

Committee of the Whole (2) Report

DATE: Tuesday April 12, 2022

WARD(S): ALL

TITLE: DECISION - FRANK MIELE V. BEVILACQUA, 2022 ONSC 2065

FROM:

Wendy Law, Deputy City Manager, Legal and Administrative Services & City Solicitor

ACTION: FOR INFORMATION

Purpose

To provide an update regarding the successful conclusion of the above-noted matter at the Ontario Superior Court of Justice.

Report Highlights

- In May 2019, Frank Miele launched a lawsuit against the City and eight (8) out of nine (9) current members of Council plus two (2) former members of Council, claiming misappropriation of funds, amongst against other allegations, seeking damages of \$210 million and disqualification of the members from holding any municipal office for two years.
- Mr. Miele has since admitted that his allegations were wrong and baseless, and he had apologized for his actions. Prior to doing so, however, Mr. Miele has put the City and the defendants through substantial amount of effort and costs to defend the litigation.
- In its decision issued on April 4th, 2022, the Court dismissed the claim and awarded costs on a substantial indemnity basis in favour of the City and the individual defendants (90% of fees plus disbursements and taxes). This amounts to around \$1 million+ costs.
- The Court determined that the claim was frivolous and abusive. There was no basis for the lawsuit and the Plaintiff's aggressive litigation tactics were reprehensible. It was, therefore, fair and reasonable to award costs on a substantial indemnity basis against Mr. Miele.

Recommendation

1. That this report be received for information.

Background

In May 2019, a claim was commenced against the City of Vaughan, eight (8) current and two (2) former members of City Council (“Defendant Council Members”) by Mr. Frank Miele, a former employee of the City and failed candidate who ran for the office of Mayor in the 2018 municipal election.

Mr. Miele claimed damages of \$210,000,000 against the City and the Defendant Council Members personally. He claimed that the Defendant Council Members voted to illegally divert specially-raised funds in an effort to hide budgetary deficits from the City’s ratepayers and that the City had acted negligently in preventing the members of council from doing so. He alleged that the City had incurred an unlawful deficit in each of the years 2014 to 2017, and that the City and the Defendant Council Members failed to disclose such deficits. At the same time, he alleged that the City collected surplus funds in its water levies and stormwater charges, and used money from those accounts to reduce the illegal deficits. Mr. Miele sought to hold the Defendant Council Members personally liable and to have them disqualified from office pursuant to s. 424 of the *Municipal Act, 2001*.

Due to the personal pecuniary interests arising from the lawsuit, each of the Defendant Council Members had to retain their own respective legal counsel and could not rely on the City to defend them. This significantly increased the costs of the litigation.

Also, because of the nature of the claim (personal liability being attached), eight (8) out of nine (9) of our current members of council declared pecuniary interests in the claim in accordance with the *Municipal Conflict of Interest Act* (“MCIA”). As a result, Council did not have quorum to hold any meeting to vote on any resolutions related to the action, including its potential resolution.

On August 25, 2020, an application for relief under the MCIA was heard and granted by the Honourable Mr. Justice F.L. Myers of the Ontario Superior Court of Justice. The Court authorized Council to meet and provide City legal counsel with instructions relating to the claim, subject to the terms set out in the Order respecting the approval of any potential settlement or resolution of the action.

Mr. Miele originally opposed the MCIA application and obtained standing, on consent, as an intervenor. Mr. Miele later abandoned his opposition and was subsequently granted leave by the Court to withdraw his intervention. The Order awarded costs, on consent, in the amount of \$20,000 to the City to be paid by Mr. Miele for his role in the application.

About a year after the commencement of the lawsuit, Mr. Miele acknowledged that the claim was baseless and he approached the City indicating that he wanted to discontinue with the claim. A public and broader apology was subsequently negotiated by his lawyer with City's legal counsel, but it was not delivered until it appeared in the supplementary motion materials the day before the recent motion on March 25, 2022.

Since the parties agreed to the dismissal of the claim but could not agree on costs, a motion was scheduled before the Court on March 25, 2022 for the Court to decide on the matter of costs. The Court Order from August 2020 on the MCIA application also required that any settlement of the parties be approved by the Court.

Previous Reports/Authority

[CW \(CS\) Extract, September 24, 2019, Item 6, Report 28](#)

[Special Council Minutes, Minute No. 142., October 7, 2019, Item 1, Report 30](#)

[CW \(2\) Extract, September 29, 2020, Item 13, Report 40](#)

Analysis and Options

On April 4, 2022, Justice F.L. Myers of the Ontario Superior Court of Justice issued a decision on the litigation. (See Attachment 1)

The Court determined that the litigation was frivolous and baseless. In addition to dismissing the action, Justice Myers awarded costs against Mr. Miele on a substantial indemnity basis, to be calculated at 90% of reasonable fees plus disbursements and taxes. The City is awarded costs in the amount of \$813,101.99 inclusive, while each of the Defendant Council Members is awarded 90% of their actual legal fees plus disbursements and applicable HST. The aggregate amount of the Defendant Council Members' defence costs was about \$312,000.

As noted in the decision, in Ontario, normally when a party loses in litigation, it has to pay the successful party about 60% of its legal costs of the proceedings (i.e. partial indemnity scale). However, in litigation where the unsuccessful party has made scandalous allegations of serious wrongdoing and criminality against the successful party, the award of costs is increased significantly to almost 100%.

In this case, Justice Myers concluded that an award of costs on a substantial indemnity scale against Mr. Miele was fair and reasonable given the "scurrilous allegations he

chose to make and Mr. Miele's hardball tactics". The Court wrote: "costs awards that dissuade frivolous or meritless claims do not impair access to justice. Rather, they properly allocate responsibility for abuse." [para.10]

Mr. Miele attempted to argue that he was acting in the public interest in launching the lawsuit. He submitted that he was duped into launching this claim by another failed candidate of the 2018 election and by his former lawyer; that he was unsophisticated in areas of municipal finance and could not understand the allegations he made; that he was not thinking clearly at the time; that the defendants were insured for their costs; and that a significant cost award would have major impact on his finances and family. As such, he asserted he should be offered exemption from the normal approach to costs. The Court rejected each of his submissions and called out the inconsistencies in the evidence and his lack of credibility.

In addition, in determining the cost award, Justice Myers wrote:

"The defendants are the municipality and its elected Councillors. Absent any hint of wrongdoing, they deserve protection. The claim itself was frivolous and therefore could not have been in the public interest. The financial consequences are serious to both sides."
[para.97]

With respect to the apology that was issued by Mr. Miele, the Court stated:

"Despite the meaning and spirit of these words, Mr. Miele actually seeks to avoid responsibility for the very harm that he acknowledges having caused by his baseless allegations. He blames others and seeks to excuse his own actions in his evidence. His response to this motion shows that he actually takes no responsibility for the expenditures of significant time, effort, and resources caused by his baseless allegations despite the wording of his apologies." [para. 99]

All in all, the Court found that it was fair and reasonable to award costs on a substantial indemnity scale against Mr. Miele.

In terms of next steps, in accordance with the direction of the Court, the lawyers for all the parties will come together to confirm the exact total costs awarded. It is expected that this will fall in the range of \$1M to \$1.1M. The City's legal counsel will also coordinate costs submissions for all defendants for the cost of the motion on March 25 for the Court's consideration.

Financial Impact

The costs of this litigation were paid for by the City's insurer. The City was responsible for its deductible of \$50,000. The costs of the City and all the Defendant Council members are covered by the City's insurance policy.

The substantial indemnity cost award will be apportioned between the City's insurer and the City based on expenditures. Given that the City's expenditure was capped at \$50,000, it is expected that most of the costs will be recovered by the insurer that had paid for around \$1.2M in legal fees and costs.

However, a significant claim such as this has implications to the City's insurance premium. One of the key considerations in pricing insurance premium is the insured's claims history. A significant claim such as this one remains on the City's claims history for a number of years and has an impact on the City's annual premiums.

Broader Regional Impacts/Considerations

This Court decision will serve as precedent and hopefully deter future similar meritless lawsuits against not just the City but other municipalities and public office holders in Ontario. By ordering costs on a substantial indemnity basis, the Court has clearly signaled its disapproval for baseless and unsupported claims. One cannot simply hide behind the suggestion that s/he is acting in the public interest in calling out actions undertaken by public office holders and municipalities without some basis to support their allegations.

Conclusion

The City is successful in obtaining a substantial indemnity cost award against Mr. Miele, for his frivolous, completely baseless, and abusive lawsuit against the City and eight (8) current and two (2) former members of Council. Courts normally do not award costs on a substantial indemnity basis. However, in this case, given the frivolous and egregious nature of the lawsuit, the Court has made a significant cost award against the plaintiff.

For more information, please contact:

Wendy Law, Deputy City Manager, Legal and Administrative Services & City Solicitor, ext. 8700.

Attachments

1. Decision – Ontario Superior Court of Justice re: *Miele vs. Bevilacqua*, 2022 ONSC 2065

Prepared by

Wendy Law, Deputy City Manager, Legal and Administrative Services & City Solicitor

Approved by

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Wendy Law, Deputy City Manager,
Legal and Administrative Services &
City Solicitor

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Reviewed by

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Nick Spensieri, City Manager