



Case Law Update
Councillors Behaving Badly, The Sequel

May 4, 2018

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The information presented is for general discussion purposes only and does not constitute legal advice for any specific situation. Please contact any of the presenters if you have need for any specific legal advice.

ABOUT LOOPSTRA NIXON LLP

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OVERVIEW OF PRESENTATION

1. Recent Integrity Commissioner Investigations

- A. City of Sarnia
- B. Township of Scugog
- C. Town of Witchurch-Stouffville

2. Recent Defamation Cases

- A. *Buck v Morris* 2015 ONSC 5632, 2015 CarswellOnt 13973
- B. *Brent v Nishikawa* 2016 ONSC 4297, 2016 CarswellOnt 10561
- C. *Corp. of Township of North Shore v Grant* 2018 ONSC 4297, 2018 CarswellOnt 901
- D. *McLaughlin v Maynard* 2017 ONSC 6820, 2017 CarswellOnt 17889

3. 9 Tips for CAOs



CITY HALL

Sarnia Mayor Mike Bradley must “change his ways for the good of the City of Sarnia,” says integrity commissioner



By [Barbara Simpson](#), Sarnia Observer
Friday, June 24, 2016 3:23:12 EDT PM



CITY HALL

City council approves 90-day suspension of Bradley's pay following integrity commissioner's recommendation



By [Barbara Simpson](#), Sarnia Observer
Tuesday, June 28, 2016 11:03:38 EDT PM





Sarnia's beloved "Mayor Mike" kicked out of city hall for harassing staff



CANADA

Sarnia's beloved "Mayor Mike" kicked out of city hall for harassing staff



Sarnia Mayor Mike Bradley – seen in front of the St. Clair River, which runs between his Southeastern Ontario city and Port Huron, Mich.

GEOFF ROBINS/THE GLOBE AND MAIL

TRENDING

- 1 Toronto restaurant ordered to pay \$10,000 after asking black customers to prepay for their meal
- 2 Two top marijuana stock picks from an Echelon Wealth Partners analyst
- 3 Amazon to expand Vancouver hub, create 3,000 new jobs
- 4 'The ugly contest': What Iran sanctions could mean for the Canadian dollar and oil
- 5 Stormy Daniels sues Trump for defamation over tweet

AdChoices



Integrity commissioner urges reprimand, 30-day pay hold back, for Scugog councillors found to bully Port Perry BIA staff

Ward councillors Don Kett, Jennifer Back failed to meet Scugog's code of conduct, says investigation

NEWS Mar 03, 2017 by Chris Hall Port Perry Star



No sanctions for Scugog councillors found to bully, harass Port Perry BIA staff

Citing legal advice, council votes not to punish Don Kett, Jennifer Back

NEWS Jun 01, 2017 by Chris Hall Port Perry Star



TOWN OF WHITCHURCH-STOUFFVILLE



DEFAMATION

- ***Buck v. Morris* 2015 ONSC 5632**

- Plaintiff sued the Mayor and other members of Council alleging defamation in connection with a statement that was published by Town Council on the Town's Website
- The statement was made in response to blog postings and letters to local newspapers written by the plaintiff and stated that she had violated the Code by doing so and had improperly criticized staff



- ***Buck v. Morris* 2015 ONSC 5632**
 - Defamation requires a plaintiff to show:
 - 1. that the words were defamatory in the sense that they would lower the plaintiff's reputation in the eyes of a reasonable person
 - 2. that the words in fact refer to the plaintiff; and,
 - 3. that the words were published, meaning they were communicated to at least one person other than the plaintiff.
 - Defendants conceded that points 2 and 3 were met but argued that plaintiff had not demonstrated her reputation was lowered
 - Defendants also argued that the statements were substantially true and that this was a defense to a charge of defamation

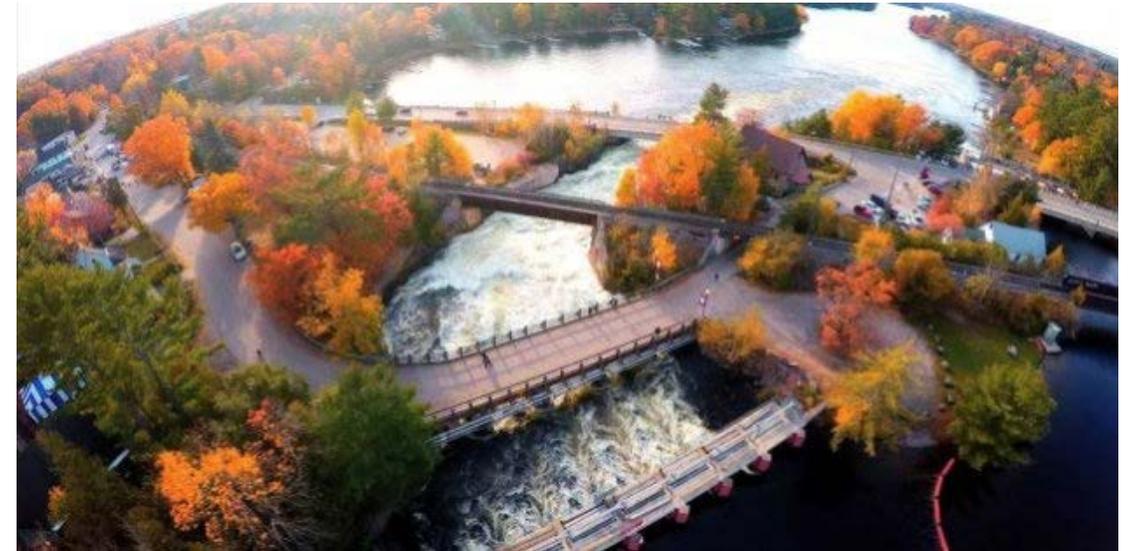
DEFAMATION

- ***Buck v. Morris* 2015 ONSC 5632**
 - The court found that the statement that the plaintiff had violated the Code was both accurate and substantively true which means it could not be defamatory
 - The statement was also crafted based on legal advice received from the Town's solicitor – it was not unreasonable for Council to follow this advice and was an indication it acted in good faith and without malice



DEFAMATION

- ***Brent v Nishikawa* 2016 ONSC 4297**
 - Plaintiff sued a fellow member of Council in connection with an email the defendant sent to a public citizen and others related to the alleged conduct of the plaintiff during a closed meeting of Council



Bala Falls

- ***Brent v Nishikawa* 2016 ONSC 4297**
 - Defendant failed to apologize for and retract the statement
 - Statement clearly defamatory:
 - False and untrue
 - Tended to lower reputation in the community
 - Cast aspersions on his business ethics and trustworthiness
 - Implied dishonesty and financial self-interest



DEFAMATION

- ***Corp. of Township of North Shore v. Grant* 2018 ONSC 503**
 - Confirms that municipal corporations cannot maintain an action for defamation
 - Claim must be brought by individual councillors
- ***McLaughlin v Maynard* 2017 ONSC 6820**
 - Members of the public likely to be held to different standard than members of council with respect to statements they make
 - Defense of fair comment and statements made in public interest



9 TIPS FOR CAOs

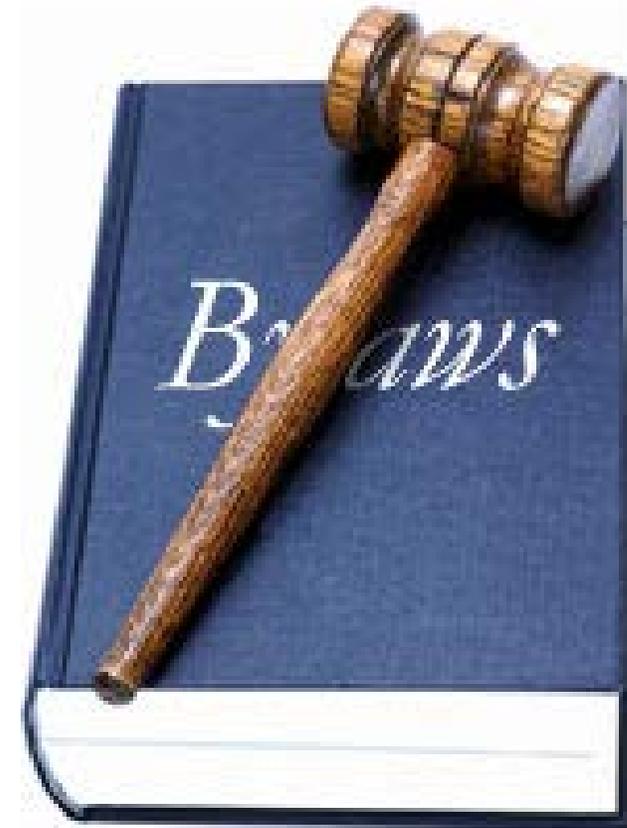
- 1. Ensure Councillors Know their Code of Conduct
- 2. Training Sessions for Incoming Councillors
- 3. The Municipality's Lawyer is not the Councillor's Lawyer
- 4. Review Indemnification or Reimbursement By-laws
- 5. Ensure Workplace Harassment and Violence Policies in Place
- 6. Be Aware and Monitor the Municipality's Conduct
- 7. Councillors Held to a Higher Standard
- 8. Councillors Should remain Free to Express Opinions
- 9. Use Integrity Commissioner as Resource



MUNICIPAL POWERS

- ***Adams Pizzeria (Prescott) Ltd. v Prescott (Town)* 2017 ONSC 3034**

- Court refused to enforce minutes of settlement entered into between plaintiff and Town
- Settlement agreement had been reached between the parties but was never adopted or approved by by-law
- Minutes of Settlement not enforceable against the Town



PRESENTER BIOGRAPHY



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Quinto practices municipal, land use planning and development law. He has over 30 years' experience as an advocate, appearing before the Ontario Municipal Board in hundreds of cases. He has practiced his entire 32 year career as a lawyer at Loopstra Nixon.

Quinto is an accomplished author and lecturer speaking frequently at conferences throughout North America. He is the author of a Thompson Reuters publication entitled "Municipal Lands: Acquisition, Management and Disposition" and is a contributing author and consulting editor for two other texts.

