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Summaries provided by: Monica Ciriello, Ontario, 2015

Hearings: When An Applicant Hangs Up - The Application is Dismissed

***Llewellyn v. City Housing Hamilton*, 2017 HRTO 102 (CanLII) http://canlii.ca/t/gx51t**

The Applicant, a long-term tenant of City Housing Hamilton (Respondent) filed two applications with the Human Rights Tribunal of Ontario (Tribunal) alleging discrimination based on disability contrary to the *Human Rights Code* (*Code*). The application claimed that for more than eight years the Respondent refused to transfer the Applicant from a bachelor unit to a one-bedroom apartment, even following an alleged assault by another tenant in the Applicant's building. The Respondent acknowledged the Applicant's transfer request, and offered to move the Applicant to another bachelor unit in a different building. A summary hearing was required to be held by teleconference to establish whether the application should be dismissed on the basis of no reasonable prospect of success. During the teleconference the Applicant hung up the phone.

HELD: Applications dismissed.

DISCUSSION: The Adjudicator began by laying out the framework for a summary hearing and dismissal of applications at the summary hearing stage. As outlined in Rule 19A of the Tribunal's Rules of Procedure, the role of Adjudicator is to determine from the evidence presented in support of the application, what demonstrates a breach of the *Code*. While the Adjudicator was conducting the teleconference with the Applicant and the Respondent, the Applicant got frustrated and hung up the phone. The Adjudicator relied on previous Tribunal decisions; *Sebhatu v. Starwood Canada Corp. o/a The Westin Harbour Castle*, 2012 HRTO 329 and *Matthews v. Manufacturers Life Insurance Company*, 2016 HRTO 1112 which found that when an applicant hung up during a teleconference, it was grounds for dismissal, and the application was deemed to be abandoned.

Based on the Applicant's actions during the teleconference the application was dismissed.

Procedure: Officers May Modify Certificate of Offence Prior To Filing It With the Court

***York (Regional Municipality) v. Wadood*, 2017 ONCA 45 (CanLII) http://canlii.ca/t/gx0mw**

The Respondents were charged with different offences contrary to the *Highway Traffic Act* (*HTA*) and were each issued a ticket by a police officer. In both situations the police officer made a minor amendment (year and municipality correction) to the certificate of offence after giving the ticket to the Respondents but prior to filing the certificate with the court. Neither party appeared to argue their ticket. The Justice of the Peace (JP) examined the certificate of offence, deemed it was "complete and regular on its face" and granted a conviction under s.9.1 of the *Provincial Offences Act (POA).* Both Respondents successfully appealed their convictions to the Ontario Court of Justice arguing that the *POA* did not provide a police officer the authority to amend the certificate of offence after the ticket had been issued to them. The Appellant, the Regional Municipality of York appealed.

HELD: Appeal allowed and convictions restored.

DISCUSSION: Neither party contested that once a certificate of offence was filed with the Court, only the Court could amend it. Therefore at issue before the Court was the time prior to the certificate of offence being filed with the Court. The Appellant relied on s. 90(1)(b) of the *POA*:

> 90. (1) The validity of any proceeding is not affected by,
> (a) any irregularity or defect in the substance or form of the summons, warrant, offence notice, parking infraction notice, undertaking to appear or recognizance; or
>
> (b) any variance between the charge set out in the summons, warrant, parking infraction notice, offence notice, undertaking to appear or recognizance and the charge set out in the information or certificate.
>
> (2) Where it appears to the court that the defendant has been misled by any irregularity, defect or variance mentioned in subsection (1), the court may adjourn the hearing and may make such order as the court considers appropriate, including an order under section 60 for the payment of costs.

The Appellant submitted that this subsection implicitly provides authorization for officers to make amendments to the certificate of offence prior to filing it with the Court. In addition, the Appellant indicated the importance of ensuring that a certificate of offence is accurate prior to filing it with the Court; as many defendants issued a ticket do not show up on their scheduled court date. The JP has the authority under s.9(1) of the *POA* to convict in the defendant's absence only if the certificate of offence is "complete and regular on its face." If there is an error the JP must quash the proceeding. The Court agreed with the Appellant in part finding that although s.90 does not explicitly permit an officer authority to amend the certificate of offence there is nothing in the *POA* that prevents an officer from making such amendments or requires the certificate of offence or ticket be identical. The Court stated that if an officer were not permitted to make such amendments, many certificates would be quashed for minor errors such as those currently at issue, which would not promote the administration of justice. The Court found that the

Respondents were not misled or prejudiced by the amendment and s.90(1) preserved the validity of the proceeding.

Real Property: Condominium Corporations Have Authority To Ban Unit Owners From Renting Out Properties On Airbnb, Etc.

Ottawa-Carleton Standard Condominium Corporation No. 961 v. Menzies, **2016 ONSC 7699 (CanLII) http://canlii.ca/t/gvzwx**

The Applicant, Ottawa-Carleton Standard Condominium Corporation (Condominium) is a 244-unit residential condominium located in Ottawa. This application was brought forward to enforce its Condominium Declaration (Declaration), which states that units can only be used as single-family dwellings and to enforce its rules that place a four-month minimum on the duration of tenancies. The Respondents own a unit in the Condominium and used their private corporation to make the unit available for short-term rentals--as short as a single night--on nine different websites including Airbnb. The listings had a "check in" and "check out" time and offered not only access to their unit, but to the Condominium's parking, exercise room, pool and common spaces, and encouraged guests to "be discreet about mentioning Airbnb to anyone in the building. When the Condominium became aware of these short-term leases, its Board of Directors placed the four-month minimum on duration of tenancies. This proposed rule was circulated to all owners including the Respondent, was not challenged, and ultimately came into effect. The Condominium argued that the Respondents, by making their unit available for short-term stays, violated the Declaration and Condominium bylaws.

HELD: Respondent must comply with the Condominium Declaration and rules.

DISCUSSION: Relying on section 7(4)(b) of the *Condominium Act*, the Court confirmed the Condominium's ability to restrict the unit's use "only for the purpose of a single-family dwelling which includes a home office [...] and for no other purpose" through the Declaration. The Court also explained that absent a definition within a Declaration of what constitutes a "single-family," courts will narrowly define the word "family" as meaning a "social unit consisting of parent(s) and their children, whether natural or adopted, and includes other relatives if living with the primary group." The Court found that the Respondents violated the single-family use provision in the Declaration by making their unit available for short-term rental through numerous websites, including Airbnb, finding that "single-family use cannot be interpreted to include one's operation of a hotel-like business, with units being offered to complete strangers on the internet, on a repeated basis, for durations as short as a single night."

The Court further found that the rule requiring leases to be a minimum duration of four months was valid and enforceable. The Court held that the Respondents violated the Declaration and rules prohibiting short-term rentals and issued an order directing the Respondents to comply.

Real Property: Decision Upheld - Property Found To Be Dangerous or Unsightly

Dalrymple v. Halifax (Regional Municipality), **2017 NSCA 6 (CanLII)**http://canlii.ca/t/gx0t9

The Appellants own property in the Regional Municipality of Halifax (Respondent). The Respondent received a complaint about the condition of the Appellants' property, which was being used as a salvage yard. A Municipal Officer (Officer)

sent to investigate discovered that the property violated the Halifax Regional Municipality's Charter (HRM) for being dangerous or unsightly. The Officer issued an order to remedy the dangerous or unsightly property. When the Officer re-investigated some time later, it was evident that some but not all of the property had been cleaned-up. The Appellants brought forward an application to prevent the Respondent from entering their property submitting that it was an unreasonable search and seizure that violating their rights under s.8 of the *Canadian Charter of Rights and Freedoms (Charter)*. The Respondent indicated that the HRM provides authority to enter and remediate property which fails to comply with a Municipal order to remedy. The Appellant's application was dismissed. The Appellants appealed the Supreme Court decision.

HELD: Appeal dismissed.

DISCUSSION: The Appellants argued that their property was not dangerous or unsightly, but if it was found to be, the Court must view it in the context of its current business use as a salvage yard. The Appellants relied on Justice Moir's statement in *Doucette v. Halifax (Regional Municipality)*, 2015 NSSC 151"... a junkyard in a place zoned for junkyards is not unsightly just because it is a junkyard. It has to be unsightly as junkyards go." The Court began by assessing the HRM definition of "dangerous or unsightly:"

> 3(q) "dangerous or unsightly" means partly demolished, decayed, deteriorated or in a state of disrepair so as to be dangerous, unsightly or unhealthy, and includes property containing . . .

The remainder of the definition provides subcategories (i) - (xii) of what could be contained. including: junk, derelict vehicles, equipment, and machinery. The Respondent's photographic evidence demonstrated that the property was littered with "disused and inoperable vehicles, construction materials, automotive parts, equipment, machinery, wheels, tires and the like." The Court concluded that the Appellant's property was dangerous or unsightly within the meaning of the HRM definition. Since the Appellant's property was not a licensed salvage yard at the time the orders were issued by the Respondent, the Court did not apply a contextual basis for interpreting the HRM as requested by the Appellants.

The Appellants further argued that the Respondent's entry onto their property and any removal of their property was an illegal search and seizure under s.8 of the *Charter.* The Court disagreed, finding that "the *Charter* does not protect against *any* search or seizure, but only those which are 'unreasonable.'" Under s. 362(1) of the HRM the Respondent is explicitly authorized to "enter in or upon any land or premises at any reasonable time without a warrant." The Court concluded that the Respondent's entry to inspect the Appellant's property was not unreasonable and therefore did not violate s.8 of the *Charter*.

The Court ultimately dismissed the Appellant's submissions.

Speech: City's Decision To Refuse Abortion Advertisement On City Transit Was Proportionate And Reasonable

***Canadian Centre for Bio-Ethical Reform v. Grande Prairie (City),* 2016 ABQB 734 (CanLII) http://canlii.ca/t/gwqc3**

The Applicant, Canadian Centre for Bio-Ethical Reform (CCBR) sought judicial review to quash a decision made by the Respondent, the City of Grande Prairie (City), to deny its pro-life advertisement on City transit buses. The Applicant

submitted that the denial violated its *Canadian Charter of Rights and Freedoms (Charter)* rights to speech and expression under s.2(b). The advertisement submitted to the Respondent showed three circles containing the photos of fetuses with the words, "growing," "growing" and "gone.". The Respondent declined publication of the advertisement on City transit, finding that the advertisement would disturb members of the community, especially women who had chosen to have an abortion legally.

HELD: Application for Judicial Review dismissed.

DISCUSSION: The Court was tasked with determining whether the Respondent unreasonably limited the Applicant's *Charter* rights to expression when it was acting as an administrative decision maker. To do so, the Court relied on the two-step analysis outlined by the Supreme Court of Canada in *Doré v. Barreau du Québec*, 2012 SCC 12: First, what statutory objectives did the decision maker seek to achieve? Second, did the statutory objectives accommodate the protection of the *Charter*, and if there was interference, was it proportional?

In denying the advertisement the Respondent argued that it sought to achieve a safe and viable community and "prevent the manifestation of harm associated with hate propaganda." The Court agreed with the Respondent, finding that "the statutory objective of controlling the content of advertising on City buses is to provide a safe and welcoming transit system." Simultaneously it was clear to the Court that the Respondent's decision to deny the Applicant's advertisement violated its freedom of expression. The question for the Court was whether the Respondent's violation of the Applicants' right was no more than was necessary to achieve its statutory objective of providing a safe community and a welcoming transit system. In the Supreme Court of Canada decision; *Greater Vancouver Transportation Authority v. Canadian Federation of Students - British Columbia Component*, 2009 SCC 31 Justice Deschamps stated that "advertising on buses has become a widespread and effective means for conveying messages to the general public." The Court interpreted this to mean "everyone sees a city bus, from the youngest to the oldest citizens of a municipality. Consequently, the messages carried on city buses must be appropriate for such a diverse audience." The Court found that the Respondent's decision to refuse the advertisement was proportionate and reasonable in that it restricted the Applicant's rights no more than necessary as the limitation was only to this particular advertisement. The Respondent did not preclude the Applicant from submitting different advertisements and even welcomed new advertisement submissions that were less harmful.

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