

Adam Wilkins, Christopher Watson and Shayne Galbraith v. The City of Saint John
2026 NBKB 116

SJM-189-2025

**IN THE COURT OF KING’S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF SAINT JOHN**

**ADAM WILKINS, CHRISTOPHER WATSON and
SHAYNE GALBRAITH**

Applicants

-and-

THE CITY OF SAINT JOHN

Respondent

DECISION ON MOTION

BEFORE:	Justice Kathryn A. Gregory
HEARING/TRIAL HELD:	Saint John, New Brunswick
DATES OF HEARING/TRIAL:	May 27, 2026
DATE OF DECISION:	May 29, 2026
SUBJECT MATTER:	Motion for Documentary Disclosure

COUNSEL:

Adam Wilkins, Christopher Watson, Shayne Galbraith, *per se*
Jonathan O’Kane, Counsel for the City of Saint John

GREGORY J:

1. The Applicants on this motion previously filed a *Notice of Application* for judicial review, pursuant to *Rule 69* of the *Rules of Court*, seeking to quash a July 7, 2025 decision (“the Decision”) of the Respondent, the City of Saint John (“City Council”).
2. According to the Applicants, who are self represented in this matter, the impugned Decision to approve the re-zoning of property comprising the proposed Spruce Lake Industrial Park was made by a biased, actual or reasonably apprehended, decision-maker, and is unreasonable for its failure to conform to the “Municipal Plan”.
3. The hearing of the Application in this matter is set for September 1-2, 2026. Several case management appearances have been held with the parties to address the question of what should comprise the *Record on Application* to come before this Court on the Application.
4. In most judicial review applications, the record on application is not a contentious issue and is comprised solely of the record that was before the decision-maker.
5. The Applicants have asserted before me and continue to assert that the *Record on Application* before this Court should be broader than what was before the decision-maker, as they have alleged actual or apprehended bias by City Council impacting the Decision.
6. As it stands currently, the *Record on Application* will include some 7,000 plus pages of materials.
7. The Applicants believe that the July 7, 2025 Decision was predetermined, and not the result of an open, fair and unbiased consideration by City Council. To demonstrate this, they argue that much more needs to be included in the *Record on Application* beyond what was specifically before the decision-maker in relation to the Decision itself.
8. By way of *Right to Information* requests made to City Council, the Applicants point to a statement made in a letter from Mayor Reardon, dated a year before the Decision, that the lands in question “... would serve as an excellent opportunity for the City to expand its industrial land holdings”; to a comment made by one councillor at a public meeting, also a year before the Decision, that “we’ve got to stop lying to the people of Lorneville...”; and to the allegedly biased public remarks made by another councillor on May 12, 2025 that resulted in a code-of-conduct investigation of the councillor.

9. City Council does not dispute that, in law, the record on a judicial review can be expanded or amplified in certain circumstances. They do not strenuously object to the broadening of the *Record on Application* and are more concerned with ensuring there are reasonable parameters and guardrails to the *Record* and a finality to the dispute over it, so that the September dates for the hearing are not impacted.
10. The Applicants have complied with an earlier Procedural Order directing that they file a motion if they seek additional disclosure, in order to expand the *Record* beyond the parameters assessed by City Council to be relevant and responsive to the Application.
11. More specifically, the motion before me seeks disclosure and production of certain documents from City Council, or, alternatively, that the Applicants or City Council produce these requested materials to the Court for the Court to assess their relevance to the Application.
12. Counsel for City Council has helpfully set out the procedural background from the date of the filing of the Application for judicial review to this present motion before me now.
13. I agree with counsel for City Council that the issue of the *Record on Application* and the issue of disclosure has been a bit of a moving target. The Applicants have made three requests (the third being by way of this motion) for additional materials to be included (to be accurate, some materials requested in the motion were the subject of discussion at prior case management conferences, so they are not “new” requests *per se*).
14. To date, City Council has extended courtesies and assistance to the Applicants, as they are unrepresented by counsel, and is to be commended for its efforts in this regard. Indeed, counsel for City Council properly acknowledged at paragraph 1 of its brief “Citizens are entitled to, and should not be discouraged from, challenging the decisions of their elected officials.”
15. However, City Council has also now put the Applicants on notice that it may begin seeking costs on any motions brought for further “piecemeal” disclosure and/or production of documentation that may cause inefficiencies and delay.
16. To date, the Applicants have been industrious, professional and collegial in their dealings with the Court and, it certainly appears so, with counsel for City Council. They too are to be commended in this regard.
17. This being said, the hearing of the judicial review is set for September 1-2, 2026, and we are coming up to the cusp of the summer months when the Court enters its summer

term and many people are off work. Therefore, barring something exceptional, this hearing on disclosure and alternatively production for the purposes of creating the *Record on Application*, should be the last consideration of the question. Otherwise, it is likely to delay the hearing of the review and trigger issues relating to costs (excluding of course the parties rights to appellate review of any interlocutory decisions and orders).

18. My findings and decision on this motion are set squarely within the context of disclosure and its central guiding principle of relevance to the issues in play. Though I reference and direct the parties to case law regarding the issue of bias, an issue the Applicants intend to raise on the merits of the Application for review, I do so on the basis that these principles impact the issue of relevance on the disclosure request.
19. The premise under which the Applicants appear to be operating is that this Court should have before it most, if not all, information on the rezoning that every deciding councillor came across leading up to the Decision. I understand their argument to be that by virtue alone of having seen or heard this information, councillors did allow, or could have allowed, this to bleed into the decision-making process, regardless of the limited record before City Council on which it maintains it made its Decision.
20. In the context of their disclosure requests, the Applicants should take heed of the following explanation. Though lengthy, it is helpful in the particular context here, from the Supreme Court of Canada in *Newfoundland Co. v. Newfoundland*, [1992] 1 S.C.R. 623, at paras. 25-29:

25. Bias was considered in a different setting in *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170, 46 Admin. L.R. 161, 2 M.P.L.R. (2d) 217, [1991] 2 W.W.R. 145, 75 D.L.R. (4th) 385, 116 N.R. 46, 69 Man. R. (2d) 134. **That case concerned a planning decision which was made by elected municipal councillors. The governing legislation for municipalities was designed so that councillors would become involved in planning issues before taking part in their final determination. The decision of the court recognized that city councillors are political actors who have been elected by the voters to represent particular points of view. Considering the spectrum of administrative bodies whose functions vary from being almost purely adjudicative to being political or policy-making in nature, the court held that municipal councils fall in the legislative end. Sopinka J., at p. 1197 [S.C.R.], set forth the "open mind" test for this type of situation:**

The party alleging disqualifying bias must establish that there is a prejudgment of the matter, in fact, to the extent that any representations at variance with the view, which has been

adopted, would be futile. Statements by individual members of Council while they may very well give rise to an appearance of bias will not satisfy the test unless the court concludes that they are the expression of a final opinion on the matter, which cannot be dislodged.

26. This same principle was applied in the companion case, *Save Richmond Farmland Society v. Richmond (Township)*, [1990] 3 S.C.R. 1213, 46 Admin. L.R. 264, 2 M.P.L.R. (2d) 288, [1991] 2 W.W.R. 178, 52 B.C.L.R. (2d) 145, 75 D.L.R. (4th) 425, 116 N.R. 68. **That case concerned a municipal councillor who campaigned for election favouring a residential development. He made public statements that he would not change his mind with regard to his position despite public hearings on the issue. Sopinka J. found that the councillor should not be disqualified for bias because he did not have a completely closed mind. He determined that to have ruled otherwise would have distorted the democratic process by discouraging politicians from expressing their views openly.**

27. It can be seen that there is a great diversity of administrative boards. Those that are primarily adjudicative in their functions will be expected to comply with the standard applicable to courts. That is to say that the conduct of the members of the board should be such that there could be no reasonable apprehension of bias with regard to their decision. **At the other end of the scale are boards with popularly elected members such as those dealing with planning and development whose members are municipal councillors. With those boards, the standard will be much more lenient. In order to disqualify the members a challenging party must establish that there has been a pre-judgment of the matter to such an extent that any representations to the contrary would be futile. Administrative boards that deal with matters of policy will be closely comparable to the boards composed of municipal councillors. For those boards, a strict application of a reasonable apprehension of bias as a test might undermine the very role which has been entrusted to them by the Legislature.**

....

29. Further, a member of a board which performs a policy formation function should not be susceptible to a charge of bias simply because of the expression of strong opinions prior to the hearing. This does not of course mean that there are no limits to the conduct of board members. It is simply a confirmation of the principle that the courts

must take a flexible approach to the problem so that the standard which is applied varies with the role and function of the board which is being considered. In the end, however, commissioners must base their decision on the evidence which is before them. Although they may draw upon their relevant expertise and their background of knowledge and understanding, this must be applied to the evidence which has been adduced before the board. [emphasis added]

21. I also refer the parties to the recent decision of the Nova Scotia Court of Appeal in *Halifax v. Dalhousie University*, 2025 NSCA 33, where the alleged bias turned in part on comments made by various councillors ahead of a Council decision on a heritage property designation, an adjudicative function, not as here a policy or legislative rezoning decision, at para. 80:

In my view, the reviewing judge's bias determination that at least seven of the thirteen councillors voting in favour of registration displayed bias against Dalhousie during the hearing also failed to properly account for the statutory context and decision making milieu in which Council's decision was made. On their face, some comments from Councillors are concerning. However, when placed in their proper context, the impugned comments/conduct are, on balance, more indicative of decision-makers attempting to consider and weigh the competing interests of a property owner vehemently opposed to registration and the public interest of preserving heritage property — not clear markers of bias. [emphasis added]

22. The decision in *Halifax* is helpful here in the context of disclosure because it, like *Newfoundland* (which is cited therein), distinguishes the standards for bias between decisions of an *adjudicative* nature, as in *Halifax*, and decisions of *policy or legislation*. The Court in *Halifax* refers to authoritative text to make this point, as follows at para. 141:

The two standards noted above were explained this way by the authors of *Judicial Review of Administrative Action in Canada*:²⁴

Policy decisions manifest a point of view, whether made in a format that resembles adjudication or legislation, and for this reason courts have recognized that even where the duty of fairness applies, it is inappropriate to apply the judicial standard of bias. Thus, when enacting bylaws, members of municipal councils have been required only to avoid having or appearing to have a "closed mind," even though they were under a statutory duty to provide a prior hearing. (*Old St. Boniface*, supra; *Save Richmond Farmland Society*,

supra...) Moreover, given the high policy content of the decisions to be made, and the fact that the statutorily-designated decision makers were elected, and indeed had campaigned on the issues, the duty of fairness in this context has been held to be satisfied as long as the members remained "capable of persuasion," the minimum standard required to prevent the proceedings from becoming a sham.

In the result, the starting point in each case will be an analysis of the decision making process in order to determine whether any form of participation is to be afforded to affected parties. If it is not, then the relevant standard will depend upon the context. For example, where the process has the essential trappings of adjudication, with a hearing at which the parties are afforded an opportunity to present submissions, a test of bias akin to that applied to judges will presumptively apply. (*Newfoundland Telephone Co*, supra) on the other hand, where the decision making process merely leads to preliminary decisions, or is investigative in nature, or is part of the administration of overall policy, as in the case of the Director of Investigation and Research under the [Competition Act](#), or implements or makes policy, or implements a political decision, then a less stringent standard of impartiality, such as only requiring an absence of a conflict of interest, or a mind that is capable of persuasion, may be more suitable. [emphasis in original]

23. In the matter before me, the alleged fractious and untoward comments made by individual councillors and comments made that suggest a positive view toward one position or another well in advance of the actual decision are not sufficient to require further disclosure and to expand the *Record on Application* beyond its proper limits for the purposes of judicial review. This is particularly so when one of the councillors, accused of a code-of conduct violation, specifically states that "he will continue to listen, and I welcome further submissions before council renders its final decision (referenced in Exhibit 39e of the Applicants' additions to the *Record on Application* – not before the Court on this motion but referenced by Shayne Galbraith in his affidavit and their brief on the motion).
24. As noted, the Applicants are self represented. They are all clearly experienced, capable and no doubt highly regarded in their fields. However, they are not trained in the complicated and specialized field of judicial review of decisions made by legislated administrative bodies.
25. Most importantly, and as should be apparent from the citation above in *Newfoundland*, a judicial review is not an *appeal* of a decision. It is a review, in most cases, of the

reasonableness of a decision of a public, administrative body granted legislative powers to perform certain functions within its administrative jurisdiction.

26. For the benefit of the Applicants, the purpose and limitations of judicial review as a judicial process are explained in *Dunsmuir v New Brunswick*, 2008 SCC 9, at para. 27, wherein the Supreme Court of Canada explains this as follows:

As a matter of constitutional law, judicial review is intimately connected with the preservation of the rule of law. It is essentially that constitutional foundation which explains the purpose of judicial review and guides its function and operation. Judicial review seeks to address an underlying tension between the rule of law and the foundational democratic principle, which finds an expression in the initiatives of Parliament and legislatures to create various administrative bodies and endow them with broad powers. Courts, while exercising their constitutional functions of judicial review, must be sensitive not only to the need to uphold the rule of law, but also to the necessity of avoiding undue interference with the discharge of administrative functions in respect of the matters delegated to administrative bodies by Parliament and legislatures.

27. While our *Rules of Court* are generally premised on the laudable goals of flexibility, efficiency, and substance over form, judicial review *per Rule 69* stands in some contrast with its specificity and requirement for attention to detail.
28. This is noted by Drapeau J.A. for the Court in *Sa Majesté la Reine du chef de la Province du Nouveau-Brunswick, représentée par le ministre de l'Éducation et du Développement de la petite enfance c. Henrie et al*, 2018 NBCA 69, at paras. 32-33, as follows:

...The relevance of these observations is rooted in [Rule 69.09\(2\)](#), which excludes relief that has not been claimed in the original or amended Notice of Application.

[Rule 69.09\(2\)](#) is designed to ensure procedural fairness by restricting the arguments to the grounds relied upon and by prohibiting the granting of any relief that was not claimed in the original or amended Notice of Application. The aim is to clearly define the issues and to preclude attempts at litigation by ambush. Just as importantly, the sub-rule is also meant to underscore the exceptional nature of judicial review under [Rule 69](#).

29. Along with a consideration of the scope and purpose of judicial review generally, courts in New Brunswick must pay heed to the limitations of our *Rule 69* compared to other provincial rules that address the process of judicial review.

30. As an example of the need for such caution, I note that in *Port of Dalhousie Inc. v. Maltais*, 2011 NBCA 84, Richard, J.A. (as he then was), points to one particular distinction, as follows:

It is noteworthy that, in some provinces, statutes or rules provide for relief in an "application for an order *in the nature of mandamus*, prohibition or *certiorari*", words which, according to Brown and Evans, "have been held to enlarge the court's jurisdiction beyond the common law boundaries of the remedy" (1:2255 at p. 1-27, referring to Ontario's *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1, s. 2(1)). **However, Rule 69 in New Brunswick contains no such words.** [emphasis added]

31. Thus, the *Record on Application* here is to be determined by the specific request for relief set out in the Application. As pointed out by counsel for City Council, the Application seeks relief in relation to one decision made on July 7, 2025 to rezone certain property.
32. The expanded request for materials in the motion is comprised of the following six requests. I make note, and as confirmed at the hearing of the motion, the Applicants accept certain assertions of City Council in response and no longer seek the materials that I have crossed out below:
- a. The Saint John Industrial Parks Market Assessment prepared by Deloitte in 2023;
 - ~~b. The Government of New Brunswick Report describing lands in Southern New Brunswick suitable for development;~~
 - ~~c. The Cost/Benefit Analysis Business Case Justification for the Spruce Lake Industrial Park Expansion Project;~~
 - d. All draft and final agendas, minutes, reports, and presentations from closed door meetings of Common Council between May 18, 2022 and July 7, 2025 that relate to the Spruce Lake Industrial Park, the Spruce Lake Industrial Park Expansion Project, and associated Municipal Plan and Zoning By-law amendments, and correspondence related to those meetings, including but not limited to closed door meetings of the Committee of the Whole and the Growth Committee of Council;
 - ~~e. The signed MOUs for a 120-acre Data Centre and a 64-acre green manufacturing facility (described as "Hydrogen?") referenced and presented by Ian MacKinnon at the May 12, 2025 Council meeting, as part of the staff presentations prior to the opening of the public hearing~~

for the proposed Municipal Plan and Zoning By-law amendments for the Spruce Lake Industrial Park Expansion; and

- f. The Final Report from the Code-of-Conduct complaint (2024-002) made against Councillor Brent Harris, dated November 18, 2024.

33. With respect to each remaining request, I find as follows:

- a. *The Saint John Industrial Parks Market Assessment prepared by Deloitte in 2023:*

The Applicants say that because this was considered by the Growth Committee, a “subset of Council”, and thereby was seen or read by members of Council on the Growth Committee, it “effectively was considered by Council” as part of the July 7, 2025 decision-making process.

The Respondent disputes this, arguing that this Report was commissioned by City *staff* to assess the state of industrial parks within the City, and that it was not part of the Record included before City Council making the Decision on July 7, 2025.

I find this document to be inadmissible and irrelevant to the judicial review process as it was not before the decision-maker of the July 7, 2025 Decision. My earlier references to the case law supports this finding. The Applicants’ argument for disclosure and inclusion in the Record, as noted, appears premised on the assertion that anything seen, heard or read by individual councillors in relation to the rezoning proposal in contexts other than that of the actual decision-making process, on its own record, is a marker of relevance to the process and to possible bias. But this is the very caution noted by the Supreme Court regarding judges unnecessarily interfering in the discharge of administrative functions: “Courts, while exercising their constitutional functions of judicial review, must be sensitive not only to the need to uphold the rule of law, but also to the necessity of avoiding undue interference with the discharge of administrative functions in respect of the matters delegated to administrative bodies by Parliament and legislatures.” The Applicants have not convinced me that this document should either be disclosed or included in the *Record on Application*. This request is denied.

- b. *All draft and final agendas, minutes, reports, and presentations from closed door meetings of Common Council between May 18, 2022 and July 7, 2025 that relate to the Spruce Lake Industrial Park, the Spruce*

Lake Industrial Park Expansion Project, and associated Municipal Plan and Zoning By-law amendments, and correspondence related to those meetings, including but not limited to closed door meetings of the Committee of the Whole and the Growth Committee of Council:

The Applicants argue that such information should be produced and form part of the Record based on a Council meeting comment made by a councillor on August 19, 2024, a year prior to the Decision, to the effect that “we’ve got to stop lying to the people of Lorneville.” This, they argue allows for a reasonable inference that meetings, closed door or otherwise, must have included discussions and materials leading up to the Decision that evidence bias, or an apprehension thereof, on the part of one or more councillors involved in the Decision subject to review. The Applicants argue that if solicitor-client privilege is asserted, they take no issue with redactions to the minutes to protect this privilege.

The Respondents argue that this request, limited as it should be by the scope of the *Notice of Application*, can apply to only one closed door meeting on June 17, 2024 in which the Spruce Lake Industrial Expansion was discussed. No other closed-door meetings discussed this specific proposal. However, this one meeting was closed to the public on the basis of permitted grounds as set out in s. 68 of the *Local Governance Act*, namely, that it related to information that could cause financial loss, gain, and/or jeopardize negotiations; related to the proposed or pending acquisition or disposition of land; related to confidential information from the Government of Canada and/ or a provincial government; and, related to legal opinions or advice in a matter of local government business. The Respondent accepts that a blanket denial based on confidentiality does not necessarily translate to a claim of privilege but in the case of this meeting, specifically, they assert solicitor-client privilege over the minutes. They have produced to the Applicants the agenda of the meeting in an effort to provide them what they could. They further note that no decisions can be made in a closed-door meeting.

I find that the Applicants are not disputing the claim of solicitor-client privilege which the Respondent asserts over the minutes of the June 17, 2024 meeting. They are not challenging the privilege and indeed accept that redactions could be made over such materials. I have no evidence before me to suggest that the discussion behind closed doors was other than as the Respondent asserts, that it involved the opinion and advice of counsel. As noted by counsel for City Council, protection of the privilege, as recognized by the Applicants, would require a complete redaction of the minutes, which

would render the minutes of no use to the Applicants in any event. Further, the tenuous leap from a councillor's comment made two months after the closed-door meeting in question, in the face of an assertion by the City that the meeting involved legal advice, is not one I am prepared to make on the evidence before me. I accept the claim of privilege and deny the request of the Applicants. I further repeat my comment above that the Applicants' request for *more* than just the minutes of that one closed door meeting, namely *all* that was seen or heard by councillors in other contexts, before the Decision was rendered by City Council, is based on a problematic premise in the context of judicial review and one that I cannot yield to. What is crucial to my review is what was the record on which the decision-maker relied to render the July 7, 2025 Decision.

- c. *The Final Report from the Code-of-Conduct complaint (2024-002) made against Councillor Brent Harris, dated November 18, 2024:*

As clarified by counsel for City Council, the Report sought by the Applicants was prepared by external counsel hired by Council to investigate and report on whether certain public conduct by a councillor constituted a breach of the City's code of conduct rules.

Allegedly, this councillor made certain public remarks and/or statements at public meetings related to the property re-zoning issue. As I understand it, there are witnesses and possible recordings that would yield direct evidence of the remarks.

City Council takes the position that the Report itself is irrelevant to the review process. The Report is the opinion of counsel on whether the code of conduct was breached and cannot form evidence on which the Court could rely in any event. While City Council does not assert privilege over the Report, as it was disclosed to the complainant, it is a confidential document (possibly for privacy reasons etc.).

They do not strenuously object to the Applicants including it in the *Record on Application*, but they object to a Court order requiring them to *produce* the Report. They argue the Applicants can request the Report from the complainant or better yet, file the direct evidence of the remarks made.

The Applicants argue that this Report should be included in the *Record* as evidence of a "closed mind" on the part of one councillor involved in the decision-making process of City Council. Their issue is that the

Report is labelled “confidential” and they do not want to improperly breach confidentiality by accessing the Report through the complainant. The breaching of confidentiality, however, would fall on the complainant who provides access not the Applicants.

However, the Applicants have now read and heard in Court that counsel for City Council is not asserting any privilege over the document, and as for the confidentiality aspect they assert that if the Applicants are going to file the Report as part of their evidence to be included in the Record, that the City simply be given the opportunity to consider what protections they wish to impose on the information as it will be public once filed.

Despite the laudable leniency of counsel for City Council, I find that this document neither needs to be disclosed nor produced by City Council to the Applicants, or directly to the Court to assess it for relevance, for the purpose of including it in the *Record on Application*. A report on an investigation into a code-of-conduct complaint is not evidence that this Court can rely upon to make any findings of fact related to the public statements made by the councillor. It is the public statements themselves that the Court would have to consider and assess, not the opinion of a third party on the question. The Applicants further seek the Report on the basis that it may contain reference to more evidence of bias than is alleged to arise from the impugned public comments, but this falls squarely within what is referred to as a “fishing expedition”, a prohibited exercise in disclosure. The Report is simply not relevant and this request is denied.

34. As the *Record on Application* is due for filing on or before June 30, 2026 I trust this decision will assist the parties to confirm the final *Record*. I note, on a procedural point, that the Court received an affidavit from the Applicants on May 27, 2026, filed after the motion hearing, proposing to add 43 video excerpts to the *Record on Application*. Assuming City Council is not objecting to their inclusion in the *Record*, I authorize the filing of those video excerpts in an electronic USB version of the *Record on Application* to be filed in addition to the paper copy of the *Record on Application*.

35. I make no order as to costs given the City's position that they are not, at this time, seeking costs against the Respondents.

Kathryn A. Gregory, J.C.K.B.