Court of Queen's Bench of Alberta

Citation: Jeremy N Williamson v Medicine Hat School District No 76, 2017 ABQB 265

Date: 20170410
Docket: 1608 00444
Registry: Medicine Hat

Between:

Jeremy N. Williamson

- and -

Applicant

Medicine Hat School District No. 76

Respondent

Reasons for Judgment
of the
Honourable Mr. Justice W.A. Tilleman

I. Introduction

[1] This is an Application pursuant to s. 267 of the *School Act*, RSA 2000, c S-3 [the "*Act*"]. The Secretary Treasurer (the "Secretary") of the Board of the Medicine Hat School District No. 76 (the "School District") declared that the Applicant's petition was insufficient pursuant to s. 265(c) of the *Act*. The Applicant appeals that decision.

II. Background

[2] On September 19, 2016, the Applicant filed a petition (the "Petition") with the Secretary for the School District. The purpose of the Petition was to have the Board of the School District call a public meeting. In oral argument, the parties clarified that the petitioners were seeking to discuss the School District's implementation of new policies about inclusiveness and protection for minorities and sexual minorities. These new policies were required in light of recent amendments to the Act pursuant to Bill 10, *An Act to Amend the Alberta Bill of Rights to Protect our Children*, 3rd Sess, 28th Leg, Alberta, 2014.

[3] The *Act* sets out the process to file a petition and the steps a school board must take once a petition is filed. The sections relevant to this application are as follows:

> 263(1) When this Act provides for the doing of anything by petition or an elector desires to present a petition to a board or the Minister, the petition shall comply with the following:
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> ...
>
> (c) the postal address of each signatory to the petition must be set out opposite the signatory's signature.
>
> ...
>
> (4) In determining the number of petitioners on a petition there shall be excluded the names of the following persons:
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> ...
>
> (c) a person whose address is not set out or is incorrectly set out;
>
> (d) a person who is not an elector.
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> 264 When the petitioners wish to present a petition to a board, they shall do so by filing the petition with the secretary of the board.
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> 265 When a petition is filed with the secretary of the board, the secretary shall
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> (a) determine the number of petitioners that have signed the petition,
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> (b) determine whether the petition meets the requirements of section 263, and
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> (c) having made the secretary's determinations under clauses (a) and (b), declare the results of the secretary's determination.
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> 266 If a petition is found under section 265 to be insufficient, the board shall proceed as if the petition had not been presented to the board.
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> 267(1) Where it is determined that a petition is insufficient, the petitioners may appeal the determination to the Court of Queen's Bench by application.
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> (2) An appeal under subsection (1) must be commenced within 14 days from the date that the secretary of the board made the secretary's declaration under section 265(c).

(3) If on hearing the appeal the Court considers that the petition is sufficient, the board shall proceed as if the petition had been declared sufficient by the secretary of the board.

...

269(1) When a board of a district situated wholly or partly within the boundaries of a city receives a petition calling for a public meeting that is signed

(a) by 25% of the parents, who are also electors, of the students in a school, or

(b) by the lesser of

(i) 2000 electors, and

(ii) 25% of the electors,

the board shall within 21 days from the date that it receives the petition publish notice of the public meeting to be held under this section in accordance with section 270.

[4] The filed Petition contained 2,030 signatures. In accordance with s. 265(c), the Secretary declared that only 1,661 valid petitioners signed the petition. The Secretary excluded 369 signatories for the following reasons:

i. 259 signatories did not set out, or incorrectly set out, their postal address as required under s. 263(1)(c) of the *Act*; and
ii. 110 signatories were not electors in accordance with s. 1(1)(i) of the *Act* and s. 47 of the *Local Authorities Election Act*, RSA 2000, c L-21 because the signatories did not reside within the School District's boundaries or they self-identified as supporters of a school board other than the School District.

[5] In addition, 15 names or signatures were identified as invalid for various reasons: duplication, lack of signature, lack of witness to signature, or no witness affidavit. The Secretary did not exclude those 15 names or signatures.

[6] Given that the purpose of the Petition was to call a public meeting and the School District is situated wholly or partly within the boundaries of the City of Medicine Hat, the Secretary evaluated the Petition against the criteria in s. 269(1). That section requires a school board to call a public meeting if a petition is signed by either (a) 25% of the parents, who are also electors, of the students in a school, or (b) the lessor of (i) 2,000 electors, and (ii) 25% of the electors. Electors, in this case, refers to electors for the particular school district that receives the petition.

[7] The Secretary did not evaluate the Petition against the criteria in s. 269(1)(a), requiring that a petition be signed by 25% of the parents, who are also electors, of the students in a school. The Secretary made this decision on the basis that the Petition did not indicate in the cover letter, or on the Petition itself, the name of a particular school or whether any of the signatories were parents of students at a particular school. The cover letter only referenced the fact that over 2,000 individuals signed the Petition. Further, the Secretary took into account that a second petition was filed on September 20, 2016 for the same purpose as the Petition. The cover page of the second petition named one particular school, and the witness affidavit swore that each of the signatories was a "parent of students enrolled in" that particular school.

[8] The Secretary evaluated the Petition against the criteria in s. 269(1)(b). The Secretary considered the Petition under s. 269(1)(b)(i) because, in his experience, this was the lower threshold and would be most advantageous for the petitioners. The Secretary confirmed this against an estimate from the City Clerk for the City of Medicine Hat that 25% of the electors for the School District is approximately 4,181 electors.

[9] With only 1,661 valid names on the Petition, the Secretary determined that the Petition did not meet the applicable thresholds set out in s. 269, and the Petition was declared insufficient. The result was that the Board of the School District, in accordance with s. 266, did not call a public meeting.

[10] On October 7, 2016, the Secretary met the Applicant in person and provided a letter setting out the reasons for his determination that the Petition was insufficient. The letter stated that the Secretary excluded 110 names of people who were non-electors and 259 signatories that did not identify an address or included only a postal code.

[11] On October 14, 2016 the Applicant sought a list of names of people that were deemed non-electors but the Secretary refused to provide that information.

[12] On October 21, 2016, the Applicant filed a notice of appeal pursuant to s. 267 of the *Act*.

[13] After the Applicant filed the notice of appeal, the Secretary provided the Applicant with further documentation of the work done to evaluate the Petition. The documentation included a digital copy of the Petition with notes and highlighting indicating what names were excluded, and a document clearly setting out the reason why each of the 369 signatories were excluded.

[14] During the hearing, the Applicant acknowledged that the Secretary provided reasons for his decision, although they argue that the reasons were not provided in a timely manner.

III. Nature of the Appeal

[15] This is a statutory appeal pursuant to s. 267 of the *Act*. The jurisdiction of this Court on this appeal is limited to a determination of whether the Secretary erred in declaring the Petition insufficient. The Applicant appeals the Secretary's determination on the basis that the Secretary failed to follow the clear evaluation criteria contained in the *Act*.

[16] The Applicant seeks clarification from the Court on the procedure the School District should follow in the future when considering a petition. It is outside the scope of this appeal to clarify the entire legislative scheme with respect to the procedure of filing and evaluating a petition. The legislature made a choice to delegate decision-making authority regarding the sufficiency of petitions to the secretary of the board and not to the courts. While this Court can offer clarity on certain issues relevant to this appeal, the wider scheme governing petitions is within the expertise of the various school boards and not the courts.

[17] The Applicant also raises various allegations that are outside the scope this appeal. For example, the Applicant made reference to an alleged violation of privacy of a witness to the Petition. The Applicant did not tender any evidence to support those allegations. Section 267 of the *Act* does not provide any relief for that claim. That does not mean that there can be no relief sought for those allegations, but the current application is not the proper avenue.

[18] Finally, during oral argument the petitioners asked the Court if they could file an amended petition with the School District. I re-iterate now what was said to the parties: that issue

is outside the scope of an application under s. 267. I note, however, that during the hearing counsel for the School District confirmed that the School District would re-consider a petition regardless of whether the petitioners filed an amended petition, or provided additional information for the names already provided so that the petition could be evaluated in accordance with s. 269(1)(a).

IV. Standard of Review

[19] The parties agree that the standard of review on this appeal is reasonableness.

[20] In ***Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd***, 2016 SCC 47 the Supreme Court of Canada confirmed that when an administrative tribunal interprets their home statute there is a presumption that the standard of review is reasonableness. The presumption is only rebutted in four circumstances. Karakatsanis J., writing for the majority, stated (at paras 22-24):

> (1) Presumption of Reasonableness
>
> 22 Unless the jurisprudence has already settled the applicable standard of review (*Dunsmuir*, at para. 62), the reviewing court should begin by considering whether the issue involves the interpretation by an administrative body of its own statute or statutes closely connected to its function. If so, the standard of review is presumed to be reasonableness (*Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, [2015] 2 S.C.R. 3 (S.C.C.), at para. 46). This presumption of deference on judicial review respects the principle of legislative supremacy and the choice made to delegate decision making to a tribunal, rather than the courts. A presumption of deference on judicial review also fosters access to justice to the extent the legislative choice to delegate a matter to a flexible and expert tribunal provides parties with a speedier and less expensive form of decision making.
>
> 23 The *Dunsmuir* framework provides a clear answer in this case. The substantive issue here — whether the Board had the power to increase the assessment — turns on the interpretation of s. 467(1) of the MGA, the Board's home statute. The standard of review is presumed to be reasonableness.
>
> (2) Categories That Rebut the Presumption of Reasonableness
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> 24 The four categories of issues identified in *Dunsmuir* which call for correctness are constitutional questions regarding the division of powers, issues "both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise", "true questions of jurisdiction or *vires*", and issues "regarding the jurisdictional lines between two or more competing specialized tribunals" (paras. 58-61). When the issue falls within a category, the presumption of reasonableness is rebutted, the standard of review is correctness and no further analysis is required (*Canadian Artists' Representation v. National Gallery of Canada*, 2014 SCC 42, [2014] 2 S.C.R. 197 (S.C.C.), at para. 13; *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895 (S.C.C.), at para. 22).

[21] In ***Edmonton (City)*** the Supreme Court of Canada rejected the argument that all issues arising on statutory appeals are reviewable on the correctness standard: at paras 27-31.

[22] To my knowledge, this is the first time this Court has heard an appeal pursuant to an application under s. 267 of the *Act*. The decision being appealed in this case is the Secretary's exercise of his statutory authority under s. 265(c) of the *Act* declaring the Petition insufficient. This decision turns on the Secretary's interpretation of sections 263 and 269 of the *Act*. The *Act* is the School District's home statute. The Board of the School District appoints the Secretary pursuant to s. 116 of the *Act*. The standard of review is therefore presumed to be reasonableness. The issue does not fall into one of the four categories that would rebut that presumption.

[23] Reasonableness is concerned with two distinct but related concepts: the outcome and the reasons. A reasonable outcome is one that "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": ***New Brunswick (Board of Management) v Dunsmuir***, 2008 SCC 9 at para 47. Reasonableness is also concerned with "the existence of justification, transparency and intelligibility within the decision-making process": *Dunsmuir*, at para 47.

[24] Our Court of Appeal recently held that a reasonable decision "must be able to stand up to a somewhat probing examination, and it will be unreasonable only if there is no line of analysis within the reasons that could reasonably lead the decision-maker to its conclusion": ***Edmonton School District No 7 v Dorval***, 2016 ABCA 8 at para 39.

V. Analysis

[25] The issue on this appeal is whether it was reasonable for the Secretary to determine that the Petition was insufficient. In making this determination, the Secretary made the following decisions: (i) that the petition should not be evaluated against the criteria in s. 269(1)(a); (ii) to exclude 259 signatories because the person did not correctly set out a postal address; and (iii) to exclude 110 signatories because the person did not qualify as an elector.

i. Whether it was reasonable for the Secretary not to consider the petition under s. 269(1)(a)?

[26] If a petition meets the thresholds listed in s. 269(1)(a) or (b), the school board must call a public meeting. The *Act* uses mandatory language. The issue here is whether it was reasonable for the Secretary not to evaluate the petition against the criteria in s. 269(1)(a) because the Applicant failed to file any information upon which the Secretary could make that evaluation.

[27] Section 269(1)(a) requires that a petition contain signatures from 25% of the parents, who are also electors, of the students in a school. In order to make a determination under s. 269(1)(a), the Secretary needs information on whether each signatory is a parent, is an elector, and the particular school in the school district where their child is a student.

[28] To determine whether a signatory is an elector, the Secretary requires the postal address. The onus is clearly on the petitioner to provide that information pursuant to s. 263(1)(c).

[29] The *Act* is silent on which party has the onus of establishing whether a signatory is a parent of a student in a school in the School District.

[30] The Applicant argues that the Petition provides the Secretary with sufficient information to make a determination under s. 269(1)(a) because the Secretary has access to lists of parents with a child at the schools in the School District. The Applicant submits that the Secretary has the capacity to undertake the administrative task of cross-referencing each signatory's name with the list of parents to determine if the threshold is met for any particular school. Finally, the

Applicant submits that it would place too onerous of a burden on the petitioners to provide this information because these lists of parents are confidential and the petitioners would have no way of knowing whether they have met the 25% threshold.

[31] The Respondent argues that if a petitioner wants a secretary to consider their petition under s. 269(1)(a), then the onus is on the petitioner to indicate whether a signatory is a parent of a student at a school in the district, and what school the student attends. The Respondent argues that to require a secretary to take extra steps to fill in the missing information would place an onus on the secretary that goes beyond their role as neutral decision maker. Further, the task to determine whether a petition satisfies s. 269(1)(a) would be a formidable task without information on a petition to indicate that the signatories were parents, and which school their children attended. The Respondent submits the Secretary made a reasonable decision in this circumstance because he applied the lowest threshold that would be most advantageous for the Applicant and he relied on the information provided on the Petition.

[32] I agree with the Respondent that the petitioner has the onus to provide the information needed by the Secretary to evaluate the petition against the threshold in s. 269(1)(a). Specifically, the petitioners must set out whether they are a parent, and what school their child attends. For reasons of practicality and fairness, I find that the Secretary's decision not to consider the petition under s. 269(1)(a) was reasonable.

[33] The objective of s. 263 of the *Act* is to allow for a ready determination by the secretary as to the validity of a signature on a petition. In my view, it does not make sense to require each signatory to provide detailed personal information such as a postal address, but then require the secretary of the board to return a request to each signatory and ask whether they are in fact a parent within the meaning of the *Act*. The signatory, not the Secretary, is in the best position to determine whether they are a parent within the meaning of the *Act*. In contrast, the Secretary, not the signatory, is in the best position to determine whether a signatory is an elector based on the various rules governing the boundaries of each school district.

[34] There is no indication that the legislature intended the onus to fall on the secretary of the board. In ***Campbell v Red Deer County***, 2004 ABQB 458, Macklin J. held that the onus of complying with specific requirements of a petition under the *Municipal Government Act*, RSA 2000, c M-26 falls on those wishing to effect significant change by submitting the petition. In my view, this principle also applies to a situation where an Act does not make specific requirements explicit, but certainly implies that they exist. The Applicant was clearly aware of the thresholds by which the petition could effect change, and it would have been simple for each individual petitioner to indicate their status as a parent and with which school they are associated.

[35] Most importantly, the Applicant's position would offend basic notions of fairness. If a secretary, while executing their statutory duties, were required to assist petitioners, then the role of the petitioner and of the neutral decision maker would overlap. To ensure fairness of the petition process, and to avoid the appearance of bias, the role of the petitioner and of the administrative decision maker must remain distinct. Pursuant to s. 265 of the *Act*, the secretary of the board has a statutory duty to act as an impartial adjudicator of the sufficiency of a petition. Just as a judge must not assist parties compile evidence for a trial, the secretary of the board must make their decision on the face of a petition as it is filed.

[36] The reasonableness standard means that this Court will not interfere with the Secretary's decision unless there is no line of analysis within the Secretary's reasons that could have

reasonably led to a conclusion that the Petition was not meant to be evaluated against the s. 269(1)(a) threshold. Taking into account the language of the cover letter of the Petition, the lack of evidence submitted regarding whether each signatory was a parent, and the second (different) petition that was filed a day later that included all of that information, it was reasonable for the Secretary not to consider the Petition under s. 269(1)(a).

ii. Whether it was reasonable for the Secretary to exclude the signatories where only a postal code was provided?

[37] The next issue is whether a postal code satisfies the requirement under s. 263(1)(c) that the "postal address of each signatory to the petition must be set out opposite the signatory's signature". The reasonableness standard demands that this Court not make a determination of whether the Secretary was correct when he decided that a postal code is not a postal address. The reasonableness standard requires that this Court only interfere if the decision falls outside a range of possible, acceptable outcomes.

[38] The Applicant, relying on *Campbell*, submits that the purpose of requiring that the petitioner include a postal address is to allow the Secretary to make a ready determination as to the validity of a signature on a petition, and to ensure that this task is as easy as possible (*Campbell* at paras 20-21). The Applicant submits that a postal *code* provides sufficient information to the Secretary to confirm that a signatory is an elector. The Applicant asserts, therefore, that when a signatory includes their postal code the objective of the legislation is met. The Applicant points to a decision from another school district in Alberta that decided that postal codes satisfied the requirement of a postal address.

[39] Even though the Applicant has put forward a reasonable interpretation of the legislation, that is not sufficient to establish that the Respondent's interpretation is unreasonable. I find that the Respondent's decision was reasonable for the following reasons.

[40] First, the Secretary gave effect to the deliberate words chosen by the legislature. Legislatures are "presumed to always say what they mean and mean what they say", to adopt a "simple, straightforward and concise way of expressing themselves": Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis, 2014) at 207-208.

[41] The Respondent submits, and I agree, that the Secretary is bound by mandatory language in the *Act*. Section 263(4)(c) states that the Secretary "shall" exclude the names of persons whose address "is not set out or is incorrectly set out". The Secretary did not exercise discretion in excluding the 259 names, nor did the Secretary hold the view that he had any option but to exclude the names. The *Act* requires that the names be excluded in this circumstance.

[42] The Secretary's interpretation of the *Act* is consistent with the ordinary meaning of the term "postal address". Common sense suggests that a postal code would not satisfy the requirement of a postal address. A postal code and a postal address have different meanings and provide different information. A postal address identifies a specific location where mail is delivered, it is exact. A postal code identifies a region; it forms part of a postal address, and though it encompasses a postal address it is inexact and does not disclose the exact location of an individual's residence.

[43] Second, adopting the ordinary meaning of the term "postal address" is consistent with the well-established principles of statutory interpretation, as recently re-affirmed in ***BC Freedom of***

Information and Privacy Association v British Columbia (Attorney General), 2017 SCC 6 at para 21:

> ...our long-accepted approach to statutory interpretation, namely that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" [citations omitted].

[44] Further support for the Secretary's decision is found in *Campbell* where Macklin J. stated that a "postal address is clearly a mailing address" (at para 22).

[45] Third, while it is relevant that another school district apparently decided that a postal code was sufficient to meet the requirement of a postal address, the other school district's decision is not binding on this School District or this Court. The decision from the other school district was not reviewed by this Court and found to be reasonable or not. The Secretary's failure to arrive at the same conclusion as a secretary from a different school district does not mean that the Secretary's decision was unreasonable.

[46] In oral argument, the Applicant made submissions that for the Medicine Hat School District No. 76, a postal code is sufficient to establish whether a signatory is an elector. While that may be true for this particular school district, there was no evidence tendered on this point. Further, the *Act* was drafted to apply to all school districts in Alberta; a postal code may not be a sufficient indicator that a signatory is an elector for a school district in Calgary even though it is sufficient in Medicine Hat. The interpretation of the *Act* should not depend upon where one lives in the province.

[47] Even if a postal address is not a helpful indicator of whether a signatory is an elector, this Court owes deference to the Secretary's decision to adopt an interpretation that is consistent with the deliberate words used by the legislature. Whether there are better methods of identifying electors is a matter for the legislature to decide and not this Court.

[48] In summary, it was reasonable for the School District to reject the 259 signatories where there was only a postal code set out opposite the signatory's signature.

iii. Whether it was reasonable for the Secretary to exclude the signatories that were not electors?

[49] This is a non-contentious issue. The Applicant appears to concede that these names were properly excluded and advanced no argument to suggest otherwise.

[50] Finally, even if I am wrong on the issue of whether a postal code satisfies the requirement of a postal address, it was reasonable for the Secretary to exclude the names of individuals that were not electors. The result is that 110 names are excluded from the Petition in any event.

[51] A petition asking the board of a school district to call a public meeting may result in significant change to the way in which the board implements policy within their district. Speaking in general, and not on the merits of this application, the Court notes the following: to allow those with no interest in the policies of a particular school district to have a voice regarding issues that have no impact on them would circumvent the purpose of this legislation, which is to weed out the needless filing of petitions.

VI. Conclusion

[52] The *Act* requires that petitions meet certain criteria. These criteria are not arbitrary. The Applicant acknowledged in their brief that requiring that petitions meet certain criteria serves a purpose of weeding out frivolous petitions.

[53] I see no reason to interfere with the decision of the Secretary in this case. As recently stated by the Supreme Court of Canada, deference respects the principle of legislative supremacy and the choice to delegate decision-making to a tribunal, rather than to the courts.

[54] The appeal is dismissed.

Heard on the 10th day of March, 2017.

Dated at the City of Medicine Hat, Alberta this 10th day of April, 2017.

W.A. Tilleman

J.C.Q.B.A.

Appearances:

Jeremy N. Williamson and Gary Prince

for the Applicant

Rakhi Pancholi

for the Respondent