S21-2694
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

RAMONA ERIKA JOHANSON

PETITIONER

AND:

CITY OF WHITE ROCK

RESPONDENT

# RESPONSE TO PETITION

**Filed by:** The City of White Rock (the "**City**" or "**White Rock**")

THIS IS A RESPONSE TO the petition filed September 1, 2021

## Part 1: ORDERS CONSENTED TO

The application respondent consents to the granting of the orders set out in paragraphs NIL of Part 1 of the notice of application.

## Part 2: ORDERS OPPOSED

The application respondent opposes the granting of the orders set out in paragraphs ALL of Part 1 of the notice of application.

## Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of the orders set out in paragraphs NIL of the notice of application.

**Part 4: FACTUAL BASIS**

1. The City accepts paragraphs 1 – 7 of the Petition as accurate, except that the City's policy on Communications between Mayor and Council and City Staff (the "**Policy**") was reviewed, but not changed, on June 14, 2021.

2. The City also accepts paragraph 8 as an accurate summary of the principal provisions of the Policy (as defined in the Petition).

3. In response to paragraph 9 of the Petition, the City acknowledges that from time to time, there were some communications from some City councillors which were not transmitted in accordance with the procedures set out in the Policy. The City also says that:

(a) Such communications are entirely irrelevant to the outcome of this Petition; and

(b) Such communications are distinguishable in their nature, in that they did not cause material disruption to the operations of City staff.

4. In response to paragraphs 10 - 12 of the Petition, the City says that the Petition omits reference to a substantial number of additional e-mails which the Petitioner sent directly to staff members, and which were detrimental to the morale and work of City staff.

5. In further specific response to paragraph 10 of the Petition, the City says that it does not accurately summarize the e-mails to which it refers. In particular:

(a) While the Chief Administrative Officer ("**CAO**") of the City advanced certain complaints about the Petitioner's manner of communicating with City staff, he did not exercise, or purport to exercise, any disciplinary power in the nature of a "reprimand"; and

(b) The CAO did not impose, or threaten to impose, any measure fairly described as a "penalty".

The CAO requested that the Petitioner's communications with staff comply with the Policy, and directed staff to respond in a manner consistent with the Policy. The CAO took these steps to protect staff he was responsible for, when he concluded that the nature and volume of the communications to staff had created an unsafe and unfit workplace, and were having a

significant adverse effect on staff, the work of staff, and the organizational culture and morale of the City (Ferrero #1, paras.3, 4).

6. In further specific response to paragraph 11 of the Petition, the City says that it as well does not accurately summarize the e-mails to which it refers. In particular, nothing in the e-mail correspondence could fairly be described as imposing a "penalty" on the Petitioner.

7. In further specific response to paragraph 12 of the Petition:

(a) It is not true that all other City councillors have been permitted to communicate directly with staff members. On August 16, 2021, an e-mail was sent to all other City councillors asking them to communicate through the same channels as the Petitioner was asked to use.

(b) The Petitioner has, in any event, ignored the request from the CAO concerning communication protocols, and has continued to send e-mails directly to staff members (in some instances without copying the CAO).

8. In response to paragraphs 13 and 14 of the Petition:

(a) On July 19, 2021, the Petitioner filed a complaint against the CAO.
(b) On September 21, 2021, Colleen Ponzini filed a complaint against the Petitioner.

The City hired an investigator to investigate these complaints, and her report is pending. In addition, the City Council organized a workshop for Council members to discuss the City's Respectful Workplace policy. All Council members were invited to attend, but the Petitioner declined to do so.

9. Paragraphs 15 – 17 of the Petition constitute mostly legal argument, which is addressed below. In addition, the following facts are relevant:

(a) The Petitioner had ample opportunity prior to July 7, 2021 to state her position on any issue to the CAO.

(b) The Petitioner declined scheduled one-on-one meetings with the CAO, which would have given her additional opportunities to state her position on any issue to the CAO.

**Part 5: LEGAL BASIS**

*The Petition does not satisfy the applicable pleading requirements*

1. Petitions for judicial review are subject to additional pleadings requirements, beyond those set out in the *Supreme Court Rules*. Section 14 of the *Judicial Review Procedure Act* ("**JRPA**") requires that an application under that Act set out "the ground on which relief is sought.

2. The interaction between this section and the standard rules of pleading was discussed in *Mayden v. British Columbia (Workers' Compensation Appeal Tribunal),* 2015 BCSC 692.

> "[66] In *Polson v. British Columbia (Superintendent of Motor Vehicle),* 2014 BCSC 700, Mr. Justice Skolrood recently considered the intersection between the requirements of the Rules for petitions and the *Judicial Review Procedure Act*. He stated that:
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> > 57 Section 14 must be read in conjunction with Rule 16-1 of the *Supreme Court Civil Rules* which deals with proceedings by petition. Applications for judicial review must be brought by petition by virtue of s. 2 of the *JRPA*.
> >
> > 58 Rule 16-1(2) stipulates that a person wishing to bring a petition proceeding must file a petition in Form 66. Form 66 in turn, under the heading "Legal Basis," directs the petitioner to specify any rule or enactment relied on and to "provide a brief summary of any other legal bases" on which the petitioner intends to rely.
> >
> > 59 The purpose of the requirement that the petitioner identify the legal basis for the relief sought is to ensure that the opposing party, and the court, have full knowledge of the legal grounds and arguments that will be advanced. From the perspective of the opposing party, such notice is necessary in order to be able to prepare a proper response. This is a basic tenet of procedural fairness and fundamental justice. Put another way, a party should not be left guessing about the case it has to meet.
> >
> > 60 The requirement for adequate notice of the grounds is particularly important in petition proceedings given the absence of discovery and other interlocutory processes that provide parties with additional opportunities to know and assess the opposing case."

3. The following defects are apparent on the face of the Petition:

(a) The Petition does not plead sufficient facts to bring the case within the purview of the JRPA. Remedies under the JRPA are available in respect of the exercise of a "statutory power of decision", or a "statutory power" (both defined terms). The Petition contains no allegations, nor any analysis of how this statutory requirement is met. In this regard, the Petition also fails to comply with the ordinary rule that pleadings which advance a claim under a statute must plead all of the facts required for a statutory remedy: *Harrington v. Canada (Minister of Health)*, 2003 BCSC 1436 (CanLII)

(b) The Petition contains no analysis of the issue of standard of review, nor of why any alleged standard of review was not met.

(c) The Petition contains no allegations or analysis to identify how any legal right of the Petitioner was adversely affected.

(d) The Petition contains brief references to the concept of fairness, but no allegations or analysis of the facts giving rise to such a duty in this case.

*Jurisdiction under the JRPA does not exist*

4. As stated above, application of the JRPA depends on the existence of a "statutory power of decision", or a "statutory power". Neither exists in this case: *Ontario Federation of Anglers and Hunters v Ontario (Minister of Natural Resources and Forestry)*, 2017 ONSC 518; *Strauss v British Columbia (Minister of Public Safety)*, 2018 BCSC 1414.

5. Similarly, there is no evidence that, and the Petition does not even allege, that any legal rights of the Petitioner have been adversely affected. Taken at its highest, the Petition complains that the CAO of the City is now insisting that the Petitioner follow certain procedures, mandated in the City's Policy governing communications between council members and staff. This is not an adequate basis for judicial review: *Blaber v University of Victoria,* 1995 CanLII 1220 (BC SC); *Ontario Federation of Anglers and Hunters v Ontario (Minister of Natural Resources and Forestry), supra.*

6. Finally, even if the Petitioner were owed a duty of fairness, it would be minimal in the circumstances of this case, and the Petitioner had ample opportunity to state her case to Mr. Ferrero: *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 S.C.R. 817.

**Part 6: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Guillermo Ferrero.

The application respondent estimates that the application will take two hours.

Date: December 10, 2021

Paul Hildebrand, Lawyer for the City

Respondent's Solicitor and Address for Service

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