

1 S 91448
Nanaimo Registry

In the Supreme Court of British Columbia
In the Matter of the *Judicial Review Procedure Act* R.S.B.C. 1996, c. 241

Between:

Adam Robert Walker

Petitioner(s)

And:

The Town of Qualicum Beach

Respondent(s)

PETITION TO THE COURT

ON NOTICE TO:

Town of Qualicum Beach
201-660 Primrose St,
Qualicum Beach, BC V9K 2R5

Deputy Attorney General
Ministry of Justice
PO Box 9290 Stn Prov Govt
Victoria BC V8W 9J7

28JUL20 2002529 RISS 200.0
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This proceeding has been started by the petitioner(s) for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner(s)
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s),

(a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed petition was served on you,

(b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you,

(c) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or

(d) if the time for response has been set by order of the court, within that time.

(1) The address of the registry is:

35 Front St, Nanaimo, BC V9R 5J1

(2) The ADDRESS FOR SERVICE of the petitioner(s) is:

Adam Robert Walker
89 Hilliers Rd N,
Qualicum Beach, BC V9K 1Y4

Fax number address for service (if any) of the petitioner(s): N/A

E-mail address for service (if any) of the petitioner(s): N/A

(3) The name and office address of the petitioner's(s') lawyer is: N/A

Claim of the Petitioner(s)

Part 1: ORDER(S) SOUGHT

1. An Order quashing the resolution of the Respondent dated June 25th, 2020, requiring the Petitioner to sign a statutory declaration, on the grounds that the requirement upon the Petitioner is not a power the local government has authority to require;
2. An Order quashing the resolution of the Respondent dated July 13th, 2020, sanctioning the Petitioner;
3. In the alternative, an Order quashing the resolutions of the Respondent dated July 25th, 2020, and July 13th, 2020, remitting the decision back to the Respondent's Council, with directions;
4. An Order pursuant to section 17 of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241, directing the Respondent to produce and file the record before it when making related sanction, censure, or indemnification decisions;
5. An Order that the Respondent produce to the Petitioner copies of all reports and materials to be considered by the Council of the Respondent in advance

- of the *in camera* meetings at which they are to be considered;
6. An Order requiring the Respondent to produce to the Petitioner all documents requested necessary for the defence of the Petitioner if the Respondent is to consider sanctions or any further actions on the matter;
 7. An Order requiring the Respondent to produce to the Petitioner all evidence Council considered against the Petitioner with respect to the sanctions it has imposed;
 8. An Order requiring the Respondent to produce to the Petitioner particulars of all charges Council intends to bring against the Petitioner;
 9. An Order requiring the Respondent to produce to the Petitioner particulars of all penalties Council intends to seek against the Petitioner;
 10. An Order quashing the decision refusing to fund the legal expense of the Petitioner in facing their charges;
 11. Costs; and
 12. Such further declarations, orders, or directions as this Court considers appropriate.

Part 2: FACTUAL BASIS

1. The petitioner, Adam Robert Walker (the "Petitioner" or "Councillor Walker") is an individual with an address of 89 Hilliers Rd N, Qualicum Beach, V9K 1Y4, and a duly elected Councillor of the Town of Qualicum Beach Council.
2. The respondent, Town of Qualicum Beach ("Respondent"), is a municipality created and operating pursuant to the *Community Charter*, S.B.C. 2003, c. 26, and *Local Government Act*, R.S.B.C. 2015, c.1, and governed by a 5 member Council.
3. On June 25, 2020, the Petitioner attended an in-camera held by the Respondent.
4. The agenda for the in-camera portion of this meeting was not made available to the Petitioner prior to the meeting.
5. Dennis Trudeau, Chief Operating Officer for the Respondent, advised the Petitioner that the Respondents' legal opinion was that the Petitioner was in a conflict of interest by attending the meeting.
6. Mr Trudeau refused to declare what the conflict of interest was when asked by the Petitioner.
7. The meeting was recessed after approximately one hour due to a scheduling conflict.
8. All agenda materials provided during this meeting were collected by the Respondent immediately following the recess.
9. On June 26, 2020, the Petitioner was hand delivered a letter at his home informing him that Council during this meeting was discussing sanctions against the Petitioner and the Petitioner was advised that he ought not to attend the meeting but could make a presentation in his defence.
10. The Petitioner was not provided with:
 - a. any written notice of hearing other than the June 26, 2020, letter, after the hearing had already begun;
 - b. any advance copy of the contents of the agenda prior to the meeting taking place;
 - c. any information about the process being taken;

- d. the evidence used by Council as they debated their decision;
 - e. an opportunity to challenge the evidence of the other side;
 - f. the charges or allegations against him;
 - g. potential penalties sought by Council;
 - h. an opportunity to have anyone represent or assist him; nor
 - i. indemnification for legal expenses.
11. The meeting resumed on July 29, 2020, and was shortly thereafter recessed.
 12. On July 3, 2020, the Petitioner was provided with some background material for his defence and informed that the Respondent would not indemnify him.
 13. Documents requested by the Petitioner for his defence were not supplied by the Town.
 14. The meeting was resumed on July 13, 2020.
 15. At the commencement of the July 13, 2020 meeting, the Petitioner presented a written statement to Council that he felt the process was unfair and that the proceeding violated the fundamentals of natural justice, identifying areas of primary concerns, and imploring Council to adjourn the meeting in order to address these identified issues.
 16. No questions were asked of the Petitioner and he removed himself from the chamber.
 17. The portion of the motion debated by the Council of the Respondent to remove the Petitioner's position of Deputy Mayor failed, however, the balance of the sanction motion on the floor passed.
 18. No clear and adequate reasons for this decision were provided to the petitioner, nor were any options identified to appeal or review the procedures.
 19. The Petitioner spoke with Councillor Teunis Westbroek and Mayor Brian S Wiese several times between July 13 and July 20, advising both of them that he intended to file a judicial review. The Petitioner was notified by Councillor Westbroek that Council would reverse the two motions directing the Petitioner to perform actions at the next meeting.
 20. During the July 20, 2020, in-camera meeting the noted resolutions were not reversed.
 21. Following this meeting the petitioner spoke with Mayor Wiese seeking clarity, the Mayor requested until the end of the day to deal with the two resolutions.
 22. Later July 20, 2020, a request from the Corporate Administrator was sent to the Petitioner stating that the Town demanded the Petitioner sign a statutory declaration by 4 PM July 24, 2020, or else further steps would be taken against the Petitioner, and that at some point in the future another hearing would be held to by the Respondent to allow the Petitioner an opportunity to present to Council again.
 23. No contact by the Respondent to the Petitioner to date has been made to organize the proposed hearing.

Part 3: LEGAL BASIS

1. The Petitioner will rely on the following:
 - a. *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241;
 - b. *Community Charter*, S.B.C. 2003, c. 26;
 - c. *Local Government Act*, R.S.B.C. 2015, c.1;
 - d. *Interpretation Act*, R.S.B.C. 1996, c. 238;
 - e. Town of Qualicum Beach Bylaw No. 554 - Officers, Employees and

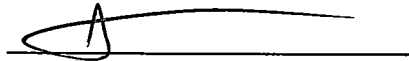
- Members of Council Indemnification Bylaw;
 - f. Rules of Court; and
 - g. The inherent jurisdiction of the court.
2. The legal ground on which this petition is brought are as follows:
- a. The Respondent failed to act fairly in all circumstances by making a decision based on evidence that was not disclosed to the Petitioner, withholding requested documents, holding a hearing that was not clear without notifying the Petitioner in advance, not allowing an opportunity for the Petitioner to challenge the evidence of the other side, not providing the charges made nor remedial actions being sought, and not providing the Petitioner an opportunity to have anyone represent or assist him. As a result, the Petitioner did not know the case against him nor have an opportunity to respond to it.
 - b. By doing so the Respondent made a reviewable error and breached the common law rules of natural justice and the rules of procedural fairness.
 - c. The Respondent exceeded their authority in their two resolutions requiring the Petitioner to perform the actions therein described.

MATERIAL TO BE RELIED ON

- 1. Affidavit #1 of Adam Robert Walker, sworn July 27, 2020.
- 2. The pleadings file herein.
- 3. Additional confidential materials at the discretion of the Court.

The petitioner(s) estimate(s) that the hearing of the petition will take 90 minutes.

Date: July 23, 2020



Signature of
 petitioner lawyer for petitioner(s)

Adam Robert Walker

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this petition

with the following variations and additional terms:

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Date:

.....
 Signature of Judge Master