



Conflicts, Clean-ups, and Class Actions

Top three cases in municipal law in the past 12 months



Further guidance on conflicts of interest

Butt v. Town of Carbonear

Butt v. Carbonear

- Latest conflict of interest case in NL
- Finding a grey area in conflict law

What makes a conflict?

(1) A councillor shall not vote on or speak to a matter before the council or a committee of the council where

- (a) the councillor has a monetary interest in the matter distinct from an interest arising from his or her functions as a councillor;
- (b) the councillor has a monetary interest directly or indirectly in the matter;
- (c) a relative of the councillor has a monetary interest in the matter, or
- (d) the councillor is an officer, employee or agent of an incorporated or unincorporated company, or other association of persons, that has a monetary interest in the matter.

What is a monetary interest

- (o) "monetary interest" means an interest or benefit
- (i) consisting of money, exacted in money, relating to money or of which money is the object,
 - (ii) capable of being measured by its financial value, cost, benefit, advantage or disadvantage, or
 - (iii) affecting or potentially affecting a person's financial position or worth, his or her assets or asset value but does not include remuneration or a benefit to which a councillor is entitled under this [Act](#); [...]

Council's duty

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- (2) *A council shall, by resolution, declare vacant the office of an elected councillor where that councillor*
- (a) fails to disclose that he or she has a conflict of interest in a matter being discussed by the council; or*
 - (b) discusses or votes on a matter on which he or she has a conflict of interest.*

Procedural fairness

- Two decisions – conflict and vacating seat – but only one resolution is necessary
- Council can act on an anonymous and undated complaint – but it has to be addressed and investigated
- Council can review actions that occurred before previous elections
- Council has a duty to disclose all evidence it has at the meeting – cannot consider new evidence in private deliberations

Guidance on monetary interest

- Council can't always rely on local knowledge
- Surveyor gave evidence that removal of neighbouring building would have “virtually no effect” on value of subject property
- Court: “no **appreciable** increase in the value of his asset
- Must be more than de minimis

Between a rock and a hard place

- Not inherently wrong for councilors to be in conflict
- Councilors are heavily engaged in communities
- Wrong for councilors to *speak or act* on a matter where they are in conflict
- Council still has no discretion once it decides s. 207 is engaged



Being careful with
clean-up orders

Janes v. Town of Embree

Janes v. Embree

- Demolition and removal orders are high stakes – have to get them right
- April 2013: Town sent a repair/removal order pursuant to ss. 178 and 404 of the municipalities act
- Resident was served, but order did not specify the right to appeal the order.
- July 2013- Town demolished building and removed debris
- July-August 2013 – Resident’s lawyer complained about order; Town issued proper order with appeal right.
- Resident appealed the August Order to appeal board and lost
- Resident sued Town in trespass and negligence

Mandatory requirements for orders

5. Where an authority makes a decision that may be appealed under [section 42](#) of the [Act](#), that authority shall, in writing, at the time of making that decision, notify the person to whom the decision applies of the

- (a) persons right to appeal the decision to the board;
- (b) time by which an appeal is to be made;
- (c) right of other interested persons to appeal the decision;
and
- (d) manner of making an appeal and the address for the filing of the appeal.

Janes v. Embree

- Why is the form of orders important?
- Court: Compliance with s. 5 is mandatory
- Failure to comply renders order invalid
- Invalid order? No defence of statutory authority

Why do you need a valid order?

- Directly interfering with or damaging someone's property is a trespass and is negligent.
- Statutory authority is an absolute defence to trespass and negligence.
- Be careful not to lose your statutory authority
- One way to do so is a mistake with the Order

Janes v. Embree

- Saving grace: causation and s. 178

178. A council may remove from real property solid waste, noxious substances and anything that poses a hazard to public health and safety or adversely effects the amenities of the surrounding property, and charge the owner or occupier of the real property for the costs of its collection and disposal.

- No need for notice

Janes v. Embree

- Currently being appealed
- Summary trial decision



Class actions, watersheds, and climate change

*Dewey v Corner Brook Pulp and Paper
Limited, 2019 NLCA 14*

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Flooding, planning, and climate change

Dewey v Corner Brook Pulp and Paper
Limited, 2019 NLCA 14

Dewey v . CB Pulp and Paper

- Flooding claim against industry and municipality
- Merits of this decision – mostly irrelevant
- Important for you to know that its moving forward

Dewey v . CB Pulp and Paper

- Class actions: no cost consequences, hard to fight.
- Class of two or more people with common issues

Dewey v . CB Pulp and Paper

Open question: How responsible are municipalities for failing to prevent flooding events?

Waterway Houseboats Ltd. v British Columbia, 2019 BCSC 581: claim against province for negligently approving work that played a role in a flood

Dewey v . CB Pulp and Paper

How to prepare?

- Doctrine of policy immunity
- When making decisions involving water control, get expert advise.
- Document your consideration of all the factors and paper the decision thoroughly



Bonus case

Bradbury v. Carbonear (Town), 2019 NLSC 1

Bradbury v. Carbonear

- Tools to stop residents from repeatedly relitigating development issues
- Resident sent in building application.
- Town refused
- Resident appealed and lost.
- Appealed again and lost
- Sued the Town

Bradbury v. Carbonear

- Doctrine of *Res Judicata*
- English translation: give it up b'y
- Court: the issue is the appropriateness of the Town's refusal to issue a permit. That issue has already been decided.



Questions?

