

# *Municipal Affairs Act*

**Department of Municipal Affairs and Environment**

# Inspection of Municipal Records

- Routine inspections
- Special inspections

# Special Inspections

- Whenever the minister considers it advisable, or
- Upon the request of the municipal authority
  - Must provide a clear reason

# Interviews

*4.(3) An inspector has power to require the attendance of an officer of the municipal authority or of another person whose presence the inspector may consider necessary during the course of his or her inspection and the inspector has the same power that is exercisable by a judge or court in civil cases to compel the attendance of the officer or person before him or her, to compel the production of documents and to take evidence under oath or affirmation and to administer the oath or affirmation.*

# Production of Documents

*4.(4) Whenever required to do so by an inspector, an officer of a municipal authority shall produce for examination and inspection all books, records, papers, documents and other property of the municipal authority in his or her possession.*

# Offence

*4.(7) A person summoned in accordance with subsection (3) or required to produce in accordance with subsection (4) who neglects or refuses to attend and be examined or to produce for examination and inspection a book, record, paper, document or other property which that person is required to produce is guilty of an offence and liable on summary conviction to a penalty of \$200 and to a further penalty of \$20 for every day during which that person neglects or refuses to do so.*

# The Report

- The Inspector completes the inspection and makes a Report to the minister and to the municipal authority

## Response to the Report

*6.(1) Where the minister is satisfied, upon the report of an inspector appointed under section 4 or in another manner, that the affairs of a municipal authority are managed in an **irregular, improper or improvident** manner, the minister may by order in writing*



## Response to the Report

*(a) direct the municipal authority or an officer of the municipal authority to take action that the minister considers necessary or advisable in the circumstances; or*

## Response to the Report

*(b) subject to the approval of the Lieutenant-Governor in Council, dismiss the municipal authority or a member of the municipal authority.*

# Other Powers of the Minister

- Mismanagement may have taken place in a previous term
- Where direction is not carried out, minister may dismiss the municipal authority, or dismiss an officer or a member of the authority
- Dismissed members cannot run for 2 years

# Other Powers of the Minister

- Minister may order an election
- Minister may appoint another officer, and prescribe the remuneration
- Minister may appoint an administrator or a commission of three persons
- Minister may order a plebiscite

*Power v. Newfoundland and Labrador*  
*(Municipal Affairs and Environment),*  
2018 NLSC 258

December 18, 2018

# Basis for the Special Inspection

A councillor had directed staff to remove/destroy a sewer line in the community, without direction from council

## Conclusion of the Inspector

- The councillor had acted in an improper and improvident manner when he directed maintenance personnel to use council equipment to remove and destroy the sewer line, without council approval

## The Councillor...

- Was given an opportunity to meet for an interview, which he declined
- Was given an opportunity to provide a written response to the Report, which he did



## The Minister...

- After considering the Report and the response, recommended to Cabinet that the councillor be dismissed
- Cabinet accepted the recommendation

# Grounds for Judicial Review

- Denial of procedural fairness
- Illegality (Minister did not have the authority to dismiss)
- Unreasonableness

# Procedural Fairness

- Natural justice
- A right to an oral hearing
- Court found that written submissions were adequate

# Procedural Fairness

- The Judge concluded...

***“Mr. Power received procedural fairness through disclosure of the inspectors’ report with copy of complaint, disclosure of potential consequences, and the reasonable opportunity to be heard in response.”***

# Illegality

- Mr. Power argued that the authority to dismiss under the *Municipal Affairs Act* relates exclusively to financial impropriety
- As such, the Minister lacked the lawful authority to dismiss

# Illegality

- The Judge concluded...

*“This argument is rejected for two reasons. First, the complaint to the Minister did involve financial matters. It involved alleged inappropriate use of town staff and equipment and damage to private property.”*

# Illegality

- The Judge concluded...

*“Second, the section 4 authority to appoint inspectors is not limited to financial matters. The mandate given to the inspectors under the legislation is wide ranging and allows inspection of all papers and all matters of a municipal authority.”*

# Unreasonableness

- Mr. Power argued that the Report was flawed, leading to an unreasonable decision
- Several factors were listed in support of this argument



# Unreasonableness

- The Judge concluded...

*“Mr. Power had the opportunity to raise these several factors with the Minister in the response letter....Judicial review is not a de novo hearing...”*

# Unreasonableness

- The Judge concluded...

*“...the reasonableness standard is satisfied if the decision falls within a range of possible, acceptable outcomes, which are defensible in respect of the facts and law. It is not for me to revisit the Minister’s thought process and assign lesser or greater weight to the evidence or arguments presented.”*

# Conclusion

- Adequate procedural fairness
- Minister had lawful authority
- Threshold for reasonableness was met
- Application was dismissed

What questions do you have?

Thank you!