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Activity not Expressly Prohibited in By-law is Permitted

Eccles v Chilliwack (City), 2018 BCSC 1894 (CanLII) http://canlii.ca/t/hvw41

The Plaintiff, a farmer in the City of Chilliwack (City) challenged the City's Solid Waste Management By-law (By-law) and sought a declaration that it was invalid. The By-law requires property owners to pay a set fee for the collection of garbage, recyclables and compostable waste. As a farmer, the Plaintiff did not require the City's services in collecting compostable waste, which the Plaintiff fed to her livestock or retained on her farm for compost. The By-law did not permit property owners to opt out of compost collection or the monthly fee; Plaintiff argued further that the By-law prohibited her from composting on her own property. Both the Plaintiff and the City agree the matter is appropriate for summary trial.

HELD: Claim dismissed.

DISCUSSION: Although the Plaintiff took no issue with the City's authority to pass the By-law under the *Community Charter,* SBC 2003, c. 26 the Court offered a thorough review of the interpretation of municipal by-laws. In *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City),* 2004 SCC 19 the Court emphasised the modern and continued shift towards empowering municipalities. The common law rule in conjunction with the legislative intent of the *Community Charter* ensures that the municipal powers are interpreted broadly. The Court applied this shift when addressing the Plaintiff's submission that, because the By-law did not include an express exemption allowing composting on a property, it prohibited such activity. The Court acknowledged that the City could have drafted an exemption to permit owners to use compost. But given the fact that the majority of the By-law was drafted in a way that allowed for broad interpretation, the absence of

a provision that explicitly prohibited residents from composting on their own property meant that Plaintiff was permitted to compost on her own farm.

She could not, however, opt-out of the compostable collection fee. The Court accepted that the City chose to create a standardized City-wide program which applied consistently to all residents, and the City was not at fault for not creating an opt out program. Despite the Plaintiff's disagreement with the By-law the City was well within its authority to draft it and adopt it. The Court found that the By-law was valid, and the claim was dismissed.

Determinants of Mootness

St. John's (City) v. Hagerty, 2018 NLSC 193 (CanLII) http://canlii.ca/t/hvbz1

The Respondent was issued a ticket by the City of St. John's (City) for parking in a location without the City's consent but was ultimately acquitted of the offence by the trial judge on the basis of a defence of due diligence or mistake of fact. The City appealed the trial judge's decision. In the interim before the appeal was heard, the Respondent told the Court that the City had sent a letter indicating that if the appeal was allowed the City would ask for the matter to be sent back to Provincial Court and the City would not proceed to prosecute the Respondent. However, the City would not withdraw the appeal since the issue was a legal question surrounding an error of law. The City confirmed this was its position.

HELD: Appeal dismissed.

DISCUSSION: The Court considered whether it should render a decision on the substance of the appeal in light of the doctrine of mootness. To determine whether the appeal was moot the Court relied on the Supreme Court of Canada (SCC) decision *Borowski v. Canada (Attorney General),* 1989 CanLII 123 (SCC), which outlines the doctrine of mootness: "the doctrine of mootness is an aspect of general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question." Further, the court may decline to decide a case if it will have no practical effect of resolving some controversy which affects or may affect the parties.

The City maintained that there was still a controversy between the parties that the Court must address; therefore, the appeal was not moot. Particularly, the City submitted that the outcome will determine if and where it installs signs at the property where the Respondent parked to prohibit similar actions. Further, it argued the decision may impact how the City prosecutes these offences in the future.

In reviewing the matter before it, the Court found it analogous to the SCC decision in *Matthews v. Coca-Cola Co. of Canada Ltd.,* 1944 CanLII 9 (SCC). In *Mathews,* the appellant was granted leave to appeal to the SCC and was ordered to pay to the respondent costs of trial. As such, there was no practical consequence to the respondent of any decision made by the SCC; the SCC would merely be expressing its view upon a legal question without deciding the matter. Similarly, the Court held that this matter would merely be about determining a legal issue and any decision made would have no practical effect on the Respondent or future motorists that parked on the City property.

The Court determined that there was no controversy between the parties and declined to exercise its discretion to determine the appeal.

Filing Deadlines Matter

Clarke v. City of Vancouver and others, 2018 BCHRT 249 (CanLII) http://canlii.ca/t/hvwc2

The Complainant, an employee at the City of Vancouver (City) filed a *Human Rights Code* (*Code*) complaint against the City alleging employee discrimination. The Complainant did not specify that his complaint was based on the grounds of skin colour, but the Tribunal inferred this based on the information provided stating "being a black man subjected to racial slurs." The complaint was filed beyond the six-month limitation period as permitted under section 22 of the *Code.* As a result, the Tribunal requested submissions pertaining to the timeliness of the complaint.

HELD: Complaint not accepted.

DISCUSSION: To ensure that they are filed diligently, section 22 of the *Code* requires that complaints are filed within six months after the last alleged instance of the contravention. There is an exception that allows for a complaint to be accepted by the Tribunal beyond this timeline if a) it is in the public interest to accept the complaint, and b) no substantial prejudice will result to any person because of the delay. In assessing the multi-pronged public interest analysis, the Tribunal assesses a list of important but non-determinative factors including the length of the delay, the reason for the delay and the public interest of the complaint itself, *British Columbia (Ministry of Public Safety and Solicitor General) v. Mzite,* 2014 BCCA 220.

The Complainant delayed filing his complaint for eight months and offered no justification for doing so. In determining the public interest of the complaint, the Tribunal assessed if there was anything unique, novel or unusual about the complaint. The Complainant submitted that the complaint was unique, novel and unusual as he was the only black employee in a group of 300 workers. The Tribunal indicated that the jurisprudence on this common type of race employment discrimination is settled, as seen in *Balikama obo others v. Khaira Enterprises and others*, 2014 BCHRT 107, and the Complainant's complaint is not one of public interest. The Complainant did not satisfy the first prong of the late-filed complaint exception and the Tribunal did not address whether there would be any substantial prejudice.

Racial Profiling as a Defence for Noise Disturbances?

White c. City of Montreal, 2018 QCCS 4922 (CanLII) http://canlii.ca/t/hw5xt

The Appellant lives on the first floor of an apartment in the City of Montreal. One evening, the police were called to investigate a matter in the Appellant's apartment; when they arrived, he started screaming. Despite the police officers' continued requests to cease screaming and disturbing the peace the Appellant continued, resulting in residents within the building to emerge onto their balconies to complain about the noise. The Appellant was charged and convicted of emitting audible noise outside of his home and failing to comply with a police order to ease disturbing the peace.

HELD: Appeal dismissed.

DISCUSSION:

Section 286 of the *Quebec Code of Penal Procedure* states:

> the judge shall grant an appeal on the record if he is satisfied by the appellant that the judgment rendered in first instance is unreasonable, considering the evidence, that an error in law has been made or that justice has not been rendered.

The Appellant appealed the conviction and argued that the trial judge failed to permit additional proof of harassment by the police which would have added in the racial profiling defense, therefore erring in law. The Appellant testified that as a result of continued harassment, he has attempted to bring harassment claims against the police officer in question on multiple occasions. The officer testified that although he recognized the Appellant from photographs at the police station he had never met or interacted with the Appellant prior to the date he was called to the apartment building where the Appellant resides.

The Court upheld the trial judge's position with respect to the racial profiling defence. The trial judge could refuse any additional proof of harassment to establish a possible racial profiling defense, to do so the trial judge would have had to determine if it would have an impact on his decision of the charges against the Appellant. In reviewing the evidence, the Court held that the trial judge accurately determined that it would not impact his decision and therefore, the trial judge's refusal to allow further proof of a possible racial profiling defence was reasonable.

What Legal Factors Determine the Significance of an Error on a Ticket?

Chow v. York (Regional Municipality), 2018 ONCJ 818 (CanLII) http://canlii.ca/t/hw6xz

The Appellant a filed a notice of intention to appear, the trial date was set, but the Appellant failed to appear for the scheduled trial date. The Court convicted the Appellant under section 9.1 of the *Provincial Offences Act*, RSO, 1990, c. P33 (*Act*). Section 9.1(1) is used in regulatory offences when the party fails to appear to the trial, and it is deemed that they do not want to dispute the charge. The failure to appear triggers section 9.1(2) which directs the Justice of the Peace to examine the certificate of offence and after determining it is "complete and regular on its face" enter a conviction. The Appellant argued that the deficiency on the certificate was that the officer failed to note if the time of the offence was 11:12 am or 11:12 pm.

HELD: Appeal is dismissed.

DISCUSSION: The Court provided an informative and through overview of section 9.1 in regulatory matters. The section is provided in the *Act* as a default to facilitate and expediate the prosecution of less serious offences. However, since the matters under section 9.1 proceed as an *ex parte* hearing the certificate before the Justice of the Peace must be "complete and regular on its face," it cannot be amended; and, if it is not complete it must be quashed. Despite the consistent reliance on language "complete and regular on its face" it is not defined. The courts have offered judicial interpretation of the language and suggest that where the certificate contains incorrect information that *may* mislead or prejudice the defendant, the certificate is not complete and regular.

The Court relied on a number of precedents. A certificate has been held not be "complete and regular on its face" when there is an incorrect set fine *London (City) v. Young* 2008 ONCA 429 and misleading wording *R v. Farah,* 2015 ONCA 302. When incorrect information has been issued on a certificate and the officer identifies it prior to filing it with the court, but after having served it on the party, the officer is entitled to make the necessary corrections *R v. Davis* 2017 ONCA 45. The Appellant argued in their appeal that the certificate was not "complete and regular on its face" because the officer failed to check off whether the time of the alleged offence occurred in the morning or evening ("a.m" or "p.m"). The appeal was dismissed because such an error did not meet the tests outlined in section 9.1. Specifically, the error did not amount to an essential element of the alleged offence nor did it mislead the Appellant:

> Where the certificate and documents show that the appellant was served with an offence notice at the scene, the court could reasonably infer the appellant was aware of the exact time and location of the alleged offence. In any event, the exact time is not typically a component of the offence so even for the most forgetful defendant the failure to check that box could not reasonably have any effect on their decision regarding default.

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