

CANADIAN ADMINISTRATIVE LAW – SAMPLE QUESTION AND ANSWER

Session: Challenging Administrative Decisions

Topic: Public Interest Standing

Recommended time: 90 Minutes

Score: 100 Marks

Author: **Manuel Akinshola**

Facts

Behn resides in his own residential property in Edmonton City. He brings a challenge by way of judicial review against a recent resolution passed by the City Council which freezes the salary of the Mayor and Councillors for the next two years. This resolution follows recommendations made by the compensation committee which considered the economic uncertainty, soaring unemployment and steep drops in GDP outlooks across Edmonton arising from the Covid-19 pandemic. The committee further recommended that at the end of the two years, the Mayor and Councillors were to receive the accumulated pay increase at 37 per cent interest under an independent formula-based system.

Behn's opposition to the resolution is grounded on the method the City Council adopted in approving the resolution. According to Behn, the recommendation ought to have been adopted by passing a bylaw to that effect, since the process of creating a bylaw is more robust and provides opportunity for public participation, debates, objections and comments before the bylaw is approved. He is of the belief that the issue of remuneration of the Mayor and councillors may affect his private pecuniary interests because as a home owner, he pays property tax which is one of the revenue used by the City Council in paying these remunerations. If the decision had come by process of a bylaw, it would have afforded him the opportunity to make inputs to the recommendation and make his objections known. On the other hand, a resolution does not provide any such opportunity for participation before its approval.

Behn contends that he does have private interest standing to bring the application since he is a taxpayer and an elector in the municipality who will be directly affected by the resolution. But that if the court is of the opinion that he lacks the requisite private interest to challenge the resolution, he should be granted public interest standing to bring the challenge on the same basis.

The City Council however raised objections to Behn's challenge, on the grounds that Behn does not have any private interest standing to bring the challenge. The Council observed that the Resolution was made pursuant to the power delegated to the City Council by the Designation Bylaw that permits the subdelegation of the power to make resolutions to the Council.

According to the Council, Behn has not shown that he has a private right that has been infringed by the resolution, or that the resolution will cause any special damage which extends beyond that suffered by the general populace in Edmonton. The Council argued further that Behn does not also show that he has met the requirements for the grant of a public interest standing and, therefore, his application should be dismissed.

During arguments on the application, Behn conceded that he lacks private interest standing to bring the application, and therefore, relies on his alternative prayer to be granted public interest standing to challenge the resolution.

Questions

- 1) Which court, in your opinion, did Behn approach for judicial review?
- 2) Does Behn meet the requirements for public interest standing?