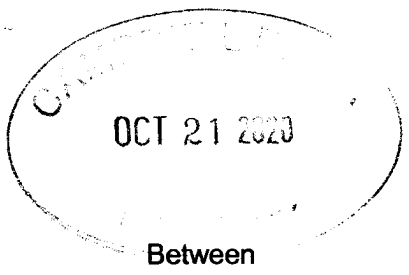


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No. S15097
Campbell River Registry

In the Supreme Court of British Columbia

Between

NOBA ANDERSON

Petitioner

and

STRATHCONA REGIONAL DISTRICT

Respondent

RESPONSE TO PETITION

Filed by: Strathcona Regional District (the "SRD")

THIS IS A RESPONSE TO the petition filed in these proceedings by the petitioner on July 13, 2020.

Part 1: ORDERS CONSENTED TO

The SRD consents to the granting of the orders set out in NONE of the paragraphs of Part 1 of the petition.

Part 2: ORDERS OPPOSED

The SRD opposes the granting of the orders set out in ALL of the paragraphs of Part 1 of the petition.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The SRD takes no position on the granting of the orders set out in NONE of the paragraphs of Part 1 of the petition.

Part 4: FACTUAL BASIS

1. The SRD denies each and every allegation contained in the petition, unless expressly admitted in this petition response.
2. The SRD is a regional district incorporated pursuant to the laws of British Columbia, with an address for service in this proceeding at 1800 – 510 West Georgia Street, Vancouver, British Columbia.
3. The Petitioner, Noba Anderson ("Director Anderson"), has served as a director representing the SRD Electoral Area B – Cortes Island on the SRD board of directors (the "Board") since in or about November 2008. The SRD denies that the actions of the

SRD Board have adversely affected Director Anderson's ability to represent her constituents, as alleged or at all.

Background

4. In or about October 2018, the SRD received information from several Cortes Island constituents respecting the alleged receipt of gifts and an alleged conflict of interest by Director Anderson.
5. At its November 7, 2018 closed meeting, the Board resolved to hire an experienced neutral third-party investigator to undertake an investigation into the allegations that it had received from Cortes Island residents. Shortly thereafter, the SRD hired Craig Peterson of Creative Solutions Risk Management Consulting ("Creative Solutions") to undertake an investigation into the allegations and this was communicated to the Board at its November 22, 2018 closed meeting.
6. In or about January 2019, the SRD became aware that residents of Cortes Island had filed a petition with respect to their allegations, seeking, among other things, the disqualification of Director Anderson (the "Disqualification Petition").
7. By letter dated January 14, 2019, Director Anderson's legal counsel requested indemnification for Director Anderson with respect the Disqualification Petition.
8. At its January 24, 2019 closed meeting, the Board resolved to delay consideration of the requested indemnification of Director Anderson until the investigation by Creative Solutions was concluded and the Disqualification Petition had been concluded. This decision was communicated to Director Anderson on January 28, 2019.
9. Between on and about January 21, 2019, and on and about February 28, 2019, the SRD received correspondence and presentations from various Cortes Island residents requesting that the SRD cover Director Anderson's legal costs. At that time, the Board had not yet made public that it had received and considered an indemnification request from Director Anderson.
10. On or about January 30, 2019, an article authored by Director Anderson, including the name of the investigator hired by the SRD, was published in the Cortes Tideline online newspaper.
11. At its February 28, 2019 closed meeting, the Board considered a February 19, 2018 legal opinion addressed to the SRD and marked "privileged and confidential" (the "February 19 Opinion") and the February 18, 2019 final report by Mr. Peterson (the "Peterson Report").
12. By letter dated March 7, 2019, Director Anderson's legal counsel set out, among other things, legal arguments as to why, in his view, the SRD ought to indemnify Director Anderson (the "March 7 Voell Letter"). In the March 7 Voell Letter, counsel referenced the contents of the Peterson Report and cited from the February 19 Opinion.

13. At its April 10, 2019 closed meeting, the Board considered a March 14, 2019 legal opinion addressed to the SRD and marked "privileged and confidential" (the "March 14 Opinion"). At the meeting, the Board also received the March 7 Voell Letter. Since on or about that meeting, Director Anderson has not been provided with copies of closed reports to the Board ("Closed Reports") respecting matters that relate to Director Anderson and to which Director Anderson may be in a conflict of interest with the SRD. Instead, Director Anderson is provided with copies of all other Closed Reports and is provided with an agenda outline that includes the titles of all the Closed Reports.
14. By letter dated April 15, 2019, the SRD's legal counsel wrote to legal counsel for Director Anderson to confirm that the SRD has not waived privilege over the February 19 Opinion or the March 14 Opinion, that the Peterson Report is confidential, that none of these documents ought to have been disclosed, and finally, that all copies of these documents should be returned to the SRD or deleted. As of April 15, 2019, no authorization had been given by the Board to release: the February 19 Opinion, the Peterson Report, or the March 14 Opinion, from the closed meetings referenced above, or to otherwise disclose the documents or contents to anyone outside the closed meetings.
15. By letter dated May 1, 2019, Director Anderson's legal counsel wrote to legal counsel for the SRD advising that, among other things, the February 19 Opinion, the March 14 Opinion and the Peterson Report were provided to Director Anderson, and that Director Anderson was entitled to disclose those documents to him. He also wrote that if the SRD does not want Director Anderson to seek legal advice about opinions that are solely about her, it ought not to have provided them to her.

The Indemnification Decision

16. At its May 8, 2019 closed meeting, the Board resolved not to indemnify Director Anderson and to provide her with an opportunity to respond through legal counsel (the "May 8 Resolution"). This was communicated to Director Anderson on May 10, 2019.
17. The SRD will include the record of the proceeding with respect to the May 8 Resolution in the materials to be filed in this petition proceeding.
18. By letter dated June 19, 2019 (the "June 19 Voell Letter"), Director Anderson's legal counsel again requested indemnification for Director Anderson with respect the Disqualification Petition.
19. At its July 24, 2019 closed meeting, the Board resolved to receive the June 19 Voell Letter, but made no further decisions respecting Director Anderson's request for indemnification (the "July 24 Resolution"). This was communicated to Director Anderson on July 30, 2019.
20. The SRD will include the record of the proceeding with respect to the July 24 Resolution in the materials to be filed in this petition proceeding.

The Censure Decision

21. By letter to Director Anderson dated June 25, 2019, the SRD gave notice that the Board would be considering whether to proceed with a censure hearing regarding Director Anderson's disclosure of confidential and privileged information belonging to the SRD without first obtaining authorization from the Board.
22. At its September 11, 2019 closed meeting, upon consideration of written submissions from Director Anderson's legal counsel, the Board resolved to proceed with a censure hearing (the "September 11 Resolution").
23. The SRD will include the record of the proceeding with respect to the September 11 Resolution in the materials to be filed in this petition proceeding.
24. By letter to Director Anderson dated October 10, 2019, the SRD gave notice that the Board would be considering a censure motion.
25. At its October 24, 2019 closed meeting, upon consideration of written and oral submissions from Director Anderson's legal counsel, the Board resolved to pass a censure motion (the "October 24 Resolution"). This was communicated to Director Anderson on October 30, 2019.
26. The SRD will include the record of the proceeding with respect to the October 24 Resolution in the materials to be filed in this petition proceeding.

Part 5: LEGAL BASIS

1. The SRD pleads and relies on the *Local Government Act*, RSBC 2015, c. 1; the *Community Charter*, SBC 2003, c. 26; the *Judicial Review Procedure Act*, RSBC 1996, s. 241; and the *Supreme Court Civil Rules*, BC Reg 168/2009, including but not limited to those sections set out below.

Indemnification Decision

2. Section 740 of the *Local Government Act*, provides that the SRD may provide indemnification for directors either by bylaw in accordance with the bylaw or by resolution in a specific case.
3. The SRD's Bylaw No. 287, Regional District Officials Indemnification Bylaw 2017 (the "Indemnification Bylaw") provides for indemnification only with respect to a "claim, action or prosecution" and only with respect to, most materially, those amounts required "to defend against a claim, action or prosecution brought against an official in connection with the exercise or intended exercise of the official's powers or the performance or intended performance of the official's duties or functions".
4. The SRD denies that the Indemnification Bylaw requires the SRD to provide indemnification with respect to a proceeding more generally, as alleged or at all, unless, as set out above, that proceeding is a "claim, action or prosecution brought against an

official in connection with the exercise or intended exercise of the official's powers or the performance or intended performance of the official's duties or functions".

5. The Disqualification Petition is not a "claim, action or prosecution" and was brought against Director Anderson in respect to the alleged receipt of gifts that were not in connection with the exercise or intended exercise of her powers or the performance or intended performance of her duties or functions. The SRD is therefore not required to indemnify Director Anderson for the legal costs incurred in defending the Disqualification Petition.
6. The Board's May 8, 2019 and July 24, 2019 decisions to not to indemnify Director Anderson were discretionary decisions made on consideration of submissions from Director Anderson's legal counsel. The process followed was fair, the decisions were reasonable, and the decisions were reasonably communicated to Director Anderson.

Censure Decision

7. Sections 26 and 27 of the SRD's Bylaw No. 330, Director Code of Conduct Bylaw 2018 (the "Code of Conduct Bylaw") provide that information discussed or disclosed at a closed meeting of the Board, information circulated to directors and marked as confidential, and information given verbally in confidence in preparation for or following a closed session of the Board is confidential and must not be disclosed or released to anyone.
8. Section 117 of the *Community Charter*, which applies to the SRD as per section 205(1)(d) of the *Local Government Act*, provides:

117(1) A council member or former council member must, unless specifically authorized otherwise by council,

 - (a) keep in confidence any record held in confidence by the municipality, until the record is released to the public as lawfully authorized or required, and
 - (b) keep in confidence information considered in any part of a council meeting or council committee meeting that was lawfully closed to the public, until the council or committee discusses the information at a meeting that is open to the public or releases the information to the public.
9. Local governments have the discretionary authority to regulate and control misconduct of their officials through censure resolutions.
10. In this case, Director Anderson released confidential and solicitor-client privileged information that she received as a result of her position as a director on the Board to a third party in order to advance her own personal interests. The SRD's solicitor-client privileged information belonged to the SRD and a single Board member has no authority to waive that privilege. There was no resolution passed by the Board to allow Director

Anderson to release the SRD's confidential and privileged documents to her legal counsel.

- 11. The Board's October 24, 2019 decision to censure Director Anderson was a discretionary decision made on consideration of submissions from Director Anderson's legal counsel. The process followed was fair, the decision was reasonable, and the decision was reasonably communicated to Director Anderson.

Confidential Board Materials


- 12. The SRD has no obligation to provide Director Anderson with copies of all Closed Reports to be considered by the Board, as alleged or at all.
- 13. In particular, the SRD has no obligation to provide Director Anderson with copies of the Closed Reports relating to matters in respect of which Director Anderson may be in a conflict of interest with the SRD. Director Anderson has demonstrated that she will pass that information on to her personal legal counsel and the SRD does not agree that that is an acceptable use of its privileged and confidential information. Director Anderson is provided with copies of all other Closed Reports and is provided with an agenda outline that includes the titles of any Closed Reports.

Part 6: MATERIAL TO BE RELIED ON

- 1. Affidavit No. 1 of David Leitch, made October 8, 2020.
- 2. Such other material as counsel may advise and this court accept.

The SRD estimates that the hearing of the within petition will take 3 days.

Norton Rose Fulbright Canada LLP

per: "James H. Goulden"


Date: October 9, 2020

per: _____
 Signature of lawyer for the Strathcona
 Regional District

James H. Goulden, Q.C.

SRD's address for service:

1800 – 510 West Georgia Street
 Vancouver, British Columbia
 V6B 0M3

E-mail address for service (if any):

james.goulden@nortonrosefulbright.com

Name of the petition respondent's lawyer:

Norton Rose Fulbright Canada LLP
Attention: James H. Goulden, Q.C. / Sarah
McCalla

No. S15097
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Respondent

RESPONSE TO PETITION

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