

# Judge tosses byelection petition for Coquitlam

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a day ago





1 / 3 The Vancouver Law Courts heard a petition on Tuesday between two Coquitlam residents and the City of Coquitlam. | JANIS CLEUGH/THE TRI-CITY NEWS



Coquitlam residents won't go to the polls twice this year to elect city politicians.

Yesterday (June 21), a judge at BC Supreme Court in Vancouver immediately dismissed part of a petition that, had it been successful, would have seen residents cast ballots in September and October.

Madam Justice Shelley Fitzpatrick tossed out an order sought by Coquitlam residents Neal Nicholson — a former city councillor — and Wayne Taylor to compel the municipality to hold a byelection to replace Bonita Zarrillo, who quit her civic duties on Oct. 1, 2021, after winning a federal seat.

In her decision, at the end of the day-long judicial review, Fitzpatrick said a byelection wouldn't be practical given the cost and the timing so close to the municipal general election on Oct. 15, 2022.

But she said she would return a ruling in a month or so as to whether the city erred in its interpretation of Section 54 of the Local Government Act, which governs how municipalities run.

That section of the provincial legislation states that if a municipality has a council opening before Jan. 1 of a general election year, a byelection must be held "as soon as practicable after a vacancy occurs," and a chief election officer must be appointed and notify the Minister of Municipal Affairs.

Instead, on Oct. 4, 2021 — three days after Zarrillo resigned — council-in-committee wrote a letter to then Municipal Affairs minister Josie Osborne asking for the byelection requirement to be waived.

What followed, between then and last month, was a number of letters between the city and the ministry about the interpretation of the legislation and the merits of a possible byelection.

In court, Nicholson and Taylor's lawyer, Sebastien Anderson, alleged the city had a "deliberate litigation strategy" and "did nothing for months" to delay the required byelection. He also noted the city's hired legal team failed to file a response to their petition with the court until last week.

"The city had lots of time to hold a byelection," he said, accusing the city of "subverting democracy."

## **'NIGHTMARE' IN FALL 2021**

Still, the city's hired counsel, Paul Hildebrand, said the municipality had many reasons to request a pass on a byelection — among them, logistics and scheduling problems during the pandemic.

He described the fall of 2021 as being a “nightmare” for senior city staff, who were contending with not only new COVID-19 restrictions because of the outbreak of the Omicron variant, but also a new provincial state of emergency with the extreme weather that flooded much of the Lower Mainland in November, and then blanketed roads with repeated snowfalls in December and January.

Those had an impact on the supply chain and would have affected a byelection, Hildebrand argued.

He also pointed out the high costs to stage a byelection (\$200,000) as well as the bill for the general election (\$450,000), and the usual voter byelection turnout: between 6 and 9 per cent.

As well, Hildebrand read out a letter sent by Mayor Richard Stewart on Oct. 19, 2021, to Osborne stating the difficulties for candidates to raise money twice in one year, should a byelection proceed in 2022.

Hildebrand also pointed out that the council-in-committee decision to ask to forgo a byelection was unanimous and was in the public interest. He also said if the ministry of Municipal Affairs wanted the city to hold a byelection, the minister had the ability under Section 55 of the Local Government Act.

Hildebrand cited an affidavit from then city clerk Jay Gilbert, who noted a byelection would require at least 80 days to mobilize — meaning a byelection would be held in early September if called at the next council meeting, which is July 4. That would give the new councillor three meetings.

However, Anderson contended the city had clear direction in its dealings with the ministry over the past eight months. In a letter dated May 3, 2022, Nathan Cullen, the new Municipal Affairs minister, rejected Stewart's request to use Section 167 of the Local Government Act, as that clause for special circumstances is applicable only for elections that are underway and have to be delayed.

Cullen cited the instance in Lytton, which burned to the ground in a wildfire last summer.

## **OTHER BC BYELECTIONS**

Still, Anderson said, that village was able to conduct a byelection in April, and other B.C. municipalities such as Prince George, Nanaimo, Silverton, Vernon and Wells have held byelections during the pandemic; the federal and provincial governments also have staged recent elections.

Asked by the judge about those votes, Hildebrand acknowledged that the City of Coquitlam “could have overcome” the external circumstances to hold a byelection, but it would have been difficult.

Meanwhile, Fitzpatrick reserved her decision on the petitioners’ claim for an order to quash the city’s decision to not hold a byelection, and on declarations that the city failed to appoint a chief election officer and “failed and refused” to perform its statutory obligation to conduct a byelection.

Neither Taylor nor Nicholson is running for elected office, they told the *Tri-City News* on Tuesday; both also declined to comment on the case until the judge has rendered her rulings.

In a statement on Wednesday morning (June 22), city manager Peter Steblin wrote: “We are encouraged by the initial results of the court proceedings. As the court dismissed the petitioners’ claim, we are pleased to know that Coquitlam taxpayers will not have to bear the additional cost of a byelection and that our staff can focus on the successful delivery of the general municipal election in October.”

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