

HARPER GREY LLP
3200 – 650 West Georgia Street
Vancouver, British Columbia, V6B
4P7
Canada

Tel: 604 687 0411
Fax: 604 669 9385

CASE SUMMARY: MUNICIPAL COUNCIL'S CONSULTATIVE PROCESS WAS HELD TO BE PROCEDURALLY FAIR

Administrative law – Decisions reviewed – Municipal boards – By-laws – Notice and consultation – Judicial review – Bias – Procedural requirements and fairness

West Nipissing (Municipality) Police Services Board v. West Nipissing (Municipality), [2018] O.J. No. 5958, 2018 ONSC 6454, Ontario Superior Court of Justice, November 14, 2018, H.S. Arrell R.S.J., G.M. Mulligan, W.M. Matheson JJ.

The Municipality of West Nipissing passed Motion 2017/84 adopting By-Law 2017/85 which accepted a contract proposal submitted by the Ontario Provincial Police (“OPP”) to assume responsibility for policing functions for the Municipality. The Council of the Municipality reviewed feedback from the public, including print and online, a public meeting which was broadcast on TV and internet, and online questions and answer. After reviewing the public consultation, hearing the concerns of the Police Services Board, and debating the resolution, the Council voted in favour of switching to the OPP. Two councillors had familial relationships with the OPP.

The Board brought an application for judicial review seeking an order quashing the Motion and By-law on the basis that the Council did not follow previous consultation processes when considering whether to switch to the OPP. The Board also raised issues of bias and bad faith.

The parties agreed that the Council owed a duty of procedural fairness. After reviewing the Baker factors, the Court held that a low level of procedural fairness was owed. In review of the Municipalities consultative process, the Court found that there was no breach of procedural fairness.

On the issue of bias, the Board submitted that the two councillors were disqualified from voting. The Court dismissed the notion of bias as the Board did not demonstrate a direct or indirect pecuniary interest as defined in the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M. 50. The Court was not satisfied that the Board showed the Council did not act in the public interest and therefore dismissed the argument of bad faith.

The application for judicial review was dismissed.

This case was digested by [Jackson C. Doyle](#), 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 Jackson C. Doyle at jdoyle@harpergrey.com.