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Summaries provided by: Monica Ciriello, Ontario, 2015

Assets Matter: A Lesson in Applying to Avoid Paying Your Property Tax Bill

O. B. v Toronto (City), 2017 CanLII 76230 (ON ARB)
http://canlii.ca/t/hnqx3

The Applicant and her brother together own a condominium in the in the City of Toronto (City). The Applicant resides at the condominium property full time with her son. Pursuant to s. 323.(1)(e) of the *City of Toronto Act, 2006* (*Act*) the Applicant filed an application with the Assessment Review Board (Board) for a reduction or refund of the property taxes paid in the amount of $2235.91 during 2016 because of sickness or extreme poverty.

HELD: Application dismissed.

DISCUSSION: The Board began by outlining its authority to cancel, reduce or refund taxes under section 323(1)(e) of the *Act*:

> 323 (1) Upon application to the city treasurer made in accordance with this section, the City may cancel, reduce or refund all or part of taxes levied on land in the year in respect of which the application is made if,
>
> (e) the applicant is unable to pay taxes because of sickness or extreme poverty;

The Applicant submitted medical documentation as evidence to demonstrate her inability to work full time during the 2016 calendar year. The City did not argue whether the medical documentation or resulting medical issue met the sickness test in the *Act*. This allowed the Board to conclude that as a result of the Applicant's medical issues, she did not work full time in 2016. The question before the Board narrowed to whether the sickness put the Applicant in a position of extreme poverty, thereby rendering her unable to pay municipal property taxes. The Applicant simply

argued that as a result of her medical issues she could not work full time, causing her to live in extreme poverty in 2016. The City questioned the involvement of the Applicant's brother (as half-owner of the property) and his legal responsibility to contribute to the property taxes. The Board did not consider the brother's involvement only because the Applicant's comprehensive financial assessment found a net total of $241,784 in assets. The Board determined that in addition to income, evaluating an individual's level of savings and assets are key considerations in the determination of extreme poverty. With this information, the Board concluded that the Applicant was not in extreme poverty as she had the necessary assets required to pay municipal property taxes in 2016.

City Required to Forego Evidence Prior to Making Non-Suit Motion

Corporation of The City of Windsor v Canadian Union of Public Employees, Local 543 Windsor Municipal Employees, 2017 CanLII 72979 (ON LA) http://canlii.ca/t/hmtdp

A former employee filed a grievance against the City of Windsor (City) over acting pay. The Union represented the employee at the arbitration. The Union relied on the sole testimony of the employee and concluded its arguments. In response, the City sought a non-suit motion. The City suggested that it should be permitted to make its motion and if its unsuccessful it could still proceed with evidence. The Union disagreed and suggested that this would be unfair and permit the City two separate opportunities to be successful at the arbitration.

HELD: City must forego right to call evidence prior to non-suit motion.

DISCUSSION: The question before the Arbitrator was whether the City could make a non-suit motion without foregoing its right to call evidence. A non-suit motion changes the standard process of an arbitration hearing; permitting the party making the motion to argue that the party with the onus has not made its case without providing evidence, and if unsuccessful, proceed with evidence to meet the case. This theoretically would permit the party to have two separate opportunities to succeed. The City acknowledged that the standard practice in both civil law and labour arbitrations require the party raising the non-suit motion to forego its right to call evidence. Relying on a limited number of authorities including; *Re North Bay Regional Health Centre and CUPE, Local 138* (2015), 263 L.A.C. (4th) 316 which held that there was no requirement for the party to forego its right to call evidence, the City's argument was primarily that the law was changing and the Arbitrator should determine this matter on a case by case basis. The Union's argument highlighted not only the standard practice used in civil and labour arbitrations, but also that it would be unfair and a duplication of proceedings. In reviewing the arguments, the Arbitrator acknowledged that many arbitrators have cited this approach to be an unfair practice. Therefore, the Arbitrator had the discretion to permit it but the City would require a persuasive argument for doing so. The Arbitrator found that the City produced no persuasive reason to forego evidence prior to a non-suit motion.

Duplicative Proceedings: Process and Procedure in Labour Law

Saskatoon (City) v Amalgamated Transit Union, Local 615, 2017 SKCA 96 (CanLII)http://canlii.ca/t/hnbp5

The Appellant, City of Saskatoon (City) provided a lockout notice prior to initiating a lockout of its Transit employees in October 2014. In response, the Respondent (Union) representing the Transit employees filed an unfair labour practice application arguing that the City violated Section 6-62(1)(l)(i) of the *Saskatchewan Employment Act,* SS 2013. Section 6-62(1)(l)(i) prohibited the City from initiating a lockout while an unfair labour practice application surrounding Mr. Mongovius (Mongovius) was pending before the Labour Board (Board). The Board agreed that the City had unlawfully locked out its employees and granted the Union members monetary damages for the time period up to the date the Mongovius decision was made, but not beyond. The lockout continued for two weeks following the Mongovius decision. The Union filed another application for the two week time period following the Mongovius decision until the lockout ended. The Board disagreed and dismissed the application citing its original decision that damages would only apply until the Mongovius decision was decided. The Board indicated that anything beyond that would be a collateral attack on its original decision. The Union successfully sought judicial review and the Board's decision was quashed. The lower court judge (judge) found that by dismissing the application, the Board denied the Union of its opportunity to make submissions of the two week period. The City appealed.

HELD: Appeal allowed.

HELD: The question before the Arbitrator was whether the City could make a non-suit motion without foregoing its right to call evidence. A non-suit motion changes the standard process of an arbitration hearing; permitting the party making the motion to argue that the party with the onus has not made its case without providing evidence, and if unsuccessful, proceed with evidence to meet the case. This theoretically would permit the party to have two separate opportunities to succeed. The City acknowledged that the standard practice in both civil law and labour arbitrations require the party raising the non-suit motion to forego its right to call evidence. Relying on a limited number of authorities including; *Re North Bay Regional Health Centre and CUPE, Local 138* (2015), 263 L.A.C. (4th) 316 which held that there was no requirement for the party to forego its right to call evidence, the City's argument was primarily that the law was changing and the Arbitrator should determine this matter on a case by case basis. The Union's argument highlighted not only the standard practice used in civil and labour arbitrations, but also that it would be unfair and a duplication of proceedings. In reviewing the arguments, the Arbitrator acknowledged that many arbitrators have cited this approach to be an unfair practice. Therefore, the Arbitrator had the discretion to permit it but the City would require a persuasive argument for doing so. The Arbitrator found that the City produced no persuasive reason to forego evidence prior to a non-suit motion.

How Rigid are Deadlines on Settlement Agreements for Human Rights Claims?

Newcombe v. Kingston (City), 2017 HRTO 1422 (CanLII) http://canlii.ca/t/hmtwm

The Applicant filed an application with the Human Rights Tribunal of Ontario (Tribunal) regarding discriminatory training at the City of Kingston (City). The two parties reached a settlement which required the City to develop and provide

discrimination training programs for all staff by an agreed upon date, with a copy circulated to the Applicant's lawyer. The Applicant filed this application under section 45.9(3) of the *Human Rights ode* R.S.O. 190, c.H.19 (*Code*), which permits a party who believes that another party has contravened a settlement to make an application to the Tribunal. The Applicant argued that the City did not meet the deadline outlined in the settlement, and sought a monetary remedy for the delay. The City acknowledged that the training was provided five weeks after the deadline, but all training had been provided to all employees at the time of the application.

HELD: No remedy.

HELD: The onus was on the Applicant to prove her case. Despite this, all parties agreed that the City did not meet the settlement requirement to complete the training by the deadline. The Tribunal recognized that a failure to meet the deadline was a violation of the settlement. When there is a settlement violation, as held in *Glover v. 571566 Ontario Inc.,* 2011 HRTO 1563, absent fraud or essential error, neither of which are at issue in this matter, the remedy is simply enforcing the terms of the settlement. The Tribunal applied *Glover* to the current matter and held that there was nothing to enforce in the settlement as the training by the City was now complete.

The question that remained before the Tribunal was whether the Applicant should be awarded a remedy for the delay. The Tribunal outlined its authority to provide a personal remedy on a case by case basis and assessed whether it was reasonably foreseeable that the Applicant would suffer harm as a result of the five-week delay. The Tribunal had addressed this specific question in *A.B. v. Western University*, 2016 HRTO 612 (CanLII).

In that matter, the Tribunal found it was reasonably foreseeable that the applicant would be harmed by a delay as the respondent was aware of the applicant's mental health issues. No such indication or circumstances was provided in this matter by the Applicant that a delay would harm her. The Tribunal held that the Applicant would not have suffered harm due to a five week delay, and even though the City violated the settlement agreement this is not an appropriate matter to grant a remedy.

Old Notes are Not New Evidence

Martin v. Orillia (City), 2017 HRTO 1511 (CanLII)
http://canlii.ca/t/hnvfk

The Applicant filed an application with the Human Rights Tribunal (Tribunal) alleging discrimination with respect to goods, services and facilities because of disability, identified by a prohibited ground of discrimination contrary to the *Human Rights Code*, R.S.O 1990, c. H.19 (*Code*). The application was dismissed with the Tribunal finding that that the Applicant did not have a good faith explanation for a delay in filing a human rights application. The Applicant sought reconsideration.

HELD: Reconsideration of application denied.

DISCUSSION: Section 45.7 of the *Code* provides the Tribunal with the authority to reconsider a previous decision. However, reconsideration is discretionary and should be reviewed on a case by case basis. In addition, there are Rules that the Tribunal must abide by for reconsideration, and of particular importance to this matter is Rule 26.5 (a) and (c):

> 26.5. A Request for Reconsideration will not be granted unless the

Tribunal is satisfied that

> (a) there are new facts or evidence that could potentially be determinative of the case and that could not reasonably have been obtained earlier; or
>
> (c) the decision or order which is the subject of the reconsideration request is in conflict with established jurisprudence or Tribunal procedure and the proposed reconsideration involves a matter of general or public importance.

In the reconsideration application, the Applicant argued that a medical note was new evidence satisfying 26.5(a). Upon review of the medical note the Tribunal disagreed and determined it was not new evidence, as the note been generated in 2012 and could have been acquired prior to the original hearing. The Tribunal further stated that the Applicant was not incapacitated by his medical issue, and it would not have prohibited him from filing an application within the required timelines--the very reason the Applicant's original application was first dismissed. With regards to 26.5(c) the Applicant failed to produce any evidence demonstrating a conflict with the jurisprudence, or with general/public importance. As a result, the Tribunal denied the Applicant's request for reconsideration.

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