The Evolution of the Municipal Licensing Regime in Ontario

by John Mascarin



The licensing of businesses by municipalities in Canada, stemming from s. 92(9) of *The Constitution Act, 1867*,[1] has long been recognized by the courts as a vehicle for municipalities to both raise revenue and to provide a basic form of "consumer protection." Prior to the significant amendments made by the *Savings and Restructuring Act, 1996*[2] (SARA), provisions respecting licensing in Ontario were scattered throughout the former *Municipal Act*[3] and various other pieces of legislation.[4] Generally, the municipal ability to license was expressed in a very specific manner, and any license fee that was permitted was, typically, explicitly prescribed (and usually set at a very low rate).

The SARA ushered in a more modernized and consolidated licensing authority and scheme for municipalities.[5] That licensing regime has undergone a number of additional modifications in relatively short succession. The purpose of this article is to canvas, briefly, these major amendments, and to review the current authority to license contained in Part IV of the *Municipal Act, 2001*[6] (as recently amended by the *Municipal Statute Law Amendment Act, 2006*,[7] or MSLAA) and the *City of Toronto Act, 2006*,[8] as well as through the broad authority granted in both statutes.

The Municipal Act

Licensing matters were regulated under the former *Municipal Act* in the standard archaic and prescriptive manner common to the "laundry list" approach to municipal legislation.[9] General licensing provisions were set out in s. 109 of the Act and included the authority "to license, regulate or govern places or things"; to "fix the fee to be paid for the license"; the discretion to grant or refuse a license; the right to prohibit or regulate; the right to suspend a license; the discretion to grant or refuse a license; and the right of a person to appeal the revocation or refusal of a license. The specific authority to license a particular business or undertaking was dispersed throughout disparate parts of the statute — for example, mobile sign vendors and public garages (s. 210); body rub parlours (s. 224); adult entertainment establishments (s. 225); livery stables (s. 228); the sale of newspapers and magazines in streets (s. 232); salvage shops (s. 233); food shops (s. 234), and others.

The Savings and Restructuring Act, 1996

The licensing provisions enacted by the SARA (originally contained in Part XVI of the old *Municipal Act*) gave municipalities the authority to license, subject to certain specific exceptions, any type of business or economic activity carried out in full or in part within the municipality. This authority excluded manufacturing, the sale of goods by wholesale, or resource exploitation, extraction, harvesting, processing, renewal, or the transportation of natural resources. Part XVII.1 – General Licensing Powers (with new ss. 257.1 to 257.7) was added to the *Municipal Act*.

The general power to license was specifically subject to the former *Theatres Act*[10] and the *Retail Business Holidays Act*,[11] pursuant to s. 257.2(1). The licensing authority was set out in s. 257.2(2) to include, but not be limited to, the power to:

(i) prohibit a business without a license;
(ii) to grant or refuse to grant a license;
(iii) fix a time for which a license was in force;
(iv) revoke or suspend a license;
(v) define classes of business, and to separately license, regulate and govern each class;
(vi) impose conditions, including, but not limited to, the payment of license fees, setting business hours, and requiring inspections;
(vii) impose special conditions on certain businesses within a class;
(viii) impose conditions and special conditions as a requirement to continue to hold a license at any time during the term of a license;
(ix) license, regulate and govern the places or premises used to carry on a business;
(x) regulate or govern the equipment and personal property of businesses;
(xi) exempt any business or person from all or part of a licensing by-law.

Municipal councils were prohibited from refusing to grant a license only because of the location of a business, if the business was being carried on at the time of the enactment of the licensing by-law (s. 257.2(4)). As an additional control over the municipal licensing authority, a sunset provision was implemented, with a licensing by-law having a maximum life of five years from the date it originally came into force (s. 257.2(5)).[12]

Decisions relating to issuance, revocation and conditions were to be at the discretion of municipal council, based only upon the grounds set out in the licensing by-law (s. 273.5). There was a regulation-making authority in the Minister of Municipal Affairs and Housing to exempt any particular business from all or part of a business licensing by-law. Regulations could also impose conditions upon municipalities, and they could be retroactive and specific to a certain municipality (s. 257.5).

With respect to the municipal ability to charge license fees, s. 257.2(5) provided that "[i]n setting the amount of fees to be charged for a license, the council shall take into account the cost of administering and enforcing by-laws within the municipality licensing businesses." This language was curious, as it clearly sought to impose a limitation, but did not, in fact, restrict the amount of a licensing fee to only the direct costs of administering and enforcing the licensing of businesses.

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Enforcement provisions were powerful, with a maximum fine of $25,000 for an individual (including a director or officer of a corporation) and $50,000 for a corporation (pursuant to the general offence provisions in s. 329). In addition, a court could order the closure of a premise if an operator was without a license and, in some circumstances, where the provisions of a licensing by-law had been breached (s. 330). The courts generally interpreted the new licensing provisions in favour of municipalities, including the provisions relating to license fees, the types of businesses subject to licensing, the location of businesses, and what could be regulated through conditions.

The Municipal Act, 2001

The licensing powers that were originally largely found in Part IV of the *Municipal Act, 2001* when it came into force on January 1, 2003 did not replicate Part XVII.1, as implemented by the SARA. In fact, the original version of Part IV actually represented a retrenchment of the licensing powers that had been granted to municipalities under the SARA.[13]

The general authority to license businesses by by-law remained, although the definition of "business" had been reworded (s. 150(6)). The conditions which could be attached to a license were much the same as in the former legislation (s. 150(8)) and, as with the old legislation, the granting, refusing, or revoking of licenses, or the attaching of conditions to licenses, was to be exercised by a municipal council, in accordance with the criteria set out in the by-law or on the basis that the business would not be operated lawfully or honestly (s. 150(11)). A municipality could not refuse to grant a license for the sole reason of the location of the business (with the exception of adult entertainment establishments) (s. 150(12)). The sunset clause, providing that licensing by-laws expired in five years, was continued (s. 150(13)).

The former s. 150 assigned licensing powers to a local municipality, which was a lower-tier municipality in a two-tier

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structure or a single-tier municipality. There were specific exceptions for licensing powers assigned to certain specified upper-tier municipalities. This licensing restriction is no longer the case, as municipalities in both tiers can enact licensing by-laws.

However, there were a number of substantial changes made to the municipal licensing authority in the original version of Part IV. Subsections 150(2) and (3) imposed significant limitations on the authority to license that were not contained in former s. 257.2 of the *Municipal Act*. These new subsections required that any licensing power set out in Part IV be exercised only for one or more of the following purposes: (i) health and safety; (ii) nuisance control; and (iii) consumer protection.[14] In addition, a licensing by-law was to expressly refer to the criteria, state why the class of business was being licensed, and how the reason to license fit within the criterion (s. 150(3)).[15]

Both subsections 150(2) and (3) were very generously construed in favour of the municipality by the Ontario Court of Appeal in *Toronto Taxi Alliance Inc. v. Toronto (City)*.[16] The requirements of s. 150(2) were also broadly and generously interpreted in *Cash Converters Canada Inc. v. Oshawa (City)*.[17] The judgment of the Ontario Superior Court of Justice in *Pimenova v. Brampton (City)*[18] did, however, hold that the specific restrictions set out in s. 150(2) of the *Municipal Act, 2001* were necessary conditions precedent to the enactment of a licensing by-law, and that a failure to strictly comply would render the by-law invalid. In *Pimenova*, the court was dealing with a by-law that limited the number of licenses issued for body-rub parlours, restricted their operating hours, imposed clothing requirements, prohibited certain types of physical contact, and restricted the transfer of licenses for these businesses. Interpreting s. 150(2), the court concluded that, in order for a by-law to be within a municipality's jurisdiction, it had to impose conditions for the purposes of health and safety, nuisance control, and consumer protection.[19] The court further acknowledged that, while a municipality had the power to license, regulate, and govern, it should not move into the sphere of criminal law.[20] Therefore, a licensing by-law was required to demonstrate, on its face, that its purpose and effect were directly aimed at enhancing health and safety or consumer protection by establishing a rational link with the practical effects of the by-law.

Another new requirement set out in former s. 150(4) required, for most types of licensing by-laws, that there be a public meeting, upon proper notice, prior to the enactment of the by-law, where the public could make representations.[21] However, the requirement for notice could be temporarily waived if the by-law was enacted in an emergency situation pursuant to s. 150(5).

The limitation on the imposition of licensing fees became express as s. 150(9) required that the fees charged for licensing a "class of business" did not exceed the cost directly related to the administration and enforcement of the by-law or portion of the by-law licensing that class of business. Subsection 150(10) defined the phrase "directly related to administration and enforcement" as including the costs related to the preparation of the by-law, inspections pursuant to the by-law, the enforcement of the by-law against a person operating a business without a license, prosecution and court proceedings, and any reciprocal licensing arrangement.

Finally, although it was technically a part of the old *Municipal Act*, a new permissive consultation provision had been added to the statute by s. 478(11) of the *Municipal Act, 2001* (and by virtue of s. 485(2)). This took effect on December 12, 2001. Former s. 257.2.1 provided that a municipal council could seek the views of the public prior to enacting a licensing by-law or when issuing, renewing, revoking, imposing conditions or suspending a business license.

The Municipal Statute Law Amendment Act, 2006

The MSLAA repealed Part IV of the *Municipal Act, 2001* in its entirety and replaced it with new municipal licensing provisions. Part IV no longer focused primarily on business licensing. The definition of "license" in s. 1(1) includes a "permit, an approval, a registration and any other type of permission," and "'licensing' has a corresponding meaning." It is clear that the authority under s. 151(1) extends to establishing a system of permissions for any business, activity, matter, or thing that may be authorized by the municipality's broad powers under ss. 9, 10 and 11. Of particular note, "business licensing" is now one of the enumerated broad powers under paragraph 11 of s. 10(2), and one of the spheres of jurisdiction under paragraph 11 of s. 11(3). The term "business licensing" is not defined in the statute, but "business licensing by-law" is defined in ss. 1(1) as "a by-law of the municipality providing for a system of licenses with respect to a business under paragraph 11 of subsection 10(2) or paragraph 11 of subsection 11(3) or under section 151 if the by-law could also be passed by the municipality under one of those paragraphs."[22]

The aforementioned inclusion of "business licensing" as a broad authority power, and the relaxation of the procedural requirements and elimination of other limitations related to licensing in the *Municipal Act, 2001*, mirrors the much more flexible licensing provisions contained in the *City of Toronto Act, 2006* (which are included within Part III instead of comprising a wholly separate part of this statute). Many of the comments respecting the new and amended licensing provisions in the *Municipal Act, 2001* are equally applicable to the *City of Toronto Act, 2006*, as the provisions are basically identical, save for contextual references to "municipality" and "City" to the section numbers of the broad authority powers, and to provisions dealing with municipalities in two-tier systems.

The amendments promulgated by MSLAA removed the restrictions in ss. 150(2) to (5). Municipalities (including the City of Toronto) are no longer confined to exercising licensing powers only for the purposes of health and safety, nuisance control, or consumer protection, and no longer need to

specify the reasons for licensing a business or imposing conditions. The mandatory notice and public hearing provisions in s. 150(4) were also removed.

The MSLAA imported an extended definition of "business," being any business wholly or partly carried on within a municipality (even if carried on from a location outside the municipality), and included trades and occupations; exhibitions, concerts, festivals and organized public amusements; the sale or hire of goods or services on an intermittent or one-time basis; and the display of samples, patterns or specimens of goods for the purpose of sale or hire.

The Act also deleted subsections 150(9) and (10), which restricted the ability of municipalities to set license fees, a change that will likely allow municipalities to impose license fees for a greater recovery of costs. The specific authority to impose license fees has also been eliminated, but the ability can now either be implied through the authority to impose conditions, in accordance with the reasoning of the Supreme Court of Canada in *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*,[23] or be found in the fees and charges provisions in Part XII of the *Municipal Act, 2001*, which do not limit fees or charges to only the direct costs of administration and enforcement.

Two new important enforcement powers are now contained in s. 151. First, s. 151(1)(g) authorizes municipalities to require any persons who fail to comply with any part of a licensing system to pay administrative penalties; second, s. 151(2) allows a municipality to suspend a license, without a hearing, for up to 14 days, if the continuation of the business poses an immediate danger to the health or safety of any person or property, and provided the licensee is given reasons (orally or in writing) for the suspension, and an opportunity to respond.

The MSLAA also repealed the sunset rule formerly contained in s. 150(13). License by-laws no longer have a life span of only five years, and may apply indefinitely or for any term that the municipal council deems appropriate.

Subsection 152(1) continues to provide that a municipality cannot enact a business licensing by-law in respect of: (i) a manufacturing or industrial business (except where products or raw materials are sold by retail); (ii) the sale of wholesale goods; and (iii) the generation, exploitation, extraction, harvesting, processing, renewal or transportation of natural resources.[24]

The general regulation, made pursuant to the Minister's regulation-making authority under s. 158, contains a number of other licensing prohibitions, including liquor sales and service, couriers, transportation, and real estate sale and brokerage businesses.

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The MSLAA also modified a number of other provisions in Part IV: the licensing of adult entertainment establishments (formerly in s. 151); the amendments deleted the consultation provision (former s. 153); the registry of unlicensed businesses (former s. 157); the list of licensed businesses for public inspection (former s. 158); and the specific authority to delegate (former s. 159), which is covered by the general power to delegate now contained in s. 23.1. The authority to impose additional penalties related to contraventions of adult entertainment establishment by-laws in former s. 161 has been deleted and replaced by the new authority to establish fines found in s. 429 and the imprisonment provision in s. 430.

Conclusion

The longstanding municipal authority in Ontario to license businesses and persons has undergone a number of significant changes in a relatively short period of time. For many years, the authority to license under the old *Municipal Act* was narrow and prescriptive. The licensing scheme implemented by the SARA consolidated and modernized the previously scattered and archaic licensing authorities into a new part. Part IV of the original *Municipal Act, 2001* appeared to take a step backward, as it instituted a number of oversight, control, and process requirements that were antithetical to the intended purpose of the statute — to confer greater flexibility and autonomy on municipalities. The repeal and re-enactment of a new Part IV by the MSLAA, and the enactment of new licensing provisions in ss. 85 to 96 of the *City of Toronto Act, 2006*, as well as the creation of a broad authority to enact by-laws related to business licensing in both statutes, signifies a movement towards the acceptance of municipal governments as responsible and accountable levels of government.

Notes

1. *The Constitution Act, 1867* (U.K.), 30 & 31 Victoria, c. 3.
2. S.O. 1996, c. 1, Sched. M.
3. R.S.O. 1990, c. M.45.
4. J. Mascarin and C.J. Williams, Ontario Municipal Act & Commentary, 2010 Edition (Markham: LexisNexis Canada Inc. 2009) at 41 (hereinafter Mascarin and Williams).
5. Some other jurisdictions, notably the Province of Alberta through the *Municipal Government Act, 1994*, S.A. 1994, c. M-26.1, had instituted a measure of "modernized" licensing regimes.
6. S.O. 2001, c. 25.
7. S.O. 2006, c. 32, Sched. A (Bill 130).

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impact.[48] The City made use of the "practice" of excluding those who scored 88 or below each time it filled a new class of firefighters.[49] Unfortunately for the City, its "business necessity" defense under Title VII did not succeed; thus, each appointment from the list presented a disparate impact claim.[50]

Many employers may not be effectively following these minimum requirements, and some who are following them cannot, if pressed, prove it. The recent decisions in *Ricci* and *Lewis* illustrate a trend by the Supreme Court that suggests local government entities are required to re-focus on the requirements of Title VII to prevent discriminatory practices, especially with civil service and public safety positions. These events are a good reminder to revisit one's employment practices and keep a paper trail.

Notes

1. Ricci v. DeStefano, 129 S.Ct. 2658 (2009).
2. U.S. v. Vulcan Society, Inc., 637 F. Supp. 2d 77 (E.D.N.Y. 2009) (resisting an attempt to have *Ricci* govern all discrimination cases).
3. 29 C.F.R. § 1607.1 *et seq*. (1978).
4. *Id*. at § 1607.5 (general standards for validity studies).
5. *Id*. at § 1607.4 (D).
6. *Id*.
7. Ricci v. DeStefano, 129 S.Ct. 2658, 2666 (2009).
8. *Id*. at 2666-67.
9. *Id*. at 2667-71.
10. *Id*. at 2671.
11. *Id*.
12. *Id*. at 2664.
13. *Id*. at 2673.
14. *Id*. at 2674.
15. *Id*. at 2675.
16. *Id*. at 2676.
17. *Id*. at 2677.
18. *Id*. at 2676.
19. *Id*. at 2678.
20. *Id*.
21. *Id*.
22. *Id*. at 2681.
23. *Id*. at 2679-81.
24. *Id*.
25. 401 U.S. 424 (1971).
26. *Id*. at 431.
27. *Id*. at 431-32.
28. Albemarle Paper Co. v. Moody, 422 U.S. 405, 425 (1975).
29. *Id*. (allowing complaining party to show "that other tests or selection devices, without a similarly undesirable racial effect, would also serve the employer's legitimate interest").
30. 42 U.S.C. § 2000e-2(k)(1)(A)(i) (West 2010).
31. *Id*.
32. 42 U.S.C. §§ 2000e-2(k)(1)(A)(ii) and (C) (West 2010).
33. Ricci v. DeStefano, 129 S.Ct. 2658, 2674 (2009).
34. *Id*.
35. *Id*. at 2675.
36. 42 U.S.C. §2000e-2(j) (West 2010).
37. 129 S.Ct. at 2675.
38. *Id*. at 2677.
39. *Id*.
40. *Id*. at 2680. The Court added that it did not need to resolve the point, as banding was not a valid alternative in this case.
41. 29 C.F.R. § 1607.15 (documentation of impact and validity evidence).
42. 2010 WL 2025206 (U.S. May 24, 2010).
43. Applicants who scored between 65 and 88, designated as "qualified," were kept on the list but told it was unlikely they would be hired. *Id*. at *1.
44. Although African-Americans accounted for nearly half of all applicants, just over eleven percent of the "well-qualified" applicants were black.
45. 42 U.S.C. § 2000e-5(e)(1) required filing within 300 days "after the unlawful employment practice occurred."
46. 2010 WL 2025206 at *6.
47. *Id*. at *5.
48. *Id*. at *5.
49. *Id*.
50. The district court had rejected the City's business necessity argument; *see* Lewis v. City of Chicago, No. 98 C 5596, 2005 WL 693618 (N.D. Ill. Mar. 22, 2005). **M**

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8. S.O. 2006, c. 11, Sched. A.
9. Mascarin and Williams, *supra* note 4 at 6-7.
10. R.S.O. 1990, c. T.6.
11. R.S.O. 1990, c. R.30.
12. The *Savings and Restructuring Act, 1996*, S.O. 1996, c. 1, Sched. M, made significant changes to municipal legislative powers and administrative responsibilities. In addition to limiting the life span of future licensing by-laws, the Act also provided for retroactive control of licensing by-laws. Specifically s. 24(3), known as the "sunset provision," provided that: "A by-law of a local municipality, a regional municipality, The Municipality of Metropolitan Toronto and the Metropolitan Licensing Commission licensing a business under any Act passed before this section comes into force expires the earlier of five years after the day this section comes into force and the day it is repealed by the local municipality, the regional municipality, The Municipality of Metropolitan Toronto or the Metropolitan Licensing Commission, as the case may be."
13. S. Auerback and J. Mascarin, The *Annotated Municipal Act, Second Edition*, looseleaf (Toronto, Ontario: Carswell, 2010), Vol. 1 at MA4-1.
14. In *Municipal Parking Corp. v. Toronto (City)* (2007), 38 M.P.L.R. (4th) 1 (Ont. C.A.), the court noted that, when interpreting "consumer protection," it was to take into account the overall context of the enabling legislation, which, in this case, permitted municipalities to license, regulate, and govern business. Using this approach, the court determined that "consumer" would include those persons and entities with whom a licensee transacted, engaged, or dealt with directly as party of carrying on its licensed business activities.
15. In *Durham Rapid Taxi Inc. v. Ajax (Town)* (2006), 30 M.P.L.R. (4th) 1 (Ont. Div. Ct.), it was noted that, pursuant to s. 150(3) of the *Municipal Act*, 2001, any by-law licensing or imposing any condition on a business was to include an explanation as to the reason why the municipality was licensing or imposing the conditions, and how that reason related to the purpose of the licensing function set out in s. 150(2) of the statute. Furthermore, in *Municipal Parking Corp. v. Toronto* (City), *supra* note 14, the court noted that s. 150(3) of the *Municipal Act, 2001* imposed, on municipalities,

an obligation to include, in any licensing by-law, an explanation of the reason why the municipality was licensing a business or imposing conditions, and how that reason related to the purpose for which the by-law was enacted.
16. (2005), 18 M.P.L.R. (4th) 89 (Ont. C.A.) *rev'g* (2005), 5 M.P.L.R. (4th) 114 (Ont. S.C.J.).
17. (2006), 18 M.P.L.R. (4th) 153 (Ont. S.C.J.). The court here determined that a by-law requiring second-hand goods dealers to submit daily reports of all transactions to police was authorized under s. 150(2). The court gave "consumer protection" a broad and generous interpretation that allowed the municipality to achieve its legitimate interests.
18. (2004), 49 M.P.L.R. (3d) 1 (Ont. S.C.J.).
19. *Id.* at & 23.
20. *Id.* at & 24.
21. *Adult Entertainment Ass'n. of Canada v. Ottawa (City)* (2007), 33 M.P.L.R. (4th) 1 (Ont. C.A.).
22. In *The Annotated Municipal Act, Second Edition, supra* note 13 at MA4-9, the authors note that: "Licensing now applies to almost all forms of municipal systems. This widens the scope of a municipality's licensing powers enormously and means that the municipal authority to require licenses may extend to any business activity, matter or thing that a municipality can regulate under ss. 9, 10 and 11. Therefore, it is imperative that the term 'license' effectively be read as meaning 'license/approval/registration/permission.'"
23. (2004), 46 M.P.L.R. (3d) 1 (S.C.C.).
24. Former s. 150(6) of the *Municipal Act, 2001* [now s. 152(1)] set out an exhaustive list of the various types of business that could be licensed, while s. 150(7) provided some limited exceptions.
25. O. Reg. 583/06. ML

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of remedies was resolved by the court deciding that both the Notice of Application and the supporting affidavit would be struck, but without prejudice to Alpha Care's right to commence a fresh application. G. was to have no communication with new counsel and Alpha Care was to make no reference to the contents of the privileged report when instructing new counsel. The court's reasons were since edited to remove the references to the privileged contents of the confidential report. The case is reported as *1784049 Ontario Limited (Alpha Care Studio 45) v. Toronto (City),* 2010 ONSC 1204 (Ont. S.C.J. Feb. 24, 2010). ML

Ordinances

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governments in the second quarter of 2009 (at the time the Ninth Circuit decided the case), compared to the second quarter of 2008, were down 12.2 percent, by over $42 billion.[6] The second issue concerns the inappropriate burden of forcing law enforcement officers with having to diagnose psychological conditions, particularly when the detainee has been evaluated by medical professionals. Nevada law requires 480 hours of mandatory training for law enforcement officers on subjects like civil liability, constitutional law, juvenile law, probable cause, traffic laws, search and seizure, investigation of crime scenes, preservation of evidence, interrogation, weapons training, courtroom demeanor, ethics, and much more.[7] The training necessary to properly diagnose types of mental illness or mental status would require specialized and advanced training that is better suited for individuals in the medical profession. The Supreme Court is on recess until October 1, so it will be a few months before we find out whether the Court believes this to be a case worthy of Supreme Court review. IMLA thinks it is. Stay tuned.

Notes

1. City of Canton v. Harris, 489 U.S. 378, 388 (1989).
2. *Conn*, 591 F.3d at 1103.
3. *Id.*
4. *See* Boncher ex rel. Boncher v. Brown *City*, 272 F.3d 484, 485-86 (7th Cir. 2001); Manarite ex rel. Manarite v. City of Springfield, 957 F.2d 953, 959-60 (1st Cir. 1992); Barber v. City of Salem, 953 F.2d 232, 240 (6th Cir. 1992); Burns v. City of Galveston, 905 F.2d 100, 104 (5th Cir. 1990); Popham v. City of Talladega, 908 F.2d 1561, 1564 (11th Cir. 1990).
5. *See* Simmons v. City of Philadelphia, 947 F.2d 1042, 1049 (3d Cir. 1991).
6. U.S. Census, Quarterly Summary ML

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In *Graham v. Connor*, 490 U.S. 386 (1989), the U.S. Supreme Court laid out several factors to consider whether the force used was excessive, including (1) the severity of crime, (2) whether the suspect posed an immediate threat to the safety of officers or others, and (3) whether he was actively resisting arrest or attempting to evade arrest by flight. In light of this, Norris's actions did constitute excessive force, as Brown was not arrested for a serious crime; she did not pose a threat to anyone's safety; and she was cooperative, did not resist arrest, and was not attempting to flee. *Brown v. City of Huntsville, Ala.*, No. 09-12965, 2010 WL 2243877 (11th Cir. June 7, 2010).

Excessive Force & Damages

Anthony Guy brought a Section 1983 action against certain San Diego officers, claiming the use of excessive force. Guy had participated in a fight outside a bar, and claimed that the police officers used pepper spray to subdue him, tightened the handcuffs on him to the point that they caused wrist pain, and caused cuts when they threw him to the ground. The jury returned a special verdict in favor of the defendants on all claims, with one exception: the jury determined that one officer did violate Guy's Fourth Amendment right to be free from excessive force. However, the jury awarded no compensatory or punitive damages, and only one dollar in nominal damages. The district court explained that, while excessive force was used against Guy, a jury could still conclude that all of the injuries he suffered were the result of the officers'