In the Court of Appeal of Alberta

Citation: Koester v Wheatland County, 2025 ABCA 308

Date: 20250916
Docket: 2401-0071AC
Registry: Calgary

Between:

Glenn Koester

Respondent

- and -

Wheatland County

Appellant

The Court:

The Honourable Chief Justice Ritu Khullar
The Honourable Justice April Grosse
The Honourable Justice Alice Woolley

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice D.J. Reed
Dated the 22nd day of February, 2024
Filed the 3rd day of May, 2024
(2024 ABKB 103, Docket: 2201 08686)

Memorandum of Judgment

The Court:

I. Overview

[1] The Council of Wheatland County passed resolutions which upheld a complaint that the respondent, an elected councillor, had contravened Wheatland's *Code of Conduct Bylaw* No. 2022-05 and sanctioned him for those breaches.[1]

[2] The respondent applied for judicial review of the resolutions, and a chambers judge quashed them because they were unreasonable and the process leading to them was unfair in various ways. Wheatland County now appeals that decision.

[3] A secondary issue raised by this appeal is the status of a confidentiality and sealing order. Under the *Code of Conduct* in force at the time, the information underlying the complaint and the resolutions was confidential, so all the public knows is that the Council sanctioned the respondent for misconduct but not why. The parties obtained a consent order which maintained the confidentiality of that information during the judicial review proceeding subject to any further court order.

[4] We dismiss the appeal for the reasons below. In addition, we lift the publication ban and sealing order in relation to the record. While there may be circumstances where it is necessary to seal a court record or impose a publication ban on a *Code of Conduct* complaint, this case is not one of them.

II. Background

A. The complaint

[5] In March 2022, Councillor Link, the Reeve of Wheatland County, submitted a written complaint about the respondent. The complaint refers to two distinct events: the respondent's conduct as chair of the Board of Wheatland and Adjacent Districts Emergency Medical Services (Wheatland EMS) and his conduct as chair of the Board of Wheatland Housing Management Body (Housing Body).

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[1] The *Code of Conduct Bylaw* was amended twice after the respondent was sanctioned for misconduct. In 2025, the *Municipal Government Act*, RSA 2000, c M-26 was amended, and all bylaws that provided for a code of conduct or addressed the behaviours of councillors were repealed: *Municipal Affairs Statutes Amendment Act*, SA 2025, c 13, s 2(2)(c). The bylaw that was in force prior to the 2025 amendments was *Code of Conduct Bylaw* No. 2023-18, but it did not apply to the conduct at issue in this appeal.

[6] The Wheatland EMS complaint arose from a November 15, 2021 board meeting. During his chair report, the respondent reported an increase in staff unwilling to work core/flex shifts for Wheatland EMS. He referred to an email recently received from Councillor Link asking how much funding would be required to eliminate core/flex shifting. She needed the information to advocate to area MLAs for more funding.

[7] The Board discussed the request during an open session. A board member (not the respondent) raised a concern that Councillor Link might have a pecuniary interest in getting more funding because her husband was employed by Wheatland EMS. The Board resolved that the respondent would request a friendly meeting with Councillor Link to discuss the issue.

[8] The complaint states that when Councillor Link met the respondent, he outlined the Board's concerns in "an accusatory and suspicious tone". The respondent asked for a further meeting, but Councillor Link thought it better for the issue to be discussed at Council. At a Wheatland EMS Board meeting on January 17, 2022, the respondent reported that Councillor Link "refused" an informal meeting to discuss her email further. Councillor Link explained in her complaint that this way of handling the issue damaged her reputation. She also felt that the proper way to deal with the alleged conflict of interest was to raise it with her, not to air it during a public board meeting.

[9] The Housing Body complaint was very brief. It stated that the respondent's actions as chair of the Housing Body Board treated Councillor Ikert with a "complete lack of respect" and embarrassed him. Councillor Ikert was not a party to this complaint.

[10] The underlying facts were that a resolution was passed at a Housing Body Board meeting on November 18, 2021, requiring board members to be vaccinated against Covid-19. The motion was raised during the chair report section of the meeting. Councillor Ikert voted against it and later made critical comments in the media. He tried to attend the January 18, 2022 board meeting in person but mistakenly believed he was "barred" from doing so because he was unvaccinated and did not have a recent negative test. In February 2022, the Board issued a letter of reprimand concerning Councillor Ikert's media comments. Councillor Ikert resigned in March 2022.

B. The investigation and investigation report

[11] Following receipt of the complaint, the Council appointed an investigator under s 14.5 of the *Code of Conduct* then in force.

[12] The investigation report states that the investigator interviewed "more than a dozen persons" although it does not indicate who they were or what they said.

[13] On the Wheatland EMS complaint, the report found that the respondent brought Councillor Link's email to the Board's attention but did not raise the issue of a pecuniary interest or participate

in the discussion. Bringing up the email was disrespectful because the proper step was to raise the issue with Councillor Link first. Failing to stop the discussion immediately or move it *in camera* showed a lack of professionalism. Recording the discussion in the minutes and later reporting that Councillor Link "refused" to meet caused embarrassment. The report found that these actions breached several sections of the *Code of Conduct*: ss 4.1(a), (g), (k) and (n)(ii).

[14] On the Housing Body complaint, the report concluded that the respondent's conduct in allowing the vaccination resolution to be raised and passed during the chair report session of the November 18, 2021 board meeting breached various duties under the *Code of Conduct*. The respondent was not responsible for the mix-up that led Councillor Ikert to believe he was barred from attending the January 18, 2022 meeting or for Councillor Ikert's embarrassment. However, the respondent's conduct leading to that incident breached the *Code of Conduct* in several ways. We discuss the report's reasoning and conclusions later in these reasons.

[15] The report recommended to the Council that it uphold the complaint, require the respondent to provide a written and public apology and, if he failed to do so within 21 days, he should be removed from the Wheatland EMS Board.

C. Council resolutions

[16] The Council addressed the complaint and the investigation report at an *in camera* portion of its meeting on April 5, 2022, as required by the *Code of Conduct* then in force. The respondent, Councillor Link, and Councillor Ikert were in attendance.

[17] Council members were given a copy of the investigation report, and all confirmed that the 27 minutes they had to read it was sufficient. At that point, the respondent and Councillor Link were asked if they wanted a formal hearing. Both declined and left the meeting. The investigation report was then presented to the Council, again as required by the *Code of Conduct*, which took 19 minutes. The respondent and Councillor Link then rejoined the meeting, and the Council deliberated about the matter for 89 minutes.

[18] After deliberations, the meeting reverted to an open session where the following resolutions were tabled and passed within four minutes:

> 1. That Council accept the report ... as information (the Information Resolution[2]).

[2] Carried 5-2.

2. That Council determines that, in conjunction with the written report prepared by the investigation team, ... the complaint against Councillor Koester be upheld (the Complaint Resolution[3]).

3. That Councillor Koester be sanctioned and he provide a written apology to Wheatland County Council for breaching the *Code of Conduct*, and further, that Councillor Koester publicly apologize to Wheatland County Council for breaching the *Code of Conduct* (the Apology Resolution[4]).

4. That Council determines, in conjunction with the upheld complaint against Councillor Koester, the following sanction(s) be imposed in accordance with the [Code], 14.21(h), removal from all boards until the next Wheatland County Organizational meeting on October 18, 2022 (the Removal Resolution[5]).

[19] Counsellor Link co-tabled all the resolutions. Both she and Councillor Ikert voted in favour of them. The respondent voted in favour of the Apology Resolution as a way to put this matter behind him. Notably, the Removal Resolution imposed a more severe sanction than the investigation report had recommended.

D. Application for judicial review

[20] The respondent filed an application for judicial review asking the Court to quash the resolutions.

[21] The stated grounds of review were that the resolutions "are unreasonable or patently unreasonable on their merits" and the process leading to them was unfair. Sub-grounds of the procedural fairness issue included that the Council denied the respondent a reasonable opportunity to make submissions before the resolutions were passed and that the involvement of Councillors Link and Ikert gave rise to a reasonable apprehension that the Council was biased against the respondent.

[22] Part of the certified record of proceedings, comprising the complaint and the investigation report, was sealed by a consent order which prevented public access. A consent publication ban prohibited anyone from publishing information contained in the relevant parts of the record. As a result, parts of the judicial review hearing in which counsel referred to those documents were held *in camera*.

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[3] Carried 5-2.

[4] Carried 6-1.

[5] Carried 4-3.

III. Decision below

[23] The chambers judge quashed the resolutions for several reasons, each sufficient to determine the outcome. He issued two sets of reasons, and the version published as *Koester v Wheatland County*, 2024 ABKB 103 (*Reasons*) is heavily redacted.[6] This Court had the benefit of the unredacted reasons.

[24] A threshold issue was whether the Council's resolutions could be judicially reviewed on their merits. The chambers judge rejected the argument that s 539 of the *Municipal Government Act*, RSA 2000, c M-26 (*MGA*) limits judicial review of Council resolutions to *vires* and procedural fairness.

[25] The chambers judge interpreted the challenge to "the merits" as raising two grounds: (1) whether the Council complied with the legislated procedure for meetings addressing councillor misconduct and (2) whether the decision to uphold the Housing Body complaint was such that no reasonable municipality could have made it: *Reasons* at paras 116, 123. The standard of review on both grounds was reasonableness, although the reasons also mentioned a more deferential standard of review: *Reason*s at paras 109, 102, 116.

[26] The chambers judge found that the Council did not follow the required procedure because it did not decide whether to conduct a formal hearing but passed that decision to the respondent. As a result, all of the resolutions were unreasonable.

[27] The chambers judge also found that the Complaint Resolution unreasonably upheld the Housing Body complaint. The Council's decision was based on the investigation report, but the report's reasoning "makes no sense": *Reasons* at paras 87, 136-137. No reasonable council would have found that the respondent breached the *Code of Conduct* on that aspect of the complaint: *Reason*s at para 138. However, the chambers judge did find that the Complaint Resolution reasonably upheld the Wheatland EMS complaint*: Reasons* at para 136.

[28] The chambers judge also held that the process leading to the resolutions was unfair. The Council had a duty to give the respondent an adequate opportunity to make submissions before it passed the resolutions but did not do so: *Reasons* at para 176. When the respondent was offered a formal hearing (which he declined), he was unaware that the Council was considering more severe sanctions than the investigator recommended: *Reasons* at para 183.

[29] The involvement of Councillors Link and Ikert in the meeting also gave rise to a reasonable apprehension that the Council was biased. Since both councillors attended the meeting, they were statutorily required to vote on the resolutions: *Reasons* at 194-195. Nevertheless, the statutory

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[6] An unredacted version was placed on the court file not to be published until the sealing order and publication ban are lifted.

requirement to vote did not "cure" the apprehension of bias. The councillors did not have to vote in favour of the resolutions; they could have voted against them.

IV. Issues

[30] In an appeal from a judicial review, the appeal court focusses on the administrative decision rather than the reviewing court's decision. It undertakes a *de novo* review of the administrative decision based on the issues raised and the appropriate standard of review: *Northern Regional Health Authority v Horrocks*, 2021 SCC 42 at para 10.

[31] Wheatland County raised numerous grounds of appeal concerning the substance of the Council resolutions and procedural fairness. The issues to be addressed can be summarized as follows:[7]

1. Are the Council's resolutions subject to judicial review for only *vires* and procedural fairness?

2. Was the Council's decision to uphold the Housing Body complaint supported by the facts and the text of the *Code of Conduct*?

3. Did the Council fail to comply with the process prescribed by the *Code of Conduct*?

4. Did the Council give the respondent a reasonable opportunity to make submissions?

V. Analysis

A. Are the Council's resolutions reviewable for *vires* and procedural fairness only?

[32] The first issue, the effect of s 539 of the *MGA*, is a question of law. It was addressed by the chambers judge but not by the Council so the standard of review is correctness. The questions is whether the Council's resolutions are subject to review for *vires* and procedural fairness only. Wheatland County argues that s 539 of the *MGA* eliminates all other bases for judicial review.

[33] During the appeal hearing, Wheatland County clarified that s 539 is its primary argument. Even if the Complaint Resolution is unreasonable because it is based on a flawed investigation report, the Court cannot quash it for that reason. The only bases for intervention are that the Council lacked statutory authority to make it or made it in a procedurally unfair way. This was the

[7] Given the changes to the *MGA*, it is not necessary for us to address the issues raised by the argument that the statutory regime itself created a reasonable apprehension of bias.

focus of the oral argument, but Wheatland County did not abandon the other arguments in its factum, which we address later in these reasons.

[34] Before addressing the effect of s 539, it is helpful to consider the legal context including the position at common law. Municipal councils have two main ways of exercising their authority under the *MGA.* One is enacting subordinate legislation – that is, rules of general application – which is typically done through making bylaws. Another is making decisions that apply to a particular constellation of facts, typically by passing resolutions. This case is an example: the Council passed resolutions to discipline a member whom it had found breached the *Code of Conduct*.

[35] The common law position is that subordinate legislation is not subject to judicial review of its merits. It can only be reviewed for *vires*, that is for whether the decision maker's interpretation of its authority to make the subordinate legislation was reasonable: *Auer v Auer*, 2024 SCC 36 at paras 56-57, 65. That is the case whatever the place of the decision maker in the governmental hierarchy, so the restriction covers review of municipal bylaws.

[36] The restriction does not apply to the Council's resolutions here because the Council was not exercising a rule-making power. There is no common law rule that municipal resolutions addressing particular factual situations can only be reviewed for *vires* or procedural fairness. Reported decisions involving review of such resolutions on their merits include *Nanaimo (City) v Rascal Trucking Ltd*, 2000 SCC 13 at para 39; *Sahota v Vancouver (City)*, 2011 BCCA 208 at paras 38-39.[8]

[37] What effect, if any, does s 539 of the *MGA* have on the scope of judicial review of council resolutions? That section states:

> 539 No bylaw or resolution may be challenged on the ground that it is unreasonable.

[38] This provision has been discussed in previous cases but its meaning is now settled.

[39] The effect of the prohibition against challenging a bylaw or resolution, "on the *ground* it is unreasonable" is to remind courts that they may not review bylaws or resolutions for their wisdom, policy choices or effectiveness in achieving their aims: *Koebisch v Rocky View (County),* 2021 ABCA 265 at paras 23, 43; *Howse v Calgary (City)*, 2023 ABCA 379 at para 20; *Westcan Recyclers Ltd v Calgary (City)*, 2025 ABCA 67 at para 59.

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[8] In both cases, a municipal council passed resolutions declaring a specific situation (a pile of soil, a building) to be a nuisance and ordering its removal.

[40] Section 539 does not, however, eliminate reasonableness as a *standard* of review: *Koebisch* at para 23; *Howse* at para 20; *Terrigno v Calgary (City)*, 2021 ABQB 41 at paras 32-46; *Bergman v Innisfree (Village)*, 2020 ABQB 661 at paras 108-114.

[41] In this case, the respondent does not object to the Council's resolution to uphold the Housing Complaint on the basis that it was unreasonable as explained in paragraph 39. Rather, the respondent challenges the resolution on the grounds that it had no basis in fact or law. That application is not precluded by s. 539.

[42] The standard of review of the Council's resolution to uphold the Housing Body complaint is ordinary reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. None of the exceptions mentioned in *Vavilov* applies. Reasonableness review focusses primarily on whether the decision maker's reasons are intelligible, transparent and show the decision to be justified in light of the factual and legal constraints that bear on it: *Vavilov* at para 99.

[43] In conclusion, we reject Wheatland County's primary argument that the Court can only review the Complaint Resolution for lack of statutory authority or procedural unfairness. That is not the effect of s 539 here.

B. Was the decision to uphold the Housing Body complaint supported by the facts and the *Code of Conduct*?

[44] The chambers judge upheld the Council's decision on the Wheatland EMS complaint but noted that it was intertwined with the decision on Housing Body complaint: *Reasons* at paras 136, 139. We agree that the decisions are intertwined – the Complaint Resolution confirmed both aspects of the complaint. Issues similar to those with the Housing Body complaint arise with the Wheatland EMS Complaint; however, that complaint was not challenged on this appeal, so we comment no further.

[45] The chambers judge found that the Council's decision to uphold the Housing Body complaint was "aberrant, overwhelming, or [one] that no reasonable municipality would have taken in the circumstances": *Reasons* at paras 121-122, 132.

[46] Here, the Council did not give formal reasons for passing the resolutions: councillors voted and the votes were tallied. The context enables us to infer *why* the Council upheld the Housing Body complaint; namely, that it relied on the investigation report. That inference is based on the requirement under s 14.16 of the *Code of Conduct* for the investigation report to be presented to

the Council, the text of the Complaint Resolution[9] and that the expanded record indicates that no other information about the Housing Body complaint was presented to the Council.

[47] It follows that the reasonableness of the resolution upholding the Housing Body complaint depends on the reasoning and conclusions in the investigation report.

[48] The report found that the respondent was the chair at the November 18, 2021 Housing Body Board meeting and during the chair report part of the meeting, someone proposed a motion that all board members should be vaccinated against Covid-19. Other members, such as Councillor Ikert, were opposed. The motion was passed. The report concluded that allowing the vaccination motion to be raised and passed during the chair report session contravened the *Code of Conduct*. It showed that the respondent strongly supported the motion and his opinion, as chair, was likely to be influential with other members, "which could be interpreted as not in good faith". Specifically, the respondent's conduct breached the following duties under the *Code of Conduct* then in force:

- The duty to act in good faith (s 4.1(a));
- The duty to express personal opinions in a manner that maintains respect for other councillors (s 4.1(g));
- The duty to act with professionalism when interacting with other councillors (s 4.1(k)); and
- The duty to demonstrate fairness and impartiality on all matters (s 4.1(m)).

[49] The report also found that Councillor Ikert did not attend the January 18, 2022 Housing Body Board meeting due to a mix up. The Councillor was not vaccinated and did not have a recent negative test. He showed up to what he believed to be the meeting location, but the location had been moved due to a Covid-19 outbreak. Councillor Ikert believed he had been "barred" from attending, which caused him embarrassment. In fact, he could have participated virtually, but he did not ask to do so. The investigation report concluded that "while Councillor Koestler cannot be held responsible for Councillor Ikert's claim of embarrassment on January 18, there are aspects of his actions leading up to the incident that are in contravention of the [*Code of Conduct*]". The report does not specify what these were but hints at the respondent's conduct at the November 18, 2021 meeting.

[50] The report's conclusion that the respondent's conduct on the Housing Body Board breached the *Code of Conduct* does not withstand reasonableness review. Reasons capable of

[9] "Council determines that in conjunction with the written report prepared by the investigation team ... that the complaint against Councillor Koester be upheld".

justifying misconduct findings are constrained by the text of the *Code of Conduct*. While we accept the investigation report's findings of fact, the report does not contain a rational chain of analysis from the facts found to the conclusion that the respondent breached the *Code of Conduct*. Gaps and leaps of logic make it impossible to understand why or how the investigator reached his conclusions: *Vavilov* at para 102.

[51] The report does not explain why allowing the vaccination motion to be raised during the chair report session of the meeting breached the respondent's duty to act in good faith. The respondent voted in favour of the motion, but there is no indication that he did so for an improper motive such as embarrassing other board members. The finding that the respondent breached the duty to express personal opinions respectfully and to act professionally is also unexplained. Some members, including Councillor Ikert, opposed the vaccination motion, but mere disagreement on a motion is not disrespect without something more. The report does not find that the respondent used disrespectful language. Also unexplained is the finding that the respondent's conduct breached the duty to act impartially. Was the respondent required to be impartial about the vaccination motion? The report assumes "yes" but with no explanation. The implication is that the chair should not even be associated with (let alone participate in) discussions of controversial issues because their views may carry more weight than those of other councillors. This is a remarkable implication in a democracy and requires justification, but there was none.

[52] The report's finding of misconduct in relation to Councillor Ikert's absence from the January 18 meeting is completely unexplained. The respondent was not to blame for the mix-up, but "aspects" of the respondent's conduct leading to it breached the *Code of Conduct*. The "aspects" are left unidentified. If they refer to the respondent's conduct in relation to the vaccination motion, the issues identified above resurface.

[53] In summary, the aspect of the Complaint Resolution upholding the Housing Body complaint was not explained or justified in light of the relevant legal constraints and was unreasonable.

[54] Wheatland County argues that this aspect of Complaint Resolution cannot be found unreasonable just because the Court would have weighed the evidence about misconduct differently. That is true. However, the Court is not reweighing the evidence; the issue is not with the facts found but with the failure to explain how or why those facts constitute breaches of the *Code of Conduct*.

C. Did the Council follow the procedure prescribed by the *Code of Conduct*?

[55] The next issue is whether, on a reasonable interpretation of the *Code of Conduct*, the Council followed the process required for meetings that address complaints against councillors.

[56] Wheatland County characterizes this issue as a question of *vires* but, respectfully, we disagree. *Vires* is a ground of review of subordinate legislation, not at issue in this appeal. Outside the context of subordinate legislation, the closest analogue of a question of *vires* is a "jurisdictional question", but *Vavilov* has largely assimilated those questions with ordinary questions of law and fact. The question is simply whether Wheatland County erred in law by failing to follow the legislated procedure.

[57] The relevant provisions of the *Code of Conduct* in force on April 5, 2022 were as follows:

> 14.16 At the conclusion of the investigation, the Investigation Team shall prepare a written report for Council to be presented at an in-camera meeting of Council …
>
> 14.17 During the in-camera session of Council referenced in Section 14.16, neither the complainant nor the Councillor or Member who is subject of the complaint shall be in attendance unless Council decides to hear from the parties in accordance with Section 14.18.
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> 14.18 In its sole discretion, *Council may decide* to hear from the complainant and the Councillor or Member who is the subject of the complaint during an in-camera session. *In the event that Council decides to hear from the parties*, the parties shall be notified in writing of the date and time of the hearing not less than five (5) days prior to the scheduled hearing …(emphasis added).

[58] When the April 5, 2022 Council meeting moved *in camera* and the respondent confirmed he had read the investigation report, the Council asked him whether he wanted a formal hearing into the complaint under s 14.18. He declined and no hearing was held. The meeting moved on to the presentation of the investigation report at which point the respondent and Councillor Link left.

[59] From the context, it is clear that the Council interpreted s 14.18 as giving it a discretion about whether to hold a formal hearing and about the factors to consider when making that decision. Here the key factor was that the parties did not want a hearing. The Council's interpretation of s 14.18 was justifiable in light of the text, and the Council complied with s 14.18 thus understood.

[60] The chambers judge held that the Council did not follow the process prescribed by s 14.18 because it did not *decide* whether to conduct a formal hearing: *Reasons* at para 130. He seems to have inferred that the respondent, not the Council, made the decision. With respect, we disagree. The Council acted on the respondent's wishes, but it was still the decision maker. The undeniable fact is that no formal hearing took place and the only way that could have happened was that the Council decided it. The power to determine the course of the April 5, 2022 meeting lay with the Council, not the respondent.

[61] We add a note of clarification. The chambers judge held that failure to follow s 14.18 made the resolutions unreasonable: *Reasons* at paras 130-131. He also found that non-compliance with s 14.18, together with other facts, led to a breach of procedural fairness. The two issues are different. Our conclusion that the Council complied with s 14.18 does not mean that the Council also afforded the respondent a reasonable opportunity to make submissions. That issue turns on what counted as a "reasonable opportunity" to make submissions in the circumstances and what opportunities the respondent had to speak at the meeting.

D. The right to be heard

[62] Whether Council gave the respondent a reasonable opportunity to be heard raises a question of procedural fairness. The question for a reviewing court is whether a party received the degree of procedural fairness to which they were entitled in law, although some cases characterize this as correctness: *Baron Real Estate Investments Ltd v Edmonton (City)*, 2021 ABCA 64 at para 17; *R v Ferzli*, 2020 ABCA 272 at para 21.

[63] The chambers judge found that the respondent had a right to "a moderately high degree of procedural fairness" based on the factors in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817. Particularly significant was that the Council was adjudicating a misconduct complaint rather than legislating or making a policy decision.

[64] There is no dispute about that nor that the Council's duty of procedural fairness required it to give the respondent a reasonable opportunity to make submissions before the resolutions were passed. The parties disagree about whether the Council fulfilled that duty.

[65] The issue arises because the Removal Resolution imposed a more severe sanction (suspension from all boards for slightly less than six months) than the investigator had recommended (suspension from the Wheatland EMS Board if the respondent did not give a timely apology). The chambers judge described the effect of the Removal Resolution as follows:

> The reality is that while Koester's right to continue in his profession as a Councillor was not ended, as Wheatland points out, he was in fact removed from every board he was on (a total of four different boards). His entire tenure of board membership was ended, not just on the boards subject to the complaint. This not only impacted his income, but his significant involvement in matters of government and administration in the community.
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> *Reasons* at para 155.

[66] The respondent had various opportunities to make submissions during the April 5, 2022 Council meeting.

- After reading the investigation report, the respondent was asked whether he wanted a formal hearing. This was an opportunity to make submissions, including about sanctions, at a future hearing. The respondent declined. At the time, he did not know that the Council was considering sanctions more severe than those recommended in the report.

- The respondent rejoined the meeting after the presentation of the investigation report (which took 19 minutes). The Council then deliberated *in camera* about whether sanctions were warranted (this took 89 minutes). There is no evidence that the Council discussed sanctions beyond those recommended in the report: *Reasons* at para 98.

- The meeting reverted to an open session. Four resolutions were passed, the Removal Resolution being the last one. When the Removal Resolution was tabled, the respondent became aware the Council was proposing his removal from all boards until October 18, 2022. A vote was called, and then the chair asked if anyone had any comments. No one spoke up within the 10 seconds before the vote was taken.

The question is whether the Council satisfied its duty to hear the respondent on sanctions by providing these opportunities.

[67] Wheatland County argues that it did. It relies on *Muradov v College of Naturopathic Doctors of Alberta*, 2024 ABCA 224 for the proposition that a decision maker does not violate the right to be heard by imposing harsher-than-recommended sanctions for professional misconduct, even though it did not give the affected person notice that it might do so.

[68] However, that misreads *Muradov*. The facts did not raise this issue: *Muradov* at para 18. In *obiter*, the majority commented that it will not "always" breach procedural fairness to impose a harsher sanction without giving notice and inviting submissions. *Muradov* does not purport to establish a general rule, which makes sense given the context sensitivity of procedural fairness.

[69] In some circumstances, the right to be heard is satisfied even though the decision maker does not give advance notice of its intention to impose more severe sanctions. An example is *Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 which held that a provincial judicial council did not violate a judge's right to be heard when it recommended her removal from office, which exceeded the reprimand recommended by the inquiry panel. The judge had legal counsel, was aware that removal was a possible sanction, that the judicial council was not bound by recommendations, and that it would come to its own decision about the sanction: *Moreau-Bérubé* at paras 81-82.

[70] In this case, the respondent was not legally represented. There is no evidence that he knew, before the Removal Resolution was tabled, the range of sanctions that might be imposed or that the Council was considering exceeding the recommended sanction. Without that knowledge, the offer of a formal hearing and the chance to speak when the floor was opened for discussion did not satisfy the Council's duty to hear the respondent on sanction.

[71] When the Removal Resolution was tabled, the respondent learned the extent of the sanction the Council was proposing. Did the respondent have a reasonable opportunity to make submissions on sanction then? We do not think so.

[72] The situation must be put in its context. The Removal Resolution was tabled during a fast-moving public portion of the meeting. In four minutes, the Council proposed and voted on resolutions accepting the investigation report, upholding the complaint and requiring an apology. When the Removal Resolution was tabled, a vote was called immediately, whereupon the chair asked if there was "any comment". The video of this part of the meeting shows a gap of approximately 10 seconds between that question being asked and the vote being taken.

[73] In the circumstances, the very short window of time for the respondent to speak was not a reasonable opportunity to consider the implications of the sanction and marshal arguments against it. As such, the respondent's right to be heard was breached.

VI. Sealing order and publication ban

[74] At the outset of the proceedings in the Court of King's Bench on June 23, 2023, the parties entered into a consent sealing order and publication ban, which applies to the investigation report and related parts of the record. Those orders remain in place on this appeal, but we have decided to remove them. The respondent asked the chambers judge to do so after he issued the *Reasons*, but the chambers judge declined because Wheatland County had already filed an appeal to this Court. However, he left open the prospect of a further application to vary the orders after the conclusion of this appeal: *Koester v Wheatland County*, 2025 ABKB 63.

[75] This panel directed that the oral argument of this appeal would take place in open court, after hearing from the parties but clarified that the publication ban continued to prohibit dissemination of the investigation report discussed at the hearing. After oral argument, the panel requested written submissions from the parties about whether to maintain the publication ban and the sealing order, and we thank the parties for their supplemental submissions. They have been helpful in distilling the principles that apply in this case.

[76] Since we are revisiting a provisional consent order issued without argument, evidence or application of the test governing restricted access orders, we apply first principles. The burden is on the applicant, Wheatland County, to persuade the Court of the need for limits on court openness.

[77] The *Code of Conduct* in force at the time treated the complaint and all information related to the complaint investigation as "Confidential Information": s 14.11. It prohibited councillors and members from releasing Confidential Information, which included information received during an *in camera* portion of a meeting, unless authorized by "Council or the Board *or required by order or direction of a Court*, board or tribunal having jurisdiction" (emphasis added): s 10.2. See also s 4.1(i).

[78] While the *Code of Conduct* required councillors to keep the investigation report confidential, there is no legislation requiring the Court to maintain its confidentiality. In fact, the *Code of Conduct* specifically contemplated that a Court might decide to make it public.

[79] Since there is no statutory obligation on the Court to grant the sealing order and publication ban over the investigation report, the decision is discretionary. The law governing discretionary limits on court openness in *Sherman Estate v Donovan*, 2021 SCC 25 applies. A party asking the court to exercise its discretion in a way that limits the open court principle must establish that:

> (1) court openness poses a serious risk to an important public interest;
>
> (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
>
> (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.
>
> *Sherman Estate* at para 38.

[80] In this case, there is no compelling argument or evidence that any of these branches have been met.

[81] First, while making the investigation report accessible to the public might cause the original complainant discomfort or embarrassment, that does not amount to a serious public interest capable of justifying limits on court openness: *Sherman Estate* at paras 32, 56, 75. *Sherman Estate* held that the publication of information that risks physical harm or is sufficiently sensitive that it strikes at an individual's biographical core are serious public interests: *Sherman Estate* at paras, 73, 94, 96. Neither is engaged here. Wheatland County suggested that the orders are necessary to prevent risk to other serious public interests – such as putting the Council in breach of its statutory obligation to keep the information confidential or interfering with the Council's ability to control its own process by conducting meetings *in camera*. The short answer is that the Court's exercise of discretion with respect to the open court principle would not have these effects.

[82] Second, given that these effects would not arise, Wheatland County has not established that the public interests it has identified would be put at serious risk if this Court removes the sealing order and publication ban.

[83] Lastly, Wheatland County has not shown that the benefits of the orders outweigh their negative effects on values and interests underlying the open court principle. One consideration is the centrality of the information to the legal issues at stake. Here, the investigation report is central to the judicial review proceedings because it formed the basis for the Council resolutions upholding the complaint and sanctioning the respondent. If the investigation report remains subject to a sealing order and publication ban, it would be very difficult for the public to understand this Court's decision or the judicial review decision – witness the chambers judge's heavily redacted *Reasons* on CanLII. In addition, there is an important democratic interest at stake: the respondent, an elected councillor, was removed from all Wheatland County boards without explanation. No public justification was offered. The municipal electorate of Wheatland County has an interest in finding out what happened.

[84] The Council specifically rejected the respondent's motion at a meeting on April 19, 2022 to make the investigation report public. This was two weeks after the four Resolutions were passed. The respondent has had a cloud hanging over his head for over three years based on what Wheatland County acknowledges is a flawed investigation report. It is time to bring this flawed process to an end.

[85] Lastly, we note that on September 5, 2023 the County of Wheatland enacted *Code of Conduct Bylaw* No. 2023-18, which substantially changed the complaints procedure.[10] One change was that an Integrity Commissioner, rather than the Council, decides whether a councillor commits misconduct under the *Code of Conduct*. Another change relates to the publication of the investigation report. Where misconduct is found and the Council decides to sanction a councillor, the investigation report becomes public. This change undercuts the suggestion that public access to an investigation report would compromise the integrity of the complaint process by discouraging complainants and witnesses from participating.

[86] We lift the publication ban and sealing order.

VII. Conclusion

[87] The grounds of review of the Complaint Resolution identified by the respondent are reviewable on the standard of reasonableness. Reviewed on this basis, we are satisfied that the Complaint Resolution lacked a factual and legal foundation. The Council relied on the investigation report to uphold the Housing Body complaint, but the report fundamentally failed to

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[10] The 2025 amendments to the *MGA* have statutorily repealed *Code of Conduct Bylaw* No. 2023-18.

explain how or why the facts found constituted breaches of the *Code of Conduct*. Council's reliance on this unreasonable investigation report rendered its decision unreasonable.

[88] During the closed session of the April 5, 2022 meeting, the Council followed the prescribed procedure when it decided not to hold a formal hearing of the complaint. However, when the meeting reverted to an open session, the process by which the Council passed the resolutions was unfair. The respondent did not have a reasonable opportunity to make submissions about the Removal Resolution. This was unfair to the respondent.

[89] Accordingly, we dismiss the appeal and confirm the order quashing the Council's resolutions. The chambers judge did not remit the matter to the Council because the respondent had already "served" the sanctions imposed. Wheatland County raised no objection to this aspect of the decision, so we confirm it.

[90] The appeal is dismissed.

Appeal heard on April 16, 2025 and supplemental written submissions filed May 13 and June 6, 2025

Memorandum filed at Calgary, Alberta
this 16th day of September, 2025

Khullar C.J.A.

Grosse J.A.

Woolley J.A.

Appearances:

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