's argument that the petitioner had "constructive notice" of the resolutions because she knew that portfolios were going to be reviewed at the meeting. However, as the court put it, the "usual" process is not what occurred at the meeting. Instead, the usual review was pre-empted by the removal motion, thus effectively denying the petitioner the right to participate in the portfolio review.

Relatedly, the court also found that the removal motion was not properly added to the agenda.

In the end, while the court recognized that Council members are entitled to take political positions, the manner in which the petitioner was treated was in breach of her rights to a fair process. Council failed to act in accordance with the principles of natural justice.

The court quashed the resolutions and later appointments to the portfolios previously held by the petitioner. She was reinstated in those roles.

This case was digested by Adam R. Way of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact him directly at away@harpergrey.com or review his biography at <http://www.harpergrey.com>.