YOUNG ANDERSON
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CLIENT BULLETIN

QUÉBEC COUNCILLOR DISQUALIFIED FOR MUNICIPAL CONTRACT

In British Columbia local elected officials who consider our "ethical conduct" rules to be unduly onerous might take some comfort from a recent Québec Court of Appeal decision, from which the Supreme Court of Canada has just refused leave to appeal. Keith McKinnon was elected a councillor of the Municipality of St-Augustin on December 12 of 2010. About two years previously, McKinnon's company had entered into a passenger transportation contract with the municipality that involved the use of a hovercraft to cross the St-Augustin River in northeast Québec. Under the municipal elections legislation, a person who, during his term of office as a municipal councillor, knowingly has a direct or indirect interest in a contract with the municipality is (subject to certain exceptions) disqualified from holding elected office in any municipality in the province. This is a much more onerous rule than the contract disclosure and conflict of interest rules that apply to B.C. local elected officials under s. 107 of the *Community Charter*; in this province, a councillor may have a contract with the municipality if it is disclosed and the councillor doesn't vote on it. The Québec Attorney-General's application to have the councillor disqualified was denied in the Superior Court, but allowed in the Court of Appeal.

Since there was no question about the existence of the contract, the case turned on whether the transportation contract came within any of the numerous exceptions set out in the elections legislation: a contract that the councillor acquires by gift or succession and which he renounces as soon as practicable; a minority shareholding in a corporation that has the contract with the municipality; a contract between the municipality and another public body of which the councillor is a member, director or executive officer; councillor remuneration, benefits or expense reimbursement; a permitted employment contract with the municipality; the provision of services to the public by the municipality; a sale or lease of real estate for fair market value; municipal bonds or securities acquired for fair market value; a contract for goods or services that is mandated by statute; a prior contract for the supply of goods by the municipality; and a contract into which *force majeure* requires the municipality to enter in the general public interest. (This extensive list of exceptions perhaps explains why a similar law doesn't exist in our jurisdiction.) The Superior Court held that the latter two exceptions applied to the contract, but the Court of Appeal disagreed. It was not open to the Superior Court Justice to find, as he had, that the "supply of goods" included the supply of services, when another class of exceptions specifically referred to the "supply of goods or services"; services were impliedly excluded from the "prior contract" exception. Further, the "prior contract" class of exception dealt with a supply by the municipality, not to the municipality.

As regards *force majeure*, the Court of Appeal required that *force majeure* in the context of municipal contracts, as in other civil law contexts, be an "unpreventable, irresistible and insurmountable" force. In the Court's view, *force majeure* did not require the municipality to enter into a contract that gave its residents access to a river crossing 10 times a day, on 250 days a year, in contrast to a situation where the municipality, for example, would have to evacuate its residents in an emergency.

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