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Summaries provided by: Monica Ciriello, Ontario, 2015

Fishing Expedition: Defendant's Additional Disclosure Requests to the City Denied

Mississauga (City) v. Atis, 2017 ONCJ 260 (CanLII) http://canlii.ca/t/h3c6p

In August 2016, the Defendant was charged for speeding by a Peel Regional police officer in the City of Mississauga (City). In preparation for trial, the City provided the Defendant with a disclosure package that included the officer's notes and appropriate portions of the laser speed device manual. The Defendant filed this motion for disclosure alleging the City possessed additional relevant evidence.

HELD: Additional disclosure requests denied.

DISCUSSION: Prior to examining each of the Defendant's five disclosure requests, the Court cited the Supreme Court of Canada (SCC) decision on disclosure; *R v. Stinchcombe* 1991 CanLII 45 (SCC) which specifies that the prosecution is obligated to disclose all relevant evidence to the defendant. The Defendant argued that any other notes or tickets the officer issued the day that the Defendant was charged was relevant evidence and therefore the City should be compelled to provide it. The Defendant indicated that this information would allow for a clear understanding of the officers' note-taking style. The City responded that this evidence request was not relevant to the charge before the Court. To address the parties' arguments the Court relied on the SCC decision *R v. McNeil* 2009 SCC 3 (CanLII), that stated:

> it is important for the effective administration of justice that criminal trials remain focused on the issues to be tried and that scarce judicial resources not be squandered in 'fishing expeditions' for irrelevant evidence.

Assessing the factors before it, the Court determined that the Defendant's request was irrelevant to the charge and was indeed a 'fishing expedition' as mentioned in *McNeil.* The Defendant had also requested the discipline and human resource records of the officer that laid the charge, suggesting that it would assist in preparing for cross-examination. The City advanced the same argument, that this evidence was not relevant to the charge before the Court. *R v. Collins* [2010] A.J. No. 666 (AB Prov. Ct) outlines that with a regulatory offence a court should be satisfied with a reduced level of disclosure:

1. where the case for the prosecution is not complex;
2. the consequences of the alleged wrongdoing are not grave; and
3. the penalties are not significant.

Relying on *Collins* the Court was satisfied with the level of disclosure from the City and denied the Defendant's request for the officer's records. Unsatisfied with the portions provided by the City, the Defendant requested the laser speed device manual in its entirety, arguing that without it there would be no way to determine whether it was working accurately on the date he was charged. The City successfully responded that the Defendant should be required to make a third party records application to receive further portions of the manual, and it was not the responsibility of the City to provide this evidence; the Court agreed. The Defendant further argued unsuccessfully that he required the maintenance history of the laser speed device; the Court held that this request was without merit as there was nothing to suggest the device malfunctioned. The Defendant's final request to provide the Defendant with the officer's training records relating to the laser speed device was agreed to by the City.

Leave the Officials Out of It: Subpoenas Quashed for Lack of Material Evidence

St. John's (City) v. Walsh, 2017 CanLII 15293 (NL SCTD) http://canlii.ca/t/h2q87

Mr. Walsh (Plaintiff), a resident in the City of St. John's (City) was issued two tickets for operating without a permit on his property contrary to the City's Building By-law. The Plaintiff set one matter for trial, contesting the ticket pertaining to the installation of a site trailer without a permit, and requested that the Provincial Court issue a subpoena to the Mayor, the Chief Municipal Planner (CMP) and the Acting City Solicitor (ASC). The City sought *certiorari* to quash the subpoenas, arguing that the parties lacked evidence material to the trial. The Plaintiff contested the City's application.

HELD: Two out of three subpoenas against the City are quashed.

DISCUSSION: The Court began by addressing the authority of the City to issue tickets for violations of its by-laws under the *Provincial Offences Act (POA),* S.N.L. 1995, finding that the City acted in accordance with this authority. Next the Court addressed s. 6 of the *POA* which provides authority for the application of the *Criminal Code* s.698with regards to proceedings, as in this case subpoenas:

> 698 (1) Where a person is likely to give material evidence in a proceeding to which this Act applies, a subpoena may be issued in accordance with this Part requiring that person to attend to give evidence.

The Provincial Court relying on s.698(1) had the authority to issue the three

subpoenas. The Supreme Court of Canada decision in *R v. Jobin*, 1995 CanLII 144 found that this Court had the jurisdiction to hear an application to quash a subpoena issued by the Provincial Court. The Court relied on *Kent v. Kent,* 2010 NLCA 53 (CanLII) and "whether the information is relevant to the live issues in the proceeding" when determining if the subpoenas requested by Plaintiff should be quashed. The City argued that all three subpoenas were inappropriate as none of the three parties had relevant material evidence to provide at trial.

To strengthen its position, the City pointed to the language used by Plaintiff in his "Notice to the Applicant" to justify the subpoenas he requested. He simply stated, "...they are responsible for governing this City". The Plaintiff argued that the ASC would provide material evidence, as she was a City lawyer who is responsible for all legal actions, and his trial was a legal action. The Court disagreed, finding that the information that the ASC would provide would not be relevant to the proceedings.

With regards to the CMP subpoena, the Plaintiff successfully argued that the CMP's knowledge of municipal zoning in the City was relevant to his defense. The Court agreed, finding that zoning of the property where Plaintiff's trailer was located was relevant to the proceedings, and therefore the CMP subpoena was not quashed. The Mayor's subpoena was quashed as the Court found that Plaintiff's argument about political accountability did not rise to the level of material evidence in this trial.

No Gift, No Standing: City Denies Compensation for Damages to Vehicle

Ryan v City of St. John's, 2017 CanLII 20334 (NL PC) http://canlii.ca/t/h368h

In 2012, the City of St. John's (City) received a complaint that a partially burned vehicle with no license plates was parked on a City street. With no evidence of ownership, the City arranged for the vehicle to be towed to a scrap yard where it was damaged during the scrapping process before Mr. Ryan (Plaintiff), claimed the vehicle. The Plaintiff sought compensation from the City for damage to the vehicle that while there as no proof of ownership, he claimed was given to him from his late father. Following an investigation, the City denied the Plaintiff's compensation determining that the Plaintiff was not the owner of the vehicle, and was therefore not entitled to compensation. The Plaintiff claimed damages against the City for the loss of his vehicle.

HELD: Claim Dismissed.

DISCUSSION: The crux of the Plaintiff's argument was that the vehicle was a gift from his late father prior to his death. To establish the elements of what constitutes a gift, the Court relied on *Fornasier v. Grills,* [2009] O.J. No. 1369:

> intention to transfer property; certainty as to the property to be transferred; certainty as to the recipient of the gift; and delivery and perfection of the gift by doing everything necessary to effect an irrevocable transfer.

The Plaintiff's only evidence before the Court that the voluntary transfer of property took place was his own testimony; no documentation or transfer documents were provide as evidence to support his claim. At the time the City towed the vehicle, the documentation stated the vehicle was in the Plaintiff's late father's name. As the father died intestate and his estate was not administered, the estate was the true owner of the vehicle. It was not until after the incident in 2016 that the Office of the

Public Trustee sent a letter indicating that they were satisfied that the vehicle belonged to the Plaintiff. The Court was satisfied that as of 2016 the Plaintiff was the owner of the vehicle, but not before. The Court found the case of *Petten v. Petten* 1999 CanLII 19798 (NL SCTD) to be analogous to the facts of the current case; a grandfather died without a will and the estate was not administered. There, court held that the family member had no standing, no interest in the grandfather's estate and therefore no ability to bring a claim.

Therefore, when the City towed the vehicle it was the estate that was the owner of the vehicle, not the Plaintiff and it was up to the Public Trustee who had standing to bring a claim against the City, not the Plaintiff.

One Man's Castle: Applicant is Entitled to Development Permit Where Evidence Supports Criteria in Land Use Bylaw

Kalinski v. Cold Lake (City), 2017 ABCA 119 (CanLII) http://canlii.ca/t/h3b50

An orthodontist sought to expand his already-capacious home in the City of Cold Lake (City), to the chagrin of doctor residing nearby (Appellant). The Appellant sought to overturn the City's Subdivision and Development Appeal Board (SDAB) decision which had confirmed a developer's permit for the "renovation of an existing single detached dwelling... and an addition containing an attached garage, habitable and non-habitable rooms." The Appellant challenged that the two large structures connected by a five-door garage constituted a single detached dwelling. The Appellant appealed the SDAB's findings that confirmed the City's decision to issue the permit, arguing that the permit did not comply with the City's *Land Use Bylaw (Bylaw).*

HELD: Appeal Dismissed.

DISCUSSION: The crux of the matter before the Court was to determine if the development permit was for a single detached dwelling, which was permitted under the *Bylaw* or if the permit was to develop two separate dwellings. The *Bylaw* prohibits two separate dwellings on a site. The SDAB relied on the definitions in s. 1.8(3) of the *Bylaw* to arrive at its final decision, finding that there was no evidence illustrating the development was going to be anything other than a single detached dwelling:

> "dwelling, single detached" means a residential building containing one dwelling unit and intended as a permanent residence..."
>
> "dwelling unit" means "a building or a portion of a building containing one or more habitable rooms that constitute a self-contained living accommodation having sleeping, cooking, and toilet facilities and intended as a permanent residence".

As outlined in section 642(1) of the *Municipal Government Act*, RSA 2000, if an application for a development permit abides by the *Bylaw* a developer is entitled to receive such a permit. The Court noted that the additional habitable area contained a wet bar but no kitchen, and there was nothing to suggest that the owner intended to rent out the new space. It upheld SDAB's finding that the permit was for a single detached dwelling; there was no evidence of error and thus SDAB's finding was indisputable.

Watch Your Step! Negligence Claim Dismissed in Public Transit Incident

Dahl v. South Coast British Columbia Transportation Authority, 2017 BCSC 629 (CanLII) http://canlii.ca/t/h37xb

Ms. Dahl (Plaintiff) claimed she was injured while aboard a City of Vancouver bus. The Plaintiff alleged that before she took her seat the bus driver quickly accelerated causing her to be thrown into the air and land on the bus floor where she went unconscious due to the impact. The South Coast British Columbia Transportation Authority (Defendant) disputed on behalf of the bus driver both the rate of acceleration and the severity of injury. The Plaintiff claimed the incident impaired her ability to pursue her career as an actor and as a free lance writer. She sought damages as a result of the injuries she suffered claiming: post-traumatic brain injury; balance issues; vision problems; torn muscles in her left calf; injury to her left knee, foot and ankle, memory loss; debilitating headaches; and problems with focus and concentration.

HELD: Action Dismissed.

DISCUSSION: To determine the liability of the bus driver, the Court relied on the recent Court of Appeal decision *Benavides v. Insurance Corporation of British Columbia*, 2017 BCCA 15 (CanLII) which outlined:

- The mere fact that a passenger is injured while riding on a public carrier does not establish a prima facie case of negligence;
- The plaintiff bears the burden of proving on a balance of probabilities that the defendant breached the standard of care owed to the plaintiff;
- Once the plaintiff establishes a prima facie case of negligence, in practical terms the burden shifts to the defendant to answer the case against him and show that he was not negligent.

Relying on these principles, the Court examined four decisions with analogous fact patterns to determine what would constitute a breach of the bus driver's standard of care. Similar conclusions were reached in all the decisions; it is not a breach of the standard of care for a bus driver to start driving before a passenger is seated. [*Brinacomb v. B.C. Transit et al*, 2000 BCSC 331 (CanLII), *Rehemtulla v. B.C. Transit*, unreported Edwards, J. Vancouver Registry No. B926381, 1995, *Mauro v. Romanica,* [1988] 1 W.W.R. 684 (Man. Q.B.), *Habib v. Jack*, 2011 BCSC 399 (CanLII).

In assessing the Plaintiff's evidence to determine if the bus driver breached the standard of care that was owed, the Court found that it was "exaggerated, over dramatized and unbelievable" as even the camera footage did not depict the events as the Plaintiff described. The Court indicated that there was nothing abnormal about the bus driver's operation of the vehicle, and relying on the case law the Court stated "it is not negligent for a driver to start the bus before a passenger is seated or holding on to something". Therefore the Court ultimately held that the driver did not breach the standard of care expected of a reasonable and prudent bus driver.

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