

Fire department recommendations to stay under wraps, Phinney off the hook for court costs

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Tantramar councillor Bruce Phinney outside of the Moncton courtroom where a judge heard his application for the release of the Montana report on the Sackville Fire Department. Photo: Erica Butler

Tantramar councillor Bruce Phinney had his day in court Thursday, as he brought his request for the public release of 20 recommendations about the Sackville Fire Department to a judge in New Brunswick's Court of King's Bench.

But Judge Jean-Paul Ouellette didn't see fit to order the release of the recommendations, saying that he felt that New Brunswick's Right to Information and Protection of Privacy Act (RTIPPA) was very clear in requiring town clerk Donna Beal not to disclose the information because it would reveal "the substance of records made by an investigator... in relation to a harassment investigation or a personnel investigation."

The report in question was a workplace assessment of the Sackville Fire Department conducted by Montana consultants in the summer of 2021, after a series of allegations by volunteer firefighters of harassment and bullying were reported by local journalist Bruce Wark.

Phinney's brief on the matter argued that the report was in fact not a personnel investigation, but an assessment of the management of the department.

Although he has yet to publish his decision on the matter, Judge Ouellette indicated on Thursday that he planned to uphold the town's position, that the full Montana report as well as all of its 20 recommendations were fully protected under New Brunswick's RTIPPA law.

The judge did not agree, however, with the town's request that Councillor Phinney be on the hook for the town's legal fees.

Tessa Belliveau, a lawyer with Stewart McKelvey, prepared the town's brief and represented Tantramar in court on Thursday, with Clerk Donna Beal and Assistant Clerk Becky Goodwin sitting in the gallery. Phinney did not have a lawyer present, choosing to represent himself.

Ouellette said he did not believe Phinney's case was frivolous or that he had any malicious intent, and so he would not ask the councillor to pay the town's legal costs. But he told Phinney that if he wanted the report or its recommendations made public, he would have to first change the law.

Outside the courtroom after the hearing, Phinney said he wasn't happy with the result, but accepted the judge's position. "I understand exactly where he was coming from," said Phinney. "I just find that the Act is too defined... It needs to be changed in order to have some leeway and some leniency to it."

Phinney formally requested a copy of the 2021 report from Tantramar Clerk Donna Beal in August 2023. After Beal denied his request, the councillor decided to pursue the issue in court. Then, after finding out the legal costs involved, Phinney changed his request from the full report to just the 20 recommendations that came out of it.

The town still refused to release the 20 recommendations, but did hold an in camera meeting on March 12 to give councillors an update of the progress of implementing Montana's advice. Phinney says the information shared at that meeting was vague, and "not spelled out clearly." When the original report came out, Montana Consulting also presented to council outlining their recommendations, but Phinney says councillors have never been given a copy of the actual recommendations, and they've never been released publicly.

The longtime councillor says he believes open and honest public information could actually help resolve the issues in the Sackville Fire Department that he says persist, even over two and a half years after the Montana Report was delivered to former Sackville CAO Jamie Burke.

"I really, truly believe that if these [20 recommendations] were made available, or at least exactly what's happening, maybe it would wake these people up... You can deal with the issues, and make a much more harmonious community in which to live," said Phinney. "Right now, nobody trusts anybody. And it's a shame."

'That's what redaction is for'

"New Brunswick has the worst Right to Information Act in the entire country," said local journalist Bruce Wark, who was at the hearing on Thursday to show support for Phinney's cause. Wark originally broke the story about the bullying allegations in the fire department, and also has made his own efforts to secure the release of the Montana report. Though he took his case to the New Brunswick ombud, Marie France Pelletier, who also upheld the town's position.

"When you interpret it very narrowly, there are certain types of information that are just not available to the public," says Wark.

"The town defined this as a personnel investigation," said Wark, which means the report clearly falls under the act. But Wark disagrees with that categorization. "It's too narrow to say personnel. This is an investigation into the management of an entire department," says Wark, one that is, "key to public safety."

"I'm suspicious about what the town is hiding here," says Wark. "And I'm disappointed that the law allows them to hide it."

Librarian Laura Landon has a special interest in freedom of information issues, and was also at the hearing. She agrees that the decision is a "very narrow interpretation of the RTIPPA." Landon says that although she hasn't seen the report personally, she believes there's a way to satisfy the public's right to know and maintain privacy protections. "That's what redaction is for," says Landon, referring to the process of blacking out identifying information from documents, so that they may be released without compromising privacy.

Eddie Cole is a 28-year member of the Sackville Fire Department who has been off active duty for the past four years as a result of an internal conflict. He was at the hearing to support Phinney, and says he'd like to see a redacted version of the report.

Former Sackville and current Point de Bute firefighter Kevin Scott was also in the gallery to support Phinney. He said he found the judge's indication of his decision disappointing but not unexpected. "This is the way the town has been sort of protecting the individuals at the centre of the Montana report," said Scott.

Judge Jean-Paul Ouellette told the court on Thursday that his decision would be published in about two weeks, but indicated that he did not feel he could order the release of the report. He also assured Phinney that he would not be penalizing him by assigning him the town's legal costs, and said the application had "caught his interest".

Phinney said afterwards that he didn't hold any ill will towards town staff or his fellow councillors. "I did what I felt I had to do," said Phinney. "My intentions were to hopefully be able to get the report made public, and so people would see exactly what's going on, for the betterment of the community as a whole."

"We hear the terms openness and transparency all the time," said Phinney. "I just find that there's very little of that."

Tantramar CAO Jennifer Borne told CHMA by email that no town staff would be commenting on the hearing or its result.

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