

Case Update

The following are recent cases of interest as provided by John Mascarin, Esq. Partner in the Toronto office of Aird & Berlis, LLP.

Elections – Compliance Audits

The respondent elector applied under s. 81(1) of the Municipal Elections Act, 1996 to request a compliance audit of the appellant candidate's election campaign finances from a by-election. The city's election campaign finances committee found no compelling and credible information to raise a reasonable probability of breach of the Municipal Elections Act, 1996 and denied the application. The respondent successfully appealed to the Ontario Court of Justice which, in dealing only with the issue of the appellant's recorded rent expenses, directed a compliance audit of the appellant's campaign finances. The candidate appealed the decision on the basis that judge erred in his application of the standard of review and in his interpretation of s. 66(3) of the statute as requiring an assessment of "fair market value" of the rent.

Held – The appeal was allowed.
Where a compliance audit committee has relevant expertise, and is independent of the political process, and where the procedure before the committee involves an opportunity for each side to present evidence and to make submissions, the decisions it is authorized to make will be reviewed on a reasonableness standard. Subsection 66(3) of the Municipal Elections Act, 1996 requires a consideration of the particular circumstances in which the goods or services in question are supplied. It was within the range of reasonable outcomes for the committee to have accepted the appellant's explanation, to conclude that there had not been an apparent violation of the Municipal Elections Act, 1996, and to refuse to appoint an auditor. The function of a compliance committee is to consider an application for the appointment of the auditor in the context of the information that is provided by the applicant as well as information that is provided by the candidate in response to the application. The decision of the committee was restored and the application for a compliance audit of the election finances of the appellant was dismissed. *Vezina v. Mississauga Election Campaign Finances Committee* (April 29, 2013), Doc. DC-12-0046-00, Rensburg J. (Ont. S.C.J.)

Refusal to Issue Building Permit Where Applicant Does Not Own Property

The respondent town's chief building official denied the appellant's application for a building permit on the basis that the appellant was not the owner of the parcel of land and as the legality of its deed was in question. The deed was created under a fraudulent scheme to evade the Planning Act. The appellant's application for an order compelling the respondent town's chief building official to issue a building permit was dismissed and he appealed.

Held – The appeal was dismissed.
Chief building officials have the authority and jurisdiction to refuse the issuance of building permits to individuals not entitled to apply for them. Individuals applying for building permits must meet the eligibility requirements for permits as set out in s. 8(1.1) of the Building Code Act, 1992. Only the owner of the land or an authorized agent is entitled to make an application for a building permit. An application for a building permit appeals must be determined on the basis of the state of law that was applicable at the time the initial application to the chief building official was made. An appeal must be determined on the same basis. *Matwijow v. Pelham (Town)* (April 30, 2013), Doc. DC-12-00000373-0000, Matlow, Aston, Swinton JJ. (Ont. Div. Ct.)

Adult Entertainment– City Authorized to Implement Licensing System

The appellant corporation operated an adult entertainment establishment in the respondent city. The corporation brought an application for orders declaring invalid certain parts of the city's adult live entertainment licensing by-law enacted under the Municipal Act, 2001. The corporation argued that the sections of the by-law requiring owners and operators of adult entertainment parlours to be licensed, and the sections requiring "entertainers" who perform live performances of a specified nature in such facilities to be licensed, exceeded the city's statuary licensing and by-law making authority. The applications judge dismissed the corporation's application regarding the validity of the licensing provisions. The corporation appealed.

Held – The appeal was dismissed.
The provisions of the adult live entertainment licensing by-law were validly passed by the respondent city in the exercise of its general licencing and by-law making powers under ss. 8(3) and 10 of the Municipal Act, 2001 to implement a system of licensing in connection with matters relating to health, safety and the well-being of any person in the municipality. Pursuant to s. 151(1) of the Municipal Act, 2001 the city also had express statutory authority to provide for a system of business licensing. The respondent city had the power to implement a licensing system concerning "adult entertainment establishments," as contemplated by s. 154 of the statute. However, the operator licensing requirements of the by-law applied only to persons operating premises for a commercial purpose. Furthermore, the term "entertainer" as defined in the by-law did not extend to anyone who performs a live performance of an adult nature at an adult entertainment parlour,

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