

SUPREME COURT OF NOVA SCOTIA

Citation: North End Community Health Association v. Halifax (Regional Municipality), 2012 NSSC 330

Date: 20120924

Docket: Hfx. No. 376190

Registry: Halifax

Between:

The North End Community Health Association, The Richard Preston Centre for Excellence Society, and The MicMac Native Friendship Society

Applicants

v.

Halifax Regional Municipality

Respondent

and

Jono Developments Ltd.

Intervenor

Judge: The Honourable Justice A. David MacAdam

Heard: June 12, 13 and 15, 2012, in Halifax, Nova Scotia

**Final Written
Submissions:**

June 4, 2012

Counsel: Ronald Pink, Q.C., Kelsey McLaren, David Wallbridge, for the applicants
Jocelyn Campbell, Q.C. and Jack Townsend, for the respondent
William L. Ryan, Q.C. and Maggie Stewart, for the intervenor

Background

[4] In September 2000 Halifax Regional Council received a staff report on the subject of "Policy and Procedure for the Disposal of Surplus Schools." The text of the policy was appended to the report. Council approved the *Procedures for the Disposal of Surplus Schools* (the Procedure) pursuant to the *Municipal Government Act*, S.N.S. 1998, c. 18. The Procedure was later continued under the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39. Council's policy, resolution and by-law-making powers are described at ss. 58 and 59 of the *Charter*:

Resolutions, policies, by-laws

58 (1) The Council shall make decisions in the exercise of its powers and duties by resolution, by policy or by by-law.

(2) The Council may exercise any of its powers and duties by resolution unless a policy or a by-law is required by an enactment.

....

(4) The Council may exercise by policy any of the duties and powers that it may exercise by resolution.

....

Policies

(3) Where the Council proposes to sell property referred to in subsection (1) valued at more than ten thousand dollars at less than market value, the Council shall first hold a public hearing respecting the sale.

....

[6] The Procedure set out steps to be followed in disposing of surplus schools. When notice was received that a school was to be handed over to Halifax Regional Municipality (HRM or the Municipality), Building Management Services (BMS) would assess the property, prepare a budget, and schedule interim maintenance. BMS would then request "Business Unit" proposals for future use of the property. Commercial Real Estate Services was required to commission an appraisal to establish the property's "market value," as well as "its value based upon its use and zoning as a school property." If HRM did not opt to retain the property for its own use, the Procedure required the following steps:

7. On receipt of that information, CGPP [Community Grants and Partnering Program] will evaluate any interest that may have been expressed by local community groups or grant applicants for the use of the school for community purposes. CGPP shall:
 - (a) advise all such community groups that they are required to submit a written proposal within **90 days**, setting out the composition of the group, its purpose and management structure including office-bearers, the nature of the activities proposed, a financial statement, a business plan for the first five years, and a clear statement of the terms they are prepared to offer for the purchase or lease of the property; and
 - (b) evaluate all submissions and assess their viability. Any submission that is deemed feasible and meets HRM's fiscal goals for the accommodation of community programs shall be carried forward as a recommendation to Executive Management and Council.

The Request for Proposals

[9] The Halifax Regional School Board (the Board) declared the St. Patrick's Alexandra School (the Property) surplus to its requirements in March 2008. The closure occurred at the end of the 2010-2011 school year. The Property was valued by Colliers International (Atlantic) (Colliers) in a report dated March 30, 2011. Colliers provided three potential market values, depending on the intended use of the property: (1) the property "as is" was appraised at \$1M; (2) the prospective market value if the intention was to maintain the old school and redevelop the remainder was appraised at \$3M; and (3) the prospective market value if the intention was to demolish all the buildings and redevelop the property was \$4.3M.

[10] On June 28, 2011, HRM issued a Request for Proposals (the RFP), seeking proposals for "a comprehensive and integrated" use of the Property "through the restoration and re-use of the existing building or the re-development of the property for various commercial, institutional and other land uses, which are complementary to existing developments in the surrounding area, and which generally enhance the community." There were four scoring criteria for the assessment of proposals. These included (1) understanding the intent and objectives, with a maximum score of 30; (2) qualifications and experience, with a maximum score of 25; (3) the proponent's financial capability, with a maximum score of 25; and (4) the financial offer, with a maximum score of 20. The closing date for proposals was August 26, 2011.

[11] The RFP stated that legislation permitted "the sale of surplus municipal property at less than market value to registered non-profit organizations." In the event that a sale at less than market value was recommended, a public hearing would be required. Proponents of a sale at less than market value would be required to "demonstrate how their program and service delivery aligns with HRM's jurisdictional mandate or organizational priorities....". Such a motion before Council would require a two-thirds majority vote. The RFP did not refer to

In the event that a bid be received higher than our maximum bid, our bid will equal to Four Million Dollars (\$4,000,000.00CAD)

[14] Option B, however, was conditional on JONO and HRM reaching a development agreement:

OPTION B:

Purchase Price: A starting bid of Three Million Dollars (\$3,000,000.00)CAD to be increased by increments of One Hundred and Fifty Thousand Dollars (\$150,000.00)CAD over the highest bid to a maximum of Four Million Seven Hundred and Fifty Thousand Dollars (\$4,750,000.00)CAD

....

Applicable Conditions: Subject to a development agreement

....

In the event that a bid be received higher than our maximum bid, our bid will equal to Four Million Seven Hundred and Fifty Thousand Dollars (\$4,750,000.00CAD)

[15] The staff report described Council's options as follows:

The recommended offer of \$3,000,000 by Jono Developments Ltd. is without any limiting conditions. This offer will facilitate the sale of the subject property within a reasonable period following Council's approval for the award.

[18] The content of any duty of fairness varies from case to case. The relevant factors are set out in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, [1999] S.C.J. No. 39, where L'Heureux-Dubé J., for the majority, identified five factors: the nature of the decision and the process followed; the statutory scheme; the importance of the decision to those affected; the legitimate expectations of those challenging the decision; and the procedural choices made by the decision-maker (paras. 23-27). The values underlying the duty of procedural fairness "relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context of the decision" (para 28). The non-exhaustive list of *Baker, supra.*, factors was reaffirmed in *Canada (Attorney General) v. Mavi*, 2011 SCC 30, at para. 42.

[19] No standard of review analysis governs judicial review on the grounds of denial of natural justice or procedural fairness: see *Communications, Energy and Paperworkers Union of Canada, Local 141 v. Bowater Mersey Paper Co. Ltd.*, 2010 NSCA 19, at paras. 30-32 and *Minister of Community Services v. T.G. and R.C.*, 2012 NSCA 43, at paras. 90-91. The reviewing court must determine the content of the duty owed in the circumstances, and then decide whether the decision-maker breached that duty. The Nova Scotia Court of Appeal described these two steps in *Kelly v. Nova Scotia Police Commission*, 2006 NSCA 27, at para. 21:

The first step – determining the content of the tribunal's duty of fairness – must pay careful attention to the context of the particular proceeding and show appropriate deference to the tribunal's discretion to set its own procedures. The second step – assessing whether the Board lived up to its duty -- assesses whether the tribunal met the standard of fairness defined at the first step. The court is to intervene if of the opinion the tribunal's procedures were unfair. In that sense, the court reviews for correctness. But this review must be conducted in light of the standard established at the first step and not simply by comparing the tribunal's procedure with the court's own views about what an appropriate procedure would have been. Fairness is often in the eye of the beholder and the tribunal's

Nature of the statutory scheme and the terms of the statute

[24] In *Baker, supra.*, L'Heureux- Dubé J. said, "[t]he role of the particular decision within the statutory scheme and other surrounding indications in the statute help determine the content of the duty of fairness owed when a particular administrative decision is made. Greater procedural protections, for example, will be required when no appeal procedure is provided within the statute, or when the decision is determinative of the issue and further requests cannot be submitted...." (para. 24).

[25] The *HRM Charter* delegates specified powers to HRM. The municipality cannot act outside the authority granted by the *Charter*. The Procedure itself uses the word "shall", with exception of steps specifically identified as being optional. The use of "shall" indicates an imperative, not permissive, meaning: *Interpretation Act*, R.S.N.S. 1989, c. 235, s. 9(3). The legislative scheme and the Procedure indicate a high degree of procedural fairness, according to the applicants. HRM argues that the use of imperative language in the Procedure should be tempered by the use of allegedly more permissive language in the September 2000 staff report, which allegedly implies that the Procedure was only meant for staff guidance.

[26] I see no need to interpret the Procedure, which is comprehensive, through the prism of the staff report. It was the Procedure that Council enacted, not the staff report.

[27] HRM argues that the *Charter* provides Council with broad powers, giving it the flexibility required to carry out its statutory responsibilities in the public interest. HRM says the Procedure did not have the "force of law." It argues that the *Charter* is worded so as to permit Council to govern as it sees fit. Generally, HRM argues that Council was free to ignore the Procedure. It had not been followed in other school disposals. The *Charter* did not compel Council to adopt a policy for disposal of surplus properties. The Procedure had no penalty clause. The word

The importance of a decision to the individuals affected, therefore, constitutes a significant factor affecting the content of the duty of procedural fairness.

[29] The applicants say Council's decision to dispose of the property and by implication, the alleged failure to follow proper procedure was significant for residents of the North End and of Halifax generally, as evidenced by the petitions and letters placed in evidence. Issues with "broader policy implications for the entire community" as opposed to "local issue[s] affecting the lives of residents of a neighbourhood" have been held to demand a moderate level of procedural fairness: *Heritage Trust of Nova Scotia v. Halifax (Regional Municipality)*, 2007 NSSC 28, at para. 93. The applicants appear to argue that this factor supports a high level of procedural fairness, in view of the existence of a Procedure providing Council no discretion on the relevant issues.

[30] HRM agrees that each applicant had "a deep-rooted desire to be the successful bidder," but says this situation does not rise to the level of significance that calls for procedural safeguards, such as a determination of a person's right to continue in a profession. The decision did not prevent the applicants from continuing in "their laudable mandates" to "serve the North End community," and did not deprive them of any vested proprietary rights." Their only entitlement, HRM says, was the right to participate in the request for proposals process. HRM says this factor further suggests a level of procedural fairness at the lower end of the spectrum.

Legitimate expectations of those challenging the decision

[31] The applicants say Council's failure to follow "established procedures" was a violation of the doctrine of legitimate expectations. Those expectations allegedly arose out of the *HRM Charter* and the Procedure. The doctrine was described in *Attorney General of Hong Kong v Shiu*, [1983] 2 A.C. 629, where Lord Fraser of Tullybelton said, at 638:

Coast Parents for French v. Sunshine Coast School District No. 46 (Sunshine Coast)(1990), 49 B.C.L.R. (2d) 252, 1990 CarswellBC 213 (B.C.S.C.), for instance, the court stated that, as "a delegated legislature" a school board "was immune from the rule of legitimate expectation except to the extent that it attracted the rule to itself by its own procedural policy, but the petitioners being able to show no evidence that they knew of that policy cannot be said to have relied upon it. They therefore cannot be said to have formed a legitimate expectation in fact" (para. 32). Similar statements, requiring actual reliance, appear in *Furey v. Roman Catholic School Board for Conception Bay Centre* (1993), 104 D.L.R. (4th) 455, [1993] N.J. No. 170 (Nfld. C.A.) at para. 50, *Attaran v. University of British Columbia* (1998), 4 Admin. L.R. (3d) 44, [1998] B.C.J. No. 115 (B.C.S.C.) at paras. 87-88, and *Humber Heights of Etobicoke Ratepayers Inc. v. Toronto District School Board* (2003), 171 O.A.C. 21, [2003] O.J. No. 1381 (Ont. Sup. Ct. J.) at para. 32.

[35] In response to the claim that legitimate expectations cannot arise without actual knowledge, the applicants cite *Mavi, supra.*, where Binnie J., speaking for the court, said, at para. 68:

Where a government official makes representations within the scope of his or her authority to an individual about an administrative process that the government will follow, and the representations said to give rise to the legitimate expectations are clear, unambiguous and unqualified, the government may be held to its word, provided the representations are procedural in nature and do not conflict with the decision maker's statutory duty. Proof of reliance is not a requisite.... It will be a breach of the duty of fairness for the decision maker to fail in a substantial way to live up to its undertaking....

[36] HRM says *Mavi, supra.*, is distinguishable on its facts. *Mavi, supra.*, involved a contractual relationship between the Minister of Immigration and sponsors who gave undertakings to reimburse the government for costs of social assistance incurred by immigrants they were sponsoring. The Minister had discretion not to take enforcement action. HRM says the distinction lies in the fact that *Mavi, supra.*, involved "legitimate expectations in the context of a written agreement that the applicants saw, read and signed" before the Minister took

[40] The fifth *Baker, supra.*, factor is the decision-maker's own choice of procedures. L'Heureux- Dubé J. said, at para. 27:

Fifth, the analysis of what procedures the duty of fairness requires should also take into account and respect the choices of procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances.... While this, of course, is not determinative, important weight must be given to the choice of procedures made by the agency itself and its institutional constraints....

[41] The applicants submit that Council made a choice of procedure when it enacted the Procedure in 2000. While the Municipality is entitled to deference in the choice of its procedures (*Heritage Trust, supra.*, at para. 105), the applicants maintain that once it has chosen a procedure, it cannot ignore it. This, it is argued, suggests a high degree of procedural fairness. HRM takes the view that the RFP process Council utilized was fair to the applicants and deserves respect as the procedural choice of the decision-maker.

[42] While the *HRM Charter* does not impose specific procedures with respect to the disposal of surplus schools, I am satisfied that Council bound itself by enacting a specific procedure in 2000. It is no answer to say that Council had never observed the enacted Procedure in any previous school disposal process, and therefore was free to ignore it. Procedural fairness on this point (as with legitimate expectations) weighs in favour of the public's right to assume that an elected municipal council will follow its own procedures on matters of public importance. It was, of course, entirely within Council's power to repeal the Procedure, but this was not done until after the RFP process was completed.

Summary on procedural fairness

[47] The applicants have not alleged bad faith. HRM says it acted in good faith by soliciting and evaluating proposals through a transparent, fair, and unbiased process, and selecting the bid that best satisfied the applicable criteria. As to the requirements of the *HRM Charter*, HRM says it was only required to comply with s. 61(5)(b), which permits the municipality to "sell property at market value when the property is no longer required for the purposes of the Municipality." In this case, the determination that the school was no longer required for municipal purposes was made by staff, not by Council resolution; but HRM notes that the statute does not require a resolution of Council. Further, HRM submits that it sold the property for market value.

[48] The applicants fell within the class of community organizations that Council had identified as having specific procedural rights under the Procedure. Council could have chosen to change the Procedure as enacted, but did not do so until after the applicants raised the issue. Moreover, the *HRM Charter*, by which Council was bound, made special provisions for non-profit organizations in the disposal of municipal property. The question is not whether HRM could sell the Property, but whether, having enacted a Procedure and thereby representing that it would be followed, HRM was entitled to simply ignore it.

[49] I am satisfied that Council owed a duty of procedural fairness to the applicants in the process of disposing of the property. That duty extended no further than to act in good faith and observe HRM's own Procedure, as enacted by Council.

Breach of the duty of fairness

[50] There is no dispute that the Procedure was not followed when Council approved the sale of the property to JONO. The applicants say Council's failure to observe the Procedure was a denial of procedural fairness. Council, they argue, breached the Procedure (1) by requesting proposals from community groups and

[54] While this breach is sufficient reason to quash the second resolution to sell the property to JONO for illegality, I will proceed to consider whether Council also breached the *Halifax Regional Municipality Charter*.

Did Council breach the HRM Charter?

[55] As noted earlier, the applicants argue that the *Halifax Regional Municipality Charter* only permits a sale of municipal property for less than market value to a non-profit organization. The Colliers report provided three potential market values, ranging from \$1 million ("as is") to \$4.3 million (demolition and redevelopment). The JONO proposal, as approved by Council, was to re-develop the property with low-rise residential, high-rise residential, commercial, and institutional development. The applicants submit that this proposal is a redevelopment scheme as contemplated by the third, and highest appraisal in the Collier report. The applicants claim that the proper market value was \$4.3M, while the property was sold to JONO for \$3M. They argue that Council breached the HRM Charter by approving a sale of the property at less than market value.

Standard of review

[56] The standard of review of Council's decision on the price at which to sell the Property must be established in accordance with the analysis set out by the majority in *Dunsmuir v New Brunswick*, 2008 SCC 9. The court must first decide whether the existing jurisprudence has already determined the standard of review applicable to the issue. If not, the court must determine whether the question is reviewable on a standard of correctness or reasonableness. The relevant factors include "(1) the presence or absence of a privative clause; (2) the purpose of the tribunal as determined by interpretation of enabling legislation; (3) the nature of the question at issue, and; (4) the expertise of the tribunal. In many cases, it will not be necessary to consider all of the factors, as some of them may be determinative in the application of the reasonableness standard in a specific case": *Dunsmuir, supra.*, at para. 64. Municipal decisions may be reviewed on either

[59] The applicants say the decision to sell the property for what they say is less than market value should be reviewed on a standard of correctness. HRM says the proper standard is reasonableness.

Has the standard of review been determined in the caselaw?

[60] HRM submits that the jurisprudence has determined the standard of review applicable to judicial review of decisions respecting disposal of municipal property. The Municipality cites *Hublely v. Halifax (City)*(1909), 7 E.L.R. 360, 1909 CarswellNS 72, where Meagher J. said, at paras. 8-9:

It was also argued that there was no material before the Council upon which it could properly or at all exercise a judgment upon the question as to whether it was required for the purposes originally declared, or either of them. I do not conceive I have anything to do with that aspect. So long as the council exercises an honest discretion without fraud (gross misconduct may perhaps be added), it is not liable to have its determination of matters within its jurisdiction overturned or disregarded by the courts....

One may be convinced that the action of the council is altogether stupid and unwise in the general civic interests, but even that conclusion would not constitute ground for judicial interference.

[61] HRM says that a similar view is expressed in Ian MacF. Rogers, *The Law of Canadian Municipal Corporations*, 2d edn. (Carswell, looseleaf) at §212.4:

The determination of the council, which should be expressed in a by-law or resolution, as to the time when, the manner in which, the price for which, and the person to whom any property of the corporation which the council may lawfully sell, shall not be open to question, review or control by any court, if the purchaser is a person who may lawfully buy and the council acted in good faith. Even

(2) No by-law may be quashed for a matter of form only or for a procedural irregularity.

(3) The judge may quash the by-law, order, policy or resolution, in whole or in part, and may, according to the result of the application, award costs for or against the Municipality and determine the scale of the costs.

(4) An application pursuant to this Section to quash a by-law, order, policy or resolution, in whole or in part, must be made within three months of the publication of the by-law or the making of the order, policy or resolution, as the case may be.

[65] The applicants describe s. 207 as creating a statutory right of appeal. Clearly, however, the section actually contemplates judicial review. The introduction to the applicants' own brief indicates that this proceeding is a judicial review, and this is clear as well in the other parties' submissions.

[66] This application is to quash Council's resolution for illegality. I note that ss. 207(2) provides that a by-law may not be quashed "for a matter of form only or for a procedural irregularity." The other subsections refer to by-laws, orders, policies and resolutions. This suggests that an order, policy or resolution may be quashed on grounds broader than those on which a by-law may be quashed, that is, on the grounds of form or procedural irregularity.

[67] The absence of a privative clause is less significant as a factor than the existence of one would be: *St. George's Lawn Tennis Club v. Halifax (Regional Municipality)*, 2007 NSSC 26. The absence of a privative clause is of little significance in determining the standard of review in this case.

than market value. Further, the *HRM Charter* specifically tasks the court with determining the question of illegality. As such, the applicants say, this factor suggests that no deference is due to Council's decision.

[70] HRM relies on ss. 61-65 and 70 of the *HRM Charter* as a statutory mandate for the municipality to acquire, manage, and dispose of property. These sections, it is submitted, provide HRM with broadly-worded powers respecting dealings with property, and with weighing competing interests. HRM says these statutory purposes support deference to its decision to sell the Property to JONO. HRM appears to emphasize the decision to sell, as opposed to the determination of price.

The nature of the question

[71] In *St. George's Lawn Tennis Club, supra.*, the Associate Chief Justice said, at para. 39:

Finally, I must consider the nature of the question. In my view, the question of whether Council failed to adhere to s. 217 of the *Municipal Government Act* involves an interpretation of the said *Act* and hence is a question of law. This often suggests little deference to the body under review although it is not, in itself, determinative of the matter (see *N.S.T.U. v. Nova Scotia Community College*, 2006 NSCA 22 (N.S. C.A.).)

[72] The applicants say the determination of the conditions under which Council may sell surplus municipal property is a question of law. This involves the interpretation of the term "market value" in the statute. Further, the question of "illegality" is one to be determined by the court under the statute, pursuant to s. 207(3).

[73] The applicants say the Council's decision in selecting from several competing bids was an adjudicative one. In *Nanaimo (City) v. Rascal Trucking*

Charter to determine the scope of its power to sell the property. In particular, Council was required to determine whether it had authority to sell the property in the circumstances it faced when it made the decision. This was a question of law, requiring an interpretation of the enabling statute. A second question to be addressed, however, was what valuation constituted market value. This could be considered an issue of mixed fact and law.

Relative expertise

[77] Another factor in determining whether the decision-maker is entitled to deference is whether the decision-maker has greater expertise than the court on the question to be determined. On this point, Major J. made the following remarks in *Nanaimo, supra.*, where the issue involved a question of jurisdiction. He said, at paras. 30-33:

A consideration of the nature of municipal government and the extent of municipal expertise further militates against a deferential standard on the question of jurisdiction. Furthermore, these factors reflect the institutional realities that make municipalities creatures distinct and unique from administrative bodies.

First, in contrast to administrative tribunals, that usually adjudicate matters pertaining to a specialized and confined area, municipalities exercise a rather plenary set of legislative and executive powers, a role that closely mimics that of the provincial government from which they derive their existence. Yet, unlike provincial governments, municipalities do not have an independent constitutional status.... While administrative agencies are equally statutory delegates, they are not a substitute for provincial legislative and executive authority to the extent that municipalities are. Municipalities essentially represent delegated government.

Second, municipalities are political bodies. Whereas tribunal members should be and are, generally, appointed because they possess an expertise within the scope of the agency's authority, municipal councillors are elected to further a political platform. Neither experience nor proficiency in municipal law and municipal planning, while desirable, is required to be elected a councillor. Given the

schools disposed of between 2001 and 2009, 14 were sold for market value. HRM does not explain how these factual assertions support the conclusion that Council possesses greater expertise on the relevant question than the court does.

Summary on standard of review

[80] The applicants submit that Council is permitted by the *HRM Charter* to sell surplus property in certain specific and clearly-defined conditions. Applying the *Dunsmuir, supra.*, factors, they say there is a right of appeal (there is not); that the court has greater expertise than Council in statutory interpretation; that the *HRM Charter* provides Council's authority and provides the court with authority to quash the decision for illegality; and that the issue is a question of law. This analysis, they say, calls for a correctness standard. HRM responds that three of the four *Dunsmuir, supra.*, factors point to a reasonableness standard, while the fourth - the absence of a privative clause - is not determinative.

[81] I am satisfied that Council was required to be correct in interpreting the scope of its power to sell the property under the *HRM Charter*. That is to say, the standard to be applied to Council's determination of whether it could sell the property for less than market value was correctness. However, the determination of what the market value actually was is a question to be reviewed on a standard of reasonableness.

Did Council's decision meet the necessary standard?

[82] In approving the sale of the property to JONO, a private developer, Council was bound by ss. 61 and 63 of the *HRM Charter* to ensure that the property was sold for "market value." Pursuant to s. 61(5)(b), HRM may "sell property at market value when the property is no longer required for the purposes of the Municipality." An exception is provided by s. 63(1), which provides that the Municipality "may sell or lease property at a price less than market value to a

[86] The applicants rely primarily on the *Interpretation Act*, R.S.N.S. 1989, c. 235. Subsection 9(5) of the Act declares that every enactment "shall be deemed remedial and interpreted to insure the attainment of its objects" by consideration of the following factors, among others:

- (a) the occasion and necessity for the enactment;
- (b) the circumstances existing at the time it was passed;
- (c) the mischief to be remedied;
- (d) the object to be attained;
- (e) the former law, including other enactments upon the same or similar subjects;
- (f) the consequences of a particular interpretation; and
- (g) the history of legislation on the subject.

[87] The applicants say the purpose of limiting HRM's power over the sale of surplus municipal properties is to prevent undue advantages to private parties in the marketplace and thereby protect the value of public property. The provisions were also intended to prevent municipalities from competing to attract commercial enterprises by offering financial assistance in the form of reduced property prices.

[88] The applicants point out that the *Charter's* provisions on property taxation are cross-referenced with the *Assessment Act*, which provides for assessment of

The case law suggests that review of municipal bylaws must reflect the broad discretion provincial legislators have traditionally accorded to municipalities engaged in delegated legislation. Municipal councillors passing bylaws fulfill a task that affects their community as a whole and is legislative rather than adjudicative in nature. Bylaws are not quasi-judicial decisions. Rather, they involve an array of social, economic, political and other non-legal considerations. "Municipal governments are democratic institutions", per LeBel J. for the majority in *Pacific National Investments Ltd. v. Victoria (City)*, 2000 SCC 64, [2000] 2 S.C.R. 919, at para. 33. In this context, reasonableness means courts must respect the responsibility of elected representatives to serve the people who elected them and to whom they are ultimately accountable.

[91] By contrast, the applicants say, the decision to sell the property was an adjudicative one on a question of law. It is not comparable to a decision to pass a bylaw.

[92] The applicants also suggest that the reasonableness standard may require reasons for the decision to sell the property. In *Catalyst Paper Corp., supra.*, the court spoke of the possible need for formal reasons "for decisions that involve quasi-judicial adjudication by a municipality" (para. 29). Council has provided no reasons for its decision, and there is therefore no reasoning path for the court to examine. As a result, the applicants say, the decision must fail on a reasonableness analysis. In any event, the decision to sell the property to JONO for a price below market value is not a possible or acceptable outcome of the application of ss. 61 and 63. As such, they argue, the decision must be quashed.

[93] HRM says the provisions in question must be interpreted in light of the purpose of the *HRM Charter*, as set out at section 2. The phrase "market value," HRM argues, must be interpreted broadly, in light of the Legislature's intention to give the municipality broad governmental authority. Counsel argues that the interpretation of "market value" advanced by the applicants would undercut these purposes by limiting HRM's power to dispose of surplus properties.

[97] As for the JONO bids, HRM concluded that JONO's unconditional offer of \$3 million represented the greatest return, having a net present value of \$3,110,900.65. (JONO's second option was contingent on a development agreement being concluded.) As such, HRM says, market value for the property was \$3 million, and the decision to sell complied with s. 61 of the *HRM Charter*.

[98] An appraisal is an estimate, albeit one provided by a person with knowledge and experience in valuing property. Such estimates are often accepted, including by courts, when there is no other readily available evidence of market value. However, as the phrase suggests, "market value" is the value of a property on the market. This means the "open" market, in circumstances where there are no unique or temporary factors that may serve to drive up or down the price being offered. These circumstances are, in part at least, reflected in the different appraisal figures contained in the Colliers report.

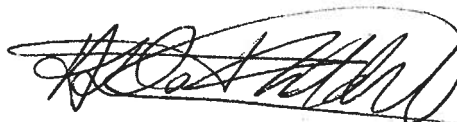
[99] The JONO bid that Council accepted was valued at \$3 million, but also included a series of step-up amounts in the event of a higher competing bid. As the applicants point out, JONO's bid, in fact, contained a range of bids. The text of "Option A" was as follows:

Purchase Price: A starting bid of Three Million Dollars (\$3,000,000.00) CAD to be increased by increments of Seventy-Five Thousand Dollars (\$75,000.00) CAD over the highest bid to a maximum of Four Millions Dollars (\$4,000,000.00) CAD

[100] As such, if the price that could be obtained from a willing seller is the measure of market value, JONO's own bid disclosed a willingness to pay up to \$4 million in the event there were competitive proposals from other bidders. Of course, JONO's preference would presumably be to obtain the property for the lowest amount possible. However, this does not change the fact that JONO indicated a willingness to pay up to \$4 million.

[105] Obviously, if the standard was correctness, the decision failed to meet that standard as well.

[106] The application is allowed.

A handwritten signature in black ink, appearing to read "J. MacAdam", enclosed within a hand-drawn oval.

MacAdam, J.