

COPY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Date: 20121127  
Docket: S124167  
Registry: Vancouver

Between:

**Carl Von Einsiedel**

Petitioner

And

**Dewdney Area Improvement District,  
Peter Schalkx and Douglas McNeill**

Respondents

Before: The Honourable Madam Justice Stromberg-Stein

**Oral Reasons for Judgment**

Counsel for the Petitioner:

B.A. Mason

Counsel for the Respondents:

J. Goulden

Place and Date of Hearing:

Vancouver, B.C.  
November 27, 2012

Place and Date of Judgment:

Vancouver, B.C.  
November 27, 2012

[1] **THE COURT:** By amended petition, the petitioner seeks to set aside the elections on May 28, 2012, of Peter Schalkx, representing Zone 1 Hatzic Prairie and a landowner in that zone, and Douglas McNeill, representing Zone 3 Dewdney, a landowner in that zone, as Trustees of the Dewdney Area Improvement District, which I will try to call the District.

[2] The petitioners seek an order for re-elections to the two zones restricted to entitled voters owning property in the relevant zone.

[3] The factual basis is set out in the petition, particularly paragraphs 1 through 11 of the amended petition.

[4] The District was incorporated by Letters Patent on August 17, 1972. The objects of the District, as set out in the Letters Patent, are the diking and drainage of land, and the construction, acquisition, maintenance, and operation of works for these purposes, and all things incidental thereto.

[5] The Letters Patent stipulated that there should be nine elected Trustees of the District. The Trustees were vested with the duty to call Annual General Meetings of the owners of land in the District. Trustees were elected by qualified voters who were described as Canadian citizens, 19 years or older, and a landowner in the Improvement District.

[6] The District Board resolved to establish three electoral areas within the District, with three Trustees representing each of the three areas, in order to ensure even representation on the District Board. By amended Letters of Patent, Order in Council Number 0867 on December 1, 2006, the District was divided into three zones: Zone 1 Hatzic Prairie; Zone 2 Hatzic Lake; and Zone 3 Dewdney. Land in Zones 1 and 3 is primarily agricultural and in Zone 2 it is described as more residential/recreational.

[7] The amended Letters of Patent provided that there shall be three Trustees from each of the three zones. There were no restrictions in the amended Letters of Patent placed on eligible voters.

[8] Historically the District Board has conducted elections at their Annual General Meetings in accordance with the 1972 Letters Patent. That is, Trustees are elected by eligible voters at the Annual General Meeting at large from each of the three zones. The petitioner maintains that the eligible voters should, in fact, be segregated to voters only in the zone for which a particular Trustee is running for.

[9] The petitioner is a Trustee and has been since 2004. He became concerned following the May 28, 2012, Annual General Meeting and election, that the election of Trustees by voters at large was a serious irregularity. He maintains that voters should be segregated to vote for Trustees in their own zone, otherwise a zone with a significantly higher number of voters could skew the elections and would defeat the purpose of achieving even representation on the Board.

[10] In this case, Hatzic Lake apparently has significantly more voters than the other two zones, and I just would note that the Hatzic Lake Trustee was acclaimed, so the two Trustees that are the subject of this proceeding are not from the Hatzic Lake zone.

[11] The petitioner argues the election of Trustees at large is contrary to the fundamental concept of constituent representation, as determined by voters from each represented zone. Counsel has relied on a number of authorities which, in my view, are not relevant to the circumstances in this petition.

[12] What is overlooked in the petitioner's argument, in addition to the proper interpretation of the legislation, is the fact that the elected Trustees have to be landowners in the zone to which they are elected, thus ensuring equal representation by zone on the Board.

[13] The District is governed by the Letters Patent and amended Letters Patent and the *Local Government Act*. Section 731 of that *Act* permits the district to be divided into zones, as it was in this case, and to specify the number of Trustees to be elected from each zone, and to provide for the election and method of election of Trustees in any zone. This section provides the power to specify the method of

election, that could be at large or segregated, in terms of eligible voters. This has not been done in this case.

[14] Section 737 of the *Act* stipulates who, in fact, is eligible to vote for Trustees in the Improvement District, and there is no restriction in that section to segregate eligible voters to specific zones within a district.

[15] The Letters Patent do not divide eligible voters into three zones, with each group representing a zone and each group being eligible to vote only for the Trustees in their zone. Such voting restriction could have been the subject of the Order in Council amending the Letters Patent; it was not.

[16] I agree with the respondents that the appropriate venue for the District Board to address the petitioner's concerns is at a District Board meeting and not in this Court. The District Board should consider whether it wishes to amend the Letters Patent. If so, a proper request should be made to the Government.

[17] I agree that policy questions, such as those raised by the petitioner, are better left to the Board and the Government. The Letters Patent should be interpreted by this Court as they are clearly and unambiguously written, and that is that the District is divided into three zones with three Trustees elected from each zone. The eligible voters can vote for all nine Trustees. There is no basis for restricting voter eligibility. As I have said, this was not done in the Letters Patent.

[18] In my view, the election was held in accordance with the Letters Patent and the amended Letters Patent and the *Local Government Act*. There is no irregularity and the petition is dismissed with costs.

  
Stromberg-Stein J.