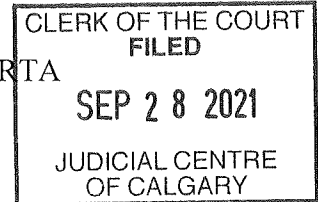


Form 11
Alberta Rules of Court
[Rule 3.31]

Clerk's Stamp

COURT FILE NUMBER	2101-11430
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	TAMMY GODDU
DEFENDANTS	TOWN OF ELK POINT, DEBRA MCQUINN and TERRI HAMPSON
DOCUMENT	<u>STATEMENT OF DEFENCE</u>
PARTY FILING THIS DOCUMENT	TOWN OF ELK POINT, DEBRA MCQUINN and TERRI HAMPSON
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	BROWNLEE LLP 1500, 530 – 8 th Avenue SW Calgary, AB T2P 3S8 Attention: Nabeel S. Peermohamed Solicitors for the Defendants



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File No.: 85969.0087

Statement of Facts relied on:

1. The Defendants, Town of Elk Point (the "Town"), Debra McQuinn ("Councilor McQuinn"), and Terri Hampson ("Councilor Hampson") collectively referred to herein as the "Defendants", deny each and every allegation contained in the Statement of Claim except as expressly admitted herein.
2. The Defendants admit paragraphs 1 to 3 of the Statement of Claim, agree with the proposal in paragraph 34 of the Statement of Claim, and further state that the trial of this matter will take less than 25 days.
3. The Defendants put the Plaintiff to the strict proof thereof regarding paragraphs 4 to 9 of the Statement of Claim.

4. Since the start of the COVID-19 pandemic, the Town council meetings have been recorded on video and published on the Town's YouTube channel for residents to view. This has been done in an effort to replace the ability to view a live Town council meeting. Therefore, these videos on YouTube existed on the Town website.
5. A timeline of the events and the comments at issue in full context from the videos follow.

The February 8, 2021 council meeting

6. The Plaintiff was present during the February 8, 2021 council meeting to deliver her bylaw enforcement officer report. During this meeting, after the Plaintiff delivered her report, there was a discussion about the bylaw enforcement officer's hours, level of service, and when the Plaintiff was available to take calls. Councilor McQuinn had received notice from residents of the Town of an incident that required clarification of the level of service. During the discussion, Councilor McQuinn described this incident to Town Council at this meeting and indicated a discrepancy in the Plaintiff's report based on information she received from residents.
7. During the meeting, as evidenced by the video, the following was said:

Mayor Young: *Do we have Tammy with us, Ken?*

Ken Gwozdz: *Yes.*

Mayor Young: *OK, then we will go to the bylaw enforcement officer's report in your package on page 8 and 9. Welcome Tammy.*

The Plaintiff: *Thank you. Hi everyone. Well that was, it was a busier month for sure than December so I'm just wondering does anyone have any questions?*

Councilor McQuinn: *Can we just get some updated information I guess on contacts for the bylaw for the pets and the times and when all this when everybody can be contacted and how to get all that information because I tried to find who we had in place for the pets and I cannot remember her name for the life of me right now and I don't have the number and I'm looking for it and I can't find all the information Terri forwarded off me some times for contact for yourself and it's your phone number.*

The Plaintiff: *OK.*

Councilor McQuinn: *So, is there a process number in here that I'm missing and I guess some clarification there with do we have any pets that we are sponsoring out, are we using those cages that are or the shack, is it heated, the one that is at public works, I guess I want some more information around that.*

Ken Gwozdz: *So maybe I can jump in here Tammy to Debbie so the shelter, the clinic, the animal kennel is heated, in this cold weather though the animal officer, animal control officer has to monitor that kennel quite often because there's a number of heaters in it. So as far as the operations side, the animal control officer doesn't have a phone for residents to call. The bylaw enforcement officer does so the residents can call the bylaw enforcement officer and then that is dispatched to the animal control officer and then the animal control officer responds. Now, keep in mind the hours of operation are during the daylight hours not in the evening late hours. So if we're concerned about that, if council wants to look at the operation in the evenings and late hours, then we need to talk about that as a level of service that becomes a budgetary item. But that's the process so the phone number is the bylaw enforcement officer's number who gives dispatch to the animal control officer and both positions are part-time and the animal control officer then goes out and will look for that animal. If it's an emergency, at any hour, we then contact the RCMP.*

Mayor Young: *But Ken, I think we need to provide a little more clarification here. Because an emergency for one person may not be an emergency for another so when you're saying that in an emergency, contact the RCMP. The only way that would ever come about was if there was a danger situation, like a dangerous animal. RCMP are not picking up a stray animal. So we need to clarify carefully here what it is that we do and when we do it.*

Ken Gwozdz: *Yes so maybe we should be asking the question on what the concern is, Debbie could help us out a little bit, because the animal control officer works late at night, later than the bylaw enforcement officer, so I don't know where the concern is.*

Councilor McQuinn: *Yes, well OK fine, there's an incident that had happened. I was contacted about an animal that was out in the community and it was raining and it's freezing and the poor thing needed a place to go. I have pets here, I couldn't board it. It was picked up by two teenage girls and the girls knew where the resident was so there's a spot in here that's saying the personnel were directed to go to the bylaw officer – that's wrong – they were not directed to go there. I was personally going to go there if there wasn't going to be any resolution. So that would have been a different story. But I didn't go.*

Mayor Young: *Just time out here. I think we're talking about a specific incident now, and if this is in regards to a particular concern and it is involving our staff we're going to have this discussion in closed session. What we're talking about here is general parameters and I think I'm going to reign the conversation in to that. We can have specific conversations later if council wishes to do so. What we're talking about here right now is what are the hours when bylaw can be contacted. You know we need to be clear about this. Our bylaw enforcement is a part-time contract. It was, it is not a 24/7 thing where you can contact at any time. Same thing with the animal control, it's very part-time. So, I think it would be helpful to the public and that's what we're doing here right now is the part where we're trying to clarify to the public what level of*

service we have. Because the truth of the matter is that unless we're willing to spend a tremendous amount of money on staffing a position 24/7, neither of these positions provide that and we got to be absolutely clear around that. So, Ken, what I would like to know is, and what I think would be helpful to the public is, during what hours, and Tammy, maybe this should come from you, too is, what hours is it OK to contact bylaw enforcement, and which days of the week.

The Plaintiff: OK, so I had actually spoken to Ken about this and what I had said was I'm open to like 8am to 8pm. I'm OK with that. But 10:30 at night? And I actually said that Sunday to Sunday, I'm ok with it. But I think, when it goes into 10:30 at night when I get phone calls and they don't leave a message then I can't be, I mean, what if I didn't get

Councilor McQuinn: The girls told me they did leave a message.

Mayor Young: Just a second here. I want to be clear here. We are not talking about a specific incident. If you wish to discuss that, we're going into closed session.

Councilor McQuinn: OK.

Mayor Young: We're talking in general so I appreciate what you've shared there Tammy, so you're saying from 8 in the morning until 8 at night, and you're willing to accept calls seven days a week, is that right?

The Plaintiff: Yeah. Yep.

Mayor Young: OK, well that's great. That's, that's, considering it's a part-time contract, that's much appreciated. And then, just to be clear, so if there's an animal concern the call still comes to bylaw enforcement and then you would forward that on to the, for animal control.

The Plaintiff: That is correct.

Mayor Young: Perfect. And we've clarified the questions in regards to do we have the shelter available, can it be used, you know, and the answer to that is yes, it's there, yes it's heated. When it's 40 below it would have to be monitored. You know, there's definitely some parameters around that we'd have to consider. Does that answer the immediate questions right now, like in terms of level of service? If that's the question?

Councilor McQuinn: Yes, and can we just make sure that is updated on the website as well as the Facebook page and circulated and shared?

Mayor Young: Yeah, pretty sure we can do that. Any further questions for Tammy, or Tammy, was there anything that you wanted to highlight out of your report?

The Plaintiff: *No, no it was a pretty good month. So I actually on January 31, I had some outstanding snow control that I had to do and it was to be followed up today as it says, and so we do have 95% compliance for the snow patrol. There were 22 and only one of them received a fine which was issued today. So, we're good.*

Mayor Young: *OK, thank you. And council any further questions for Tammy?*

Councilor McQuinn: *Not at this time.*

Mayor Young: *OK, if I could have a motion then to receive the bylaw enforcement report?*

Councilor Hampson: *I make that motion.*

Mayor Young: *OK, Terri's motion. Those in favor? Opposed? That is carried. Alright, moving on.*

8. The Plaintiff then left the February 8 meeting as her contribution to the meeting was complete.
9. In response to the allegations in the Statement of Claim, specifically paragraph 10 of the Statement of Claim, the Defendants state, and the fact is, there were no defamatory comments made during the February 8 meeting. Councilor McQuinn was simply seeking clarification on the level of service and was correcting one of the incidents described in the Plaintiff's report that was delivered at the meeting.

The June 28, 2021 council meeting

10. In the June 28, 2021 meeting, there were questions from councilors about unsightly back alley lawns. Councilor McQuinn brought up complaints she had received about some Town residents having poorly maintained back alley lawns. It was also mentioned during the meeting that some bylaws were not being implemented at the request of Town Council to the Plaintiff. There were further discussions about whether or not those bylaws should be enforced.
11. During the meeting, as evidenced by the video, the following was said:

Mayor Young: *Next, we had Deb I think this was from you something on policies and bylaws, a question.*

Councilor McQuinn: *Yeah so just has to do with our back alleys and the mowing and the clean-up and stuff like that so what is our current act on that? Are we doing anything with that? So I don't think we're actively policing it, correct? But if there is some sort of complaint then you will do something about it? Yes? OK, because I have a resident that told me that they were told we're*

not doing anything about it, so there was nothing done, so there's no follow up with a complaint that was called in so you might want to check into that. And then I wanted to, go ahead, sorry.

Ken Gwozdz: Sorry Deb, if I could just add if a resident calls in and said, like if I called in and said to the bylaw enforcement officer, "my neighbour's grass is really tall, in the back alley at the back of the lot, it's a mess, it's overgrown, the trees are grown, there's weeds really high, they're going into my yard, and there's all kinds of issues there, it's unsightly all that," the bylaw officer doesn't enforce that.

Councilor McQuinn: Mhmm.

Ken Gwozdz: We haven't been enforcing back alleys or back yards with grass.

Councilor McQuinn: OK but aren't we supposed to, wasn't that the idea right? We police it, we're not actively policing it by driving the back alleys and picking on them ourselves, but if someone's back alley, and I would think most people have quite a bit of leniency, you know a little bit of overgrowth while on vacation, things like that, if people know their neighbors, but, if you do have one neighbour that you know you're particularly, maybe living around in that neighbourhood, and that neighbour has let their place literally grow a jungle, and they're not doing anything about it, but they've been home and they've mowed their back yard, their front yard, but they're completely ignoring that part, as a resident, they do have a right to make a phone call or a complaint in about that other resident, and something should be done about that. That should not be ignored because that's now our residents bringing forward an issue and in essence now we're ignoring them. And I have this one resident that is literally being ignored right now.

Ken Gwozdz: Yeah, yeah, so Mr. Chairman, to council, this is a good discussion that we're having, I think Deb's brought up a point here on reacting to a complaint and enforcement on a back yard or a back alley, where grass and weeds are not being cut. I notice the same thing, because I tend to walk the town but not the back alleys, so but so I don't know what's the threshold that council wishes, because what often happens is the person that gets the letter or the call first, they say, "what about my other neighbour?" and then they complain about someone else down the street. And then it goes from there, so I can understand where you're coming from Deb. I just don't know what's the threshold, where does council want to go. Like what's, give us some direction perhaps. That's what we're looking for.

Councilor McQuinn: I guess we have to look at how wild is it? Like if it's like you know a week or two of some growth it's you know one thing, but is a ruler length, is this grass like overgrown and they've been taking care of other stuff within their yard, but just not that, like sometimes it just needs to be brought to people's attention too. Like sometimes they just don't know they have to do the back alley, like it's part of their responsibility. I've got a pretty grassy back alley myself and I have no choice. I have to bump over the sidewalk, down the garage, and go do my back alley, and you know if I leave it, it would look horrendous. So, but some people they don't see it, see no evil, hear no evil, all those won't be lying, but it's not out of sight out of mind, they're not seeing it because they have a big fence and the garage, whatever else, they are not thinking about it or they don't see it. So it's just sometimes it has to be brought to their attention the first time and maybe, just you know, talk to that person before we turn around and slap a fine, but I

don't want to be ignoring people when they do have a valid point. That's not fair to the people who are bringing up an issue. And yeah, we can't let people you know just ignore things on the sidelines either so we have to find a happy medium, but I don't want people to just be ignored, because literally that person feels quite offended, they basically just got told, "well we're not doing anything about it and that's it". Well that's great. That's what I got that's how I'm like oh fabulous. Sorry Terri, you were going to say something.

Mayor Young: *Yeah go ahead.*

Councilor Hampson: *Yeah, no I'm actually struggling for words to put it together because I'm dumbfounded at the principle that a resident is calling in with a complaint and we are doing absolutely nothing with it. So, we've reduced bylaw. We've said that we do not have enough money to do full-time. We said that we were only going to be reactionary, and now we're not even being that, which I think is doing a huge disservice no matter what the issue is, whether it's back alley, front alley, snow, grass, whatever, and we also hear in the first council meeting of each month a bylaw report that clearly states and clearly shows there are town-wide patrols being done on certain things, so we are having town-wide patrols done on certain items, but it floors me to hear that we are not taking phone calls or we're taking the phone calls and saying we can't do anything. That concerns me.*

Mayor Young: *So what I'm hearing then is then, Tim, Dwayne, do you want to weigh in on this? Because Ken is asking the question, what's our threshold, we tend to focus more on the front street aspects of it, less on the back alley, but do we, I mean our, our bylaw on unsightly property is definitely, somewhere it states that residents are responsible for everything from the front boulevard to the back alley. In terms of grass-cutting, weeds, and all that sort of stuff, so. So I'm hearing two people, I've heard two opinions on this, so.*

Tim Smereka: *What I can say Lorne, on my side of things, it's, we have to be respectful of those people that are taking care of their backyard and trying to promote a good neighbourhood so to speak and if they're going through the effort of trying to keep it clean you can only do, all we can do is support them on that. I guess, we are having reduced amount of servicing, that we've had to cut, so I don't want to have to, I guess, make it a routine. If there's a complaint coming in we should act on it. As far as what level, like if everybody's level is going to be different as far as what's acceptable and what's not acceptable, one person thinks that six inches of grass in their back alley is fine, where another person wants it like carpet. So, that's where I think there becomes a grey line and where we want to set that mark, you know whether it has to be done at least once a month to show that there's some effort. If it's been overgrown and weeds and rose bushes are growing up then you know something has not been done but I think that's where, that's the part where I'm unsure of where we want to be at. We want to support those people but then in the same breath, I mean you can't be called to everything. Like I say, one person's idea of part of the grass is different than the other person's. So we have to find that happy medium that we want to stand by.*

Councilor McQuinn: *I like the idea of once a month at least. Then at least it's been done once that summer, and then that person, would see it would agree that, "OK, at least it's not as obscene" because if it's cut like you know, throughout the summer, that's you know, once a month is more reasonable.*

Dwayne Yaremkevich: *If we keep up like this, we won't have to worry about it in a little while.*

Mayor Young: *That's true.*

Dwayne Yaremkevich: *I would suggest we throw in a reminder in the water bill, that that is a responsibility to do and deal with the complaints. You know if there's two complaints, a phone call or something like this and leave it at that.*

Mayor Young: *So Ken I think, I think you've got your direction from council is that if there's a complaint registered it should be followed up upon, and yeah we could put out a gentle reminder to the community that homeowner's are responsible for their property right to the back alley.*

Tim Smereka: *What would be the guideline on that homeowner. Are we happy with once a month? Like minimum once a month.*

Mayor Young: *I don't think we specify the time or anything like that. It basically says that as property owners you're responsible for keeping your property in a tidy condition. And that's variable and up to a lot of people's opinion but it's at least if someone has put in some effort they've done something.*

Tim Smereka: *Because I guess what I am trying to do is minimize the phone calls coming into town office. And then having them to make a call on it. I mean, if it's something that's easily given out to the bylaw officer saying, "OK, is it OK if I just show an effort." Again, where one person's effort is not another person's effort. If I want carpet grass in the back, I'll use myself as an example. I mow at least once a month, more or less, sometimes two to three times a month in my back alley. So my look of back alleys is different than you know a couple houses down that may be different.*

Councilor McQuinn: *And I don't want this for residents to also pick on other residents. That's definitely not what I want to promote out there. I get pissed off on behalf of that other resident and that's not fair for them either. I want a happy community. So I want to find, so that's where I'm coming from. And I have something else, sorry, so we just have to finish this one and then I have something else.*

Councilor Hampson: *I'm having a hard time even thinking we need a motion to have administration direct the bylaw officer to do their job.*

Tim Smereka: *I don't think that's the question though. I guess that's, it's not saying that hasn't been an issue, but I guess what is bylaw, what is the guiding factor, it's just like speed on a road, right. What's the, where's our minimum, where's our maximum, and we can find a middle so if it was me, I'd use myself again as an example. If you told me, "go and monitor the backyards, everything has to be cut", well what's cut?*

Councilor Hampson: *But we have been told over and over and over that they're not doing patrols. We know they are. So they are on their own. I'm specifically saying we should not have a motion that says when a resident calls in a complaint, that we have to do something with it. That to me should be a no brainer. We don't need a motion for that.*

Tim Smereka: *Yes, I agree with that. If there's a complaint that comes in, then we should at least acknowledge it and look into it.*

Mayor Young: *So maybe that's what, simply saying, we don't need a motion here. We simply need to reinforce that. Yes, we do deal with complaints as they come in. Sometimes they don't get, maybe there's no action to be taken, but at least it's followed up on.*

Ken Gwozdz: *Mr. Chairman, if I may, I'm asking council for a threshold. What's your threshold, because often the bylaw officer asks me, do we follow up on complaints in backyards. And I'll use me as an example, I cut my backyard twice a month, but my neighbour doesn't cut it. So, I can phone in and complain about my neighbour, that's never been cut.*

Councilor Hampson: *If you phone in, that should be addressed.*

Ken Gwozdz: *Let me explain Councilor Hampson. What we're getting at is what's the threshold that council wants. We should be reacting to the complaint, yes. But, what's the threshold? Do you want six inches, do you want a foot? You know we talked about once a month, that's a threshold.*

Councilor Hampson: *The threshold would be to answer the call, go and investigate, and deal with the call when it comes in. That's the threshold. Deal with the call. How would she know that that person's six inches is her six inches. If the call comes in, go address the call.*

Mayor Young: *OK just time out here please. So I think where the basis this discussion is going, is that if a complaint arrives at the town office, whether it's the town office or the bylaw, that it should be checked up on. And that's just, we shouldn't need a motion to explain that. It just, it should happen. And then, the bylaw officer, using our guidelines, uses their discretion and says well, "I think there's some validity to this, it looks like it's never been cut." Then a letter gets issued. I guess I think the deepest issue here is that if there is a complaint that comes in, it should at least be checked upon. It might not be that same night, it will be when the bylaw officer has an opportunity, because she only works part-time, but at least it would get followed up on. Is that what I'm hearing? Council?*

Tim Smereka: *I agree with that totally, I just want to make sure that we're not bringing this back up again in another meeting. I want to make sure we're clear to bylaw what our level of expectation is. Because I don't want her to come back, or whoever to come back, or another call come in and say, "well you never met my thing, well I said my neighbour isn't doing their job, you came and checked, you still say you're doing nothing, but now OK", so what is our level? We can explain to both homeowners, "this is the level we require, you want to do yours better, that's fine, you want to leave yours worse, that's fine, but this is the level we want it at." So then at least bylaw can react on it properly and not have to come back to council.*

Mayor Young: *Ken, to Tim's point there, is, and I don't have the bylaw in front of me, but is there something in the bylaw that outlines what the threshold is for keeping it as so it's not an unsightly property?*

Ken Gwozdz: *Yes.*

Mayor Young: *That's what I thought, so it's already there.*

Ken Gwozdz: *It's six inches.*

Mayor Young: *There, there we go. So it's already there. So Tim, it's already there in our bylaw. The issue at hand is the following up on it.*

Ken Gwozdz: *Mr. Chairman, I know that council is not happy with this, with complaints they receive on back alleys, but we have not been enforcing the bylaw in back alleys. OK. And, if council wants us to do that, we certainly will. You know, especially when a call comes in. But we haven't been doing that per se. So, this is why, where we need to have some, and council saying yes we need to, that's what I'm hearing. Yes we do need to enforce back alleys and back yards.*

Councilor Hampson: *We need to enforce any call for any bylaw that we have.*

Ken Gwozdz: *OK, thank you. I have, I would appreciate Mr. Chairman, a motion just saying that we enforce, and I know that council doesn't want to do this, this really clarifies because we keep coming back to this. And sometimes, we say well, "why are we enforcing that? We don't need to enforce that." So.*

Councilor Hampson: *I'll make the motion that administration deals with any phone call that comes in with any bylaw that we have through the Town of Elk Point.*

Ken Gwozdz: *Do you want anything about the water bill that Councilor Dwayne was saying, Terri?*

Councilor Hampson: *Yes, I think we should add that in.*

Mayor Young: *I think that's a good idea, because it's just a reminder to our community that, "yep, you have that responsibility that extends right to the back alley."*

Councilor McQuinn: *So we should be prepared, if we're going to have like hundreds of letters coming in.*

Mayor Young: *You can just about count on it.*

Ken Gwozdz: *Sorry Mr. Chairman, I just want be really clear while we have it on the screen, just want to make sure we are capturing what Councilor Hampson said. Moved by Councilor Hampson that Council directs Administration to address any concerns or complaints that is brought forward to the Town of Elk Point under the bylaws.*

Councilor Hampson: *Yes, and further that Administration includes reminders in the water bills as we have always done in the past when there's an issue that has reared its ugly head more than once. So in this case, right now it's the backyards. In the winter, it's snow removal. In duh duh duh it's this. Like this is what we do. This is our process, so let's keep doing it.*

Tim Smereka: *I'm thinking that's a motion we need on a regular basis. That schedule, we have new homeowners that come to town, and something that's a good reminder every spring, a notification goes out because it is going to be something that will continue to happen.*

Mayor Young: *Yeah. OK, so we have a motion on the floor, let's deal with that one. Any further discussion on it? OK, I'll call the question then, all those in favor? Opposed? That is carried. I believe next up under concerns we had Terri, you wanted to mention something from the outreach school.*

Councilor McQuinn: *I had something else. Sorry.*

Councilor Hampson: *Go ahead, Deb.*

Councilor McQuinn: *Mine was part of the same one. I had two as the one. So another one is I know we deliver notices of fines and things like that to the residents. And for issues and on those notices sometimes they say that they are hand delivered and that's great – hand delivered, but hand delivered I would hope means you are putting it in to the hands of that resident and you've spoken to them when you drop it off. Because I can tell you three cases of residents where that's not the case. The case is literally dropped on the front porch, one where actually the resident was in the house on the couch and was disturbed because the doorway was opened and it was thrown on the floor and then left. And another one where it was just, they were not home at all, and same thing, I think their door was unlocked but it was just tossed inside the house. So, we need to be talking to these residents if you're going to be acting on the bylaw you need to make sure that you are having a discussion with those people and hand delivered is hand delivered and/or then it's mailed. And yes, that's going to hold things up and there's longer timeframes in there, but it is what it is. We are doing some patrols but, and one of the things that was a personal thing that I see coming up a little bit and I'm, sometimes some repeat individuals and it is repeat individuals that is legit, have we, is there any leniencies about things, because they, you know circumstances happen. It was just grad weekend this last weekend. People are out, you know campers are being parked or things like that, and so you show up on someone who recently just got handed one on a Sunday. And, like we do patrols on Sundays? I didn't realize that we did. So, I would think that you would hand out notices on business days, but not on weekends to people. So, I don't know. I'm a little confused by maybe the processes and I can maybe bring this forward at the next meeting and ask some questions pertaining to that.*

Mayor Young: *I'm wondering just for the sake of expediency that maybe this indeed should be brought up at our July 12 meeting, because I think it would be best to discuss.*

Ken Gwozdz: *So Mr. Chairman,*

Mayor Young: *Go ahead.*

Ken Gwozdz: *I was just going to say to Councilor McQuinn that the bylaw officer does serve notices. I'm well aware of the letters that go out. I approve them all. So they do go out on Sundays. It depends on that if it's 48, 96 hours, what's stated in the bylaw. Sometimes it can land on the weekend. So, but we can certainly bring it up on the 12th.*

Councilor McQuinn: *Sure. And can you forward me the bylaw for our, the policy that has the, this is me just asking, the fifth wheel policy with the parking and the all the, I cannot, I'm trying to go in there, I'm trying to find it and I cannot find it in the links, so.*

Ken Gwozdz: *Yeah.*

Councilor McQuinn: *I'd appreciate that.*

Ken Gwozdz: *Yeah. The parking bylaw, sure.*

Mayor Young: *We're going to discuss this on the 12th.*

12. In response to the allegations in the Statement of Claim, specifically paragraph 11 of the Statement of Claim, the Defendants state, and the fact is, there were no defamatory comments made during the June 28 meeting. The Town council, Councilor McQuinn, and Councilor Hampson were trying to establish a threshold for the level of unsightly grass in back alleys that required bylaw enforcement attention. Also, Councilor McQuinn brought forward complaints she had received from Town residents to the attention of the Town council in an investigatory manner for the public's interest.
13. The Defendants state, and the fact is, that before the June 28 meeting, back alleys were not being enforced for grass, and that there was a decision made at the June 28 meeting to start doing so. There was nothing defamatory said at the June 28 meeting.
14. The Plaintiff has admitted she received direction from the Town not to enforce back alleys before the June 28 meeting.
15. After the June 28 meeting, it was decided back alleys should now be addressed. The Defendants state, and the fact is, there is no defamation in the above discussion.
16. The Defendants state, and the fact is, the Plaintiff has unreasonably interpreted the comments Councilor McQuinn made about hand delivering documents. Councilor McQuinn was bringing concerns related to her by Town residents to the attention of Town council in an investigatory manner and in the public interest.

Response to allegations regarding both meetings

17. In response to the allegations in the Statement of Claim, specifically paragraphs 12 to 15 of the Statement of Claim, the Defendants state, and the fact is, there was never a defamatory campaign against the Plaintiff, or at all. All comments made during the meetings outlined above were investigatory in nature and made in the public's interest.
18. In response to the allegations in the Statement of Claim, specifically paragraphs 16 to 20 of the Statement of Claim, the Defendants state, and the fact is, that the Plaintiff has

inferred all the alleged defamatory comments from the above discussions that took place during the meetings, without any actual defamatory comments being made.

19. The Defendants state, and the fact is, that the Plaintiff has taken out of context and focused on portions of the above discussions and has labeled them “defamatory”.
20. The Defendants state, and the fact is, that the Plaintiff has inferred the above investigative and public interest discussions as a personal attack upon her, when no such attack has actually taken place.
21. The Defendants state, and the fact is, that if the Plaintiff has to infer alleged insinuations from the above discussions, that does not qualify as defamation and no defamatory comments have been made.

The apologies made under duress

22. In response to the allegations in the Statement of Claim, specifically paragraphs 21 to 23 of the Statement of Claim, the Defendants state, and the fact is, the apologies were demanded by the Plaintiff from the Defendants under duress from the Plaintiff’s threat of litigation, the Plaintiff had a hand in drafting the apologies to state what she wanted, and the apologies are of no legal consequence in this matter.
23. The Plaintiff is of the view that she was defamed at the February 8 and June 28 meetings. As a result, on July 1, 2021, the Plaintiff issued a cease and desist letter to the Town alleging defamation, a breach of the Town’s code of conduct, and threatening litigation against the Town and its councilors. The Plaintiff demanded an apology within 14 days of this letter, otherwise she would sue the Town and its councilors for “all available damages and remedies”.
24. Under duress from the threat of litigation, the Town and its councilors had no choice but to do what the Plaintiff demanded in an effort to avoid a lawsuit.
25. The Plaintiff, under the threat of litigation, demanded from the Defendants that there be a finding they had breached their code of conduct. In an effort to avoid a lawsuit, and under the duress from the Plaintiff’s threat of litigation, the Defendants made this finding to appease the Plaintiff and avoid a lawsuit. The Plaintiff further demanded that the apologies contain a reference to the finding of a breach of the Town code of conduct and that there be a training session on the code of conduct.
26. The Plaintiff, under the threat of litigation, demanded the Defendants take down the videos of the February 8 and June 28 meetings. The Defendants took down the videos under duress from the Plaintiff’s threat of litigation.

27. On July 16, 2021, the Plaintiff was sent the Defendants' verbal and written apologies, but the Plaintiff was unsatisfied. As a result, and while threatening litigation, the Plaintiff redrafted the verbal and written apologies to a form she preferred. Specifically:
- (a) on July 20, 2021, after informing the Town that she had retained a "legal team", the Plaintiff requested changes to the apologies;
 - (b) the Plaintiff asked for references to events that occurred before the February 8 meeting be included in the apologies; and
 - (c) the Plaintiff also asked that the apologies state there was an intention to cause harm.
28. Soon after, the written apologies were delivered to the Plaintiff. These apologies were delivered by the Defendants under duress and the threat of litigation from the Plaintiff.
29. Soon after, the verbal apologies were delivered and recorded at the next council meeting. These apologies were delivered by the Defendants under duress and the threat of litigation from the Plaintiff.
30. Despite these apologies being made per the Plaintiff's demands, the Plaintiff further demanded, while threatening litigation, that the written apologies be published in the newspaper to reach an additional demographic that did not use electronic social media. Under duress from the Plaintiff's threat of litigation, the Town drafted and issued a notice to the media to conform with the Plaintiff's demands.
31. Soon after, per the Plaintiff's demands, and under duress from the threat of litigation, the Defendants participated in a training session regarding the Town's code of conduct.

The alleged defamatory comments were investigatory and in the public interest

32. The Defendants state, and the fact is, that the alleged defamatory comments were made on matters of public interest and were based on facts contained in complaints from Town residents made to Councilor McQuinn who acted reasonably and responsibly in bringing those complaints to the attention of Town council at the February 8 and June 28 meetings.
33. The Defendants state, and the fact is, that Councilor McQuinn reasonably believed the complaints from the Town residents were serious, of public interest, accurate, truthful, and required urgent attention when she brought them forward at the February 8 and June 28 meetings.
34. The Defendants state, and the fact is, that the Town has an internal procedure not to discuss individual employees during an open session. However, Councilor McQuinn was

not discussing the Plaintiff. Councilor McQuinn was simply bringing to, and discussing with, the Town council the complaints that she had received from Town residents about the enforcement of bylaws. These discussions were investigatory in nature and in the public interest, not defamatory.

35. The Defendants state, and the fact is, that Councilor McQuinn was acting reasonably upon complaints being made by residents about the enforcement of bylaws. Councilor McQuinn was bringing these complaints to the attention of Town Council at the February 8 and June 28 council meetings thus fulfilling her duties as a councilor.
36. The Defendants state, and the fact is, that once Councilor McQuinn had brought the complaints from Town residents forward, there was further discussion amongst Town council and Councilor Hampson participated reasonably and lawfully in that discussion. Other Town councilors confirmed the observations contained in the complaints from Town residents which formed a further part of the investigatory and public interest discussions.
37. The Defendants state, and the fact is, that they all acted reasonably and lawfully to fulfill their duties and mandates to further and promote the public interest.

The Plaintiff has caused and contributed to her alleged losses

38. The Defendants state, and the fact is, that even after the Plaintiff obtained the apologies she wanted from the Defendants, she continued to threaten legal action against the Defendants.
39. The Defendants state, and the fact is, that the Plaintiff made her relationship with the Town unsustainable by issuing multiple cease and desist letters to the Town, councilors, and its residents dated July 1, 2021, September 10, 2021, and September 15, 2021 while threatening lawsuits to seek “all available damages and remedies” from the Town, its councilors, and its residents.
40. The Defendants state, and the fact is, that the Plaintiff had a contract with the Town for gainful employment with a term ending December 2023. Instead, on August 27, 2021, the Plaintiff chose to terminate her own employment with the Town effective September 30, 2021 because of her unreasonable interpretation of the investigatory and public interest discussions in the February 8 and June 28 council meetings. The Plaintiff has also taken medical leave from her other employment because of these investigatory and public interest discussions.

Any matters that defeat the claim of the Plaintiff:

41. The Defendants deny that the Plaintiff has suffered losses or damages as alleged in the Statement of Claim, specifically paragraphs 25 to 33 and 35 of the Statement of Claim, or at all, and put the Plaintiff to the strict proof thereof.
42. The Defendants deny that they were negligent or owed a duty of care, in statue, common law, or otherwise, as alleged in the Statement of Claim, or at all.
43. In the alternative, if the Defendants owed the Plaintiff a duty of care, then the Defendants state and the fact is that they discharged such duty of care, and acted in a reasonable and prudent manner in all of the circumstances.
44. Further and in answer to the whole of the Statement of Claim, the Defendants state that they are statutorily immune from any liability, as alleged, or at all, pursuant to section 529 of the *Municipal Government Act*, RSA 2000 c M-26.
45. Further and in answer to the whole of the Statement of Claim, the Defendants rely on section 10(1) of the *Defamation Act*, RSA 2000 c D-7.
46. Further, and in the alternative, if the Plaintiff suffered losses, damages, or expenses, then the Defendants state that such losses, damages, or expenses are the Plaintiff's own doing.
47. The Defendants state, and the fact is, the Plaintiff had a negative reputation with the Town residents that pre-existed the February 8, 2021 meeting given the complaints about the Plaintiff the Town residents provided the Defendants.
48. Further, and in the alternative, if the Plaintiff suffered losses, damages, or expenses, then the Defendants state that the Plaintiff failed to mitigate such losses, damages, or expenses.
49. The Defendants plead and rely upon the *Contributory Negligence Act*, RSA 2000 c C-27, the *Tortfeasors' Act*, RSA 2000 c T-5, the *Defamation Act*, RSA 2000 c D-7, the *Municipal Government Act*, RSA 2000 c M-26, and any regulations thereto.

Remedy sought:

50. A declaration that the comments outlined above are not defamatory, or in the alternative, that the Defendants are immune from liability pursuant to the defences of:
 - (a) justification and truth;
 - (b) fair comment;

- (c) absolute and qualified privilege;
 - (d) innocent dissemination; and
 - (e) responsible communication on matters of public interest;
51. Dismissal of the Plaintiff's claim;
 52. Costs of this action in favour of the Defendants; and
 53. Such further and other relief as this Honourable Court may allow.