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Canadian Legal News

February 4, 2019

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Summaries provided by: Monica Ciriello, Niagara Region

Appellant Judge Upholds a 'Ruff' Decision in Animal Control Case

Santics v Vancouver (City) Animal Control Officer, 2019 BCSC 24 (CanLII) http://canlii.ca/t/hwx9h

The Appellant, a dog owner, was charged under the City of Vancouver (City) Animal Control By-law which prohibits a person who keeps a dog from permitting it to attack or injure a person. Unprovoked, the dog attacked and substantially injured a victim. In addition to charging the Appellant, the animal control officer applied for an order from the trial judge that the dog be euthanized. The trial judge determined that the dog was dangerous because of its current and past aggressive behaviour granting the order to euthanize. The decision was appealed.

HELD: Appeal is dismissed

DISCUSSION: The Appellant did not contest that the dog is dangerous nor that the victim was seriously injured. The Appellant appealed the decision of the trial judge within the meaning of section 324.1 of the *Vancouver Charter,* SBC 1953, c. 55 to approve an order that the dog be euthanized. The Appellant sought that the dog be released on strict conditions or released to another suitable owner to protect the public.

The trial judge having reviewed the evidence concluded that the dog was dangerous and had to address the application by the animal control officer. The trial judge relied on the guidelines provided in *R v. Barber*, 2015 SKPC 178 to determine if the public can be protected from the dog by strict conditions or by destruction. Relying on these factors in light of the evidence, the trial judge concluded that the dog had a

history of aggression and would likely attack again. The trial judge was unsatisfied that conditions imposed would reduce the risk to the public. The Appellant argued that the trial judge did not apply the correct test for euthanasia orders and failed to take into consideration her property interest in the dog. The test is outlined in *City of Campbell River v. Awad,* 2016 BCPC 431 and requires a court to balance the public interest in being reasonably safe and secure from a dangerous dog and the owner's property interest in the dog. The Court held that there was no error in lawand the trial judge did balance the public interest and the Appellants property interest when applying the guidelines. The appeal was dismissed the dog was humanely euthanized.

Applicant Unsuccessfully Sought a Stay of Enforcement for Highway Signage

360Ads Inc v Okotoks (Town), 2018 ABCA 319 (CanLII)
http://canlii.ca/t/hv9nz

360Ads Inc. (Applicant), a local advertising business in the Town of Okotoks (Town), parked multiple trailers with signage along the highway on Town property it did not own. In response, the Town issued an order requiring the Applicant to remove the signage. The Applicant unsuccessfully challenged the order by appealing to the Subdivision and Development Appeal Board (SDAB). The Applicant filed an application for permission to appeal and in the interim sought a stay of enforcement of the SDAB decision.

HELD: Application is dismissed.

DISCUSSION: The Court relied on the Supreme Court of Canada decision *RJR MacDonald Inc. v. Canada (Attorney General)* [1995] 3 SCR 199, which sets out a three-pronged test to grant stays pending proceedings: first, is it a serious issue to be decided, second, will the applicant suffer irreparable harm if the stay is not granted, and third, is there a balance of convenience favouring the granting of the stay. To be granted a stay, the Applicant must meet three requirements.

In reviewing the first prong, the Court viewed that the permission to appeal the SDAB decision of the order was likely to be denied. Section 688(1) and (3) of the *Municipal Government Act,* RSA 2000, c. M-26 (*Act*) states that permission to appeal a SDAB decision can only be granted on a question or law or jurisdiction and the movant has to have a reasonable chance of success. Applying these standards, the Court was unable to conclude if there was a serious issue to be tried on appeal. Second, the Applicant unsuccessfully argued that the order, if imposed, would cause him to suffer financial harm because of a loss of revenue. In contemplating the evidence, the Court concluded that the Applicant would suffer minimal financial loss if the stay was not granted. Third, the Court held that the balance of convenience and public considerations didi not favour the Applicant's position. The *Act* requires every municipality to have a land use bylaw to prohibit or regulate the use and development of land; the Court held that the actions of the Town in issuing the order served to promote the public interest and outweighed the minimal harm that the Applicant would suffer. Unable to satisfy the prongs, his application was dismissed.

Importance of Appealing to the Correct Forum and under the Correct Timelines

Brook v Town of Montague, 2018 PECA 15 (CanLII), http://canlii.ca/t/hsrlm

A resident (Appellant) of the Town of Montague (Town) brought a small claims claim in 2015 against the Town claiming that two development permits issued in 2001 and 2002 were issued contrary to the Town's bylaws. The Appellant failed to file an appeal at the time of the issuance to the Island Regulatory and Appeals Commission (IRAC). The Town responded that the claim not only failed to raise a cause of action, but the time for commencing an action was barred by statute. The claim was dismissed but overturned because the reason for striking the claim was not only an unreasonable cause of action, but the decision did not state the reasons which led to the determination. The claim was dismissed by the trial judge and the Appellant appealed.

HELD: Appeal is dismissed.

DISCUSSION: The Appellant had a long and complex history with a neighbour that was issued a development permit. Often construction on the property interfered with the Appellant's use and enjoyment of her property. The evidence provided to the Court indicated that each time the Appellant suffered damage to her property, the neighbour paid for the damage. In reviewing the trial judge's findings, the Court held that it was correct to dismiss the claim on the basis that it was statute barred. The trial judge had correctly relied on the *Planning Act,* R.S.P.E.O. 1988, Cap. P-8 which outlined that the IRAC was the proper forum for this claim and the limitation period to appeal the issuance of the permits was 21 days. Although the rule of discoverability allows for a limitation period to be postponed, the jurisdiction to postpone is with the IRAC not with this Court (*McNally v. Health PEI,* 2018 PECA 14). This claim was statute barred and as a result the appeal was dismissed.

Interpreting Procedural Fairness when Dismissing a Municipal Councillor

Power v. Newfoundland and Labrador (Municipal Affairs and Environment), 2018 NLSC 258 (CanLII) http://canlii.ca/t/hwnwv

The Minister of Municipal Affairs and Environment (Minister) received a complaint from residents of the Town of Cupids (Town) of an alleged wrongdoing by municipal council. The Minister ordered an investigation into the complaint and a report be generated. The investigation included interviews with town staff and council members. Councillor Power (Applicant) failed to attend the scheduled interview. The report concluded that the Applicant "acted in an improper and improvident manner when he directed maintenance personnel to remove and destroy a sewer line." When the report was complete, the Applicant was sent a copy and was provided another opportunity to comment. The Applicant responded by challenging the fairness and legality of the process. In reviewing the report and the Applicant's comments, the Minister recommended that the Applicant be dismissed from his duties as Councillor. Cabinet provided approval of the Minister's recommendation through section 6 of the *Municipal Affairs Act,* SNL 1995, c M-20.1. The Applicant filed an application seeking a declaration that the Minister's decision was void on the grounds of procedural fairness, illegality and unreasonableness.

HELD: Application is dismissed.

DISCUSSION: The Applicant argued that he was not provided procedural fairness as he did not have the opportunity to an oral hearing in front of the Minister. The Court disagreed, reinforcing that the objective of procedural fairness is to ensure that a person whose interests are impacted have an opportunity to provide evidence and have it fairly considered. As held in *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817 the level or approach to procedural fairness can vary and an oral hearing is not a general requirement to achieve procedural fairness. Furthermore, the Minister is provided with considerable deference to control the procedural process. The Court deferred to the Minister's choice of procedure and held that the Minister considered the request for an oral hearing and rejected it which was within its discretion (*VIA Rail Canada Inc. v. Canadian Transportation Agency,* 2007 SCC). The Court found that Applicant was provided with an opportunity to provide evidence and have it fairly considered and as a result was afforded procedural fairness. The Court swiftly dismissed the Applicant's argument of illegality, finding that the Minister did have the authority to dismiss the Applicant as a municipal councillor. The Applicant argued that the investigator's report was flawed and therefore the decision was unreasonable. The Court held that so long as the Minister's decision fell within a range of possible acceptable outcomes it was reasonable. The application was dismissed.

Supreme Court of Canada Holds Victim Surcharges are Unconstitutional; Court Remits the Equivalent Amount from Fine

New Glasgow (Town) v. Jardine, 2018 NSPC 53 (CanLII), http://canlii.ca/t/hwprm

The Defendant failed to obey a stop sign and was charged in the Town of New Glasgow (Town) contrary to subsection 83(2) the *Motor Vehicle Act,* RSNS 1989, c. 293. The Defendant having made an agreement with the Town prosecutor did not appear for the scheduled trial and the charge proceed by way of an automatic conviction. The prosecutor sought the out-of-court settlement amount of $180 as prescribed in the regulations. The out-of-court amount is made up of a fine, a prescribed cost and a victim-surcharge amount. In light of the recent Supreme Court of Canada (SCC) decision, *R v. Boudreault,* 2018 SCC 57 the Court raised a *Charter* concern with the inclusion of the prescribed victim surcharge.

HELD: Remit the amount equivalent to the victim surcharge from the fine.

DISCUSSION: The SCC eliminated the mandatory victim surcharges from criminal sentences, finding:

> that the victim-surcharge provision in section 737 of the *Criminal Code*, RSC 1985, c. C-46 are of no force or effect, having been found in violation of the no-cruel-and-unusual-punishment protection in s.12 of the *Canadian Charter of Rights and Freedoms,* and not saved by the reasonable-limits exemption in s. 1 of the
> *Charter.*

The Court raised this *Charter* issue in accordance with *R v. Tavers,* 2001 NSCA 71. Acting within its jurisdiction to rule on the section 12 *Charter* compliance, the Court through the *Remission of Penalties Act*, RSNS 1989, c. 397 held to remit from the out-of-court settlement amount of $180 an amount equal to the victim-surcharge.



IMLA in Canada 2019

WHAT

This year's IMLA in Canada Meeting will once again provide an outstanding and cutting edge program that will explore a full range of topics. The success of all IMLA events is dependent upon the dedication and participation of all members and we look forward to seeing you in New Westminster!

WHEN

April 25- April 26, 2019

WHERE

Inn at the Quay, 900 Quayside Drive, New Westminster BC, V3M 6G1
Telephone: 604-520-1776

Room Rates:
Quay Queen: $140.00
Quay King: $150.00

Individual reservations can be made by phoning Reservations at 604-520-1776 or 1-800-663-2001.

Registration Form: CLICK HERE
Agenda: Coming Soon!

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