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City Met the Criteria for a Records Search

Thorold (City) (Re), 2023 CanLII 22215 (ON IPC)

The City of Thorold (City) received a resident request under the *Municipal Freedom of Information and Protection of Privacy Act (Act)* for all correspondence between the City and the Attorney General regarding the Administrative Penalty By-law (By-law) for parking offences. The City completed a search and advised the requestor that no records existed. The requestor, (now the appellant) appealed the City's decision to the Information and Privacy Commissioner of Ontario (IPC).

HELD: Appeal dismissed

DISCUSSION: Under the *Act,* the onus is on the appellant to provide a reasonable basis for concluding that such records exist. In contrast, the City only needs to provide enough evidence to show that it made a reasonable effort to identify and locate records, but does not have to prove with certainty that further records do not exist. It was the appellant's position that communication between the Attorney General and the City relating to the By-law *should* exist (emphasis added), considering the City requires approval from the Attorney General to set fine amounts in any By-law. The City submitted that it completed the appellants' search within the 30-day timeline, highlighted the places and types of files searched, and provided a copy of its internal relevant records policy. The IPC reviewed the highstandard to be met by the appellant under the *Act*, and concluded that the onus was not met. The IPC was satisfied in the documented steps provided by the City. The steps specified how and when the City conducted its search as well as providing a reasonable explanation for why it had not located responsive records, including that the relevant records policy was not in effect at the time of the appellant's request. The IPC was satisfied that the City conducted a reasonable search for records in line with the appellant's request and thereby satisfied the requirement under the *Act*. Appeal dismissed.

Dangerous Dog: Destruction Order Granted

***Animal Control Officer for the City of Port Coquitlam v. Bennett*, 2023 BCPC 16**

The respondent's dog, a pit bull named "Kujo," has an extensive history with Animal Services Officers (Officers) at the City of Port Coquitlam (City). Kujo has been caught running at-large 22 times and bitten four people in the community. When the dog was previously impounded, it attacked City employees causing puncture wounds, soft tissue damage, and sent one employee to the hospital. The respondents are homeless, residing in a camp in a City park and were unable to comply with conditions imposed by the Officers, including; keeping Kujo on a leash and restricting the dog to the respondents' premises. The Officer who seized Kujo advised the respondents that the dog was considered to be a "dangerous dog" and sought a destruction order.

HELD: Destruction order granted.

DISCUSSION: Dangerous dogs are governed by the *Community Charter*, SBC 2003 c. 26, and the provisions have been discussed in *Santics v. Vancouver (City) Animal Control Officer,* 2019 BCCA 294. In that decision, the court held that if the dog meets the statutory definition of "dangerous dog", officers have grounds to seize the dog and if the dog is also deemed likely to kill or injure in the future, then the court has no option other than to issue a destruction order. Of interest, case law demonstrates that courts lack jurisdiction to make a conditional order that would allow the dog to be returned to the owner under certain circumstances. Only an officer and an owner may agree to terms in a consent order to avoid a destruction order, and the court has no authority to impose the terms. It was the City's position that based on the evidence, the destruction order should be granted. The court provided that the future safety of the public is paramount, whether it is people or domestic animals. The Court was persuaded by the City's evidence that Kujo was dangerous, given its previous behavior causing injuries and given that the respondents are homeless and lack a premises that can secure the dog. Under these circumstances the only option for the City was an application for a destruction order under the *Community Charter*. The Court found that Kujo was likely to kill or injure in the future and had no other choice but to make an order for the destruction of the dog.

Don't Talk and Drive: Officer Did Not Mistake Vaping Device for Cellphone

***Derbas v. City of Montreal*, 2023 QCCS 285**

The appellant was found guilty by the Municipal Court of Montreal for using a cellular telephone (cellphone) contrary to the *Highway Traffic Code*, Chapter C-24.2 (*Code*). The appellant appealed the decision.

HELD: Appeal dismissed.

DISCUSSION: The legislative intent of prohibiting the use of cellphones while using a vehicle is to reduce driver distraction while on the road. The *Code* provides that holding a cellphone in one's hand or in another manner is considered to be "using it;" therefore, holding it-- whether in one's hand or another manner-- while driving is a form of distraction and a violation of the *Code*. At trial, it was the appellant's position that while driving he was using a hands-free device, which is permitted, but was holding a black electronic vape device in his hand. The appellant unsuccessfully argued at trial that the police officer confused the vape device or a cellphone when he received a ticket, prompting the appellant to appeal. The judge shall only grant an appeal on the record if it is satisfied by the appellant that the decision rendered by the trial judge is unreasonable, considering the evidence that an error in law had been made or that justice had not been rendered.

The Court reviewed the trial judge's decision and found that a sound ruling was made. The trial judge was confronted with two versions of the facts, the appellant's claim to be vaping, and the police officer's observation of the use of a cellphone. To assess credibility of the conflicting events, the trial judge relied on *R v. W.(D)* [1991] 1 S.C.R. 742 finding that a court must be convinced beyond a reasonable doubt that the accused is guilty and anything short of this the accused must be acquitted. The requirement for the City to prove guilt of the appellant beyond a reasonable doubt is fundamental in our system of law and the free and democratic society it protects. The trial judge found the police officer to be more credible, and preferred the evidence of the police officer who articulated the observations of the appellant while operating a vehicle. The Court was satisfied that the trial judge sufficiently articulated how his credibility concerns were interpreted and resolved, providing a case full of reasons. The Court held that

absent a palpable or overriding error, or an error of law, the trial judge's decision should stand, and it does. Appeal dismissed.

Jurisdictional Considerations over Workplace Dispute

***Hartt v. Melfort (City)*, 2023 SKPC 23**

The plaintiff is a former employee at the City of Melfort (City), who claimed he was terminated without just cause. During his tenure, he was unionized, and his employment was within the scope of the collective agreement between the City and the Canadian Union of Public Employees (Union). The plaintiff's claim is that he was wrongfully terminated and that following a grievance the City owes him settlement funds. The City submitted that the Court lacks jurisdiction to adjudicate the claim, as the nature of the claim falls within the collective agreement.

HELD: Claim dismissed.

DISCUSSION: To determine if the Court had jurisdiction to adjudicate the plaintiff's claim the Court assessed the steps taken following the plaintiff's termination. The evidence provides that the plaintiff first asserted that his termination by the City was wrongful and without cause; and second, he filed a grievance, prompting the Union to negotiate on his behalf with the City, both of which make up the claim before the Court. The City submitted that the steps taken by plaintiff fall within the collective agreement, and *Lapchuk v. Saskatchewan,* 2015 SKQB 358 confirms the interpretation of section 6-45(1) of the *Saskatchewan Employment Act*, ss 2013, c. S-15.1that any workplace disputes must proceed by arbitration rather than the Court. The Court was satisfied by the plaintiff's assertion that he was terminated wrongfully, and the grievance procedure are both set out within the ambit of the collective agreement. The Court held that, given that the essential nature of the disputes are within the collective agreement, the Court did not have the jurisdiction to adjudicate the plaintiff's claim. Claim dismissed.

Motion Dismissed: Hallmarks of Frivolous and Vexatious Proceedings

***Hill v. Cambridge (City)*, 2023 ONCA 164**

The appellant brought forward a series of various unsuccessful claims alleging fraud against the City of Cambridge (City) and its employees. All claims were dismissed by the Court as frivolous and vexatious and an abuse of process pursuant to the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. The appellant filed a motion for an extension of time to file the notice of appeal.

HELD: Motion dismissed

DISCUSSION: In 2017 and 2021 the appellant made a variety of claims alleging fraud by the City pertaining to the title on her property. Despite submitting over 200 pages, the appellant failed to succinctly set out what real property in the City was at issue, while simultaneously seeking damages. The Court dismissed the arguments on their face and in the manner in which they were set out, finding that it bore the hallmarks of frivolous and vexatious proceedings that are also an abuse of process. The Court also warned the appellant that she was precluded from bringing any further proceedings involving the same property without leave of the Court. Despite this order, the appellant brought a claim without leave involving the same subject matter and parties. The claims were dismissed by the Court and the appellant filed a motion for an extension of time. In reviewing the evidence before it, the Court held that the appellant's motion does not warrant an extension. The Court was satisfied that the appellant failed to bring the matter forward over a six-year period and provided no reasonable explanation for delay to the Court. The Court was further satisfied that such a delay would cause prejudice to the responding parties, which was exacerbated by the Court's steadfast opinion that there is no merit to the proposed appeals. Motion dismissed.

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