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CASE SUMMARY: CITY COUNCILLORS MAY NOT BE SUBPOENAED TO GIVE EVIDENCE REGARDING THE MAKING OF THEIR DECISIONS

Administrative law – Decisions reviewed – Municipal Councillor – Judicial review – Evidence

Murray Purcha & Son Ltd. v. Barriere (District), [2018] B.C.J. No. 493, 2018 BCSC 428, British Columbia Supreme Court, March 19, 2018, H. Hyslop J.

The respondent awarded a contract for winter road maintenance to a contractor other than the petitioner. In the context of a judicial review application, the petitioner issued a subpoena to an elected Councillor in order to obtain testimony on in camera proceedings. The respondent asked for an order that the subpoena be quashed.

The Court affirmed the rule set down in *Agnew v Ontario Assn of Architects*, 26 OAC 354, that like judges, the members of an administrative tribunal are not ordinarily compellable to testify as to their decisions and how they reach them. Further, the court held that the testimony of the Councillor would be of limited assistance as the undertaking or testimony of an elected official, acting alone, cannot bind the District. The District can only exercise authority by resolution or by-law. Any statements made by the Councillor to the petitioner were not binding.

In dismissing the application, the court held that tribunal members may agree on a result without agreeing on each step by which the result was achieved, and that the result may flow from concession and compromise, such that it is better to let the decision speak for itself instead of inquiring into the bases for decision.

This case was digested by [Kelsey A. Rose](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Kelsey A. Rose at krrose@harpergrey.com.