Canadian Legal News
June 5, 2023

In This Issue

Drawing Badminton Court on City Road is Trespassing

Do University Neighbourhoods Discriminate Based on Age?

Adding Additional Plaintiffs After the Limitation Period Expires

Applicant Shows High Interest in Amending Payday Loan By-law

Limits on Ultimate Limitation Periods

Summaries provided by:
Monica Ciriello, Director of Municipal Law and Licensing Compliance, City of Hamilton, Ontario

Drawing Badminton Court on City Road is Trespassing

City of Surrey v. Tu, 2023 BCCRT 332

The City of Surrey ("City") brought a claim against the Respondent, a resident of the City who painted badminton court lines on the City roadway without consent. The Respondent does not dispute his actions, but submits he is not responsible for damages as he is not the only person who painted on the City road.

HELD: City entitled to costs.

DISCUSSION: It is undisputed by the parties that the roadway at issue is within the City's boundaries, and that the Respondent painted badminton court lines without the City's consent. It is the Respondent's position that other residents painted pickleball court lines on the roadway and he merely added new court lines. The City submits that this is trespass and seeks cost to remove the paint damage. It is well established that trespass to land consists of entering onto the property of another without lawful justification. To be found trespassing, the Respondent must be found to directly interfere with the property possessed by the City. Based on the evidence before the Tribunal, it found that the Respondent applying paint to the City's roadway without any right to do so is a direct interference with the City's property that amounts to trespass. The Respondent's motive is not relevant to determine liability for trespass. The Tribunal held that the City is entitled to its proven costs to remove the badminton court lines from the roadway.

Do University Neighbourhoods Discriminate Based on Age?

***Valastro v. London (City)*, 2023 HRTO 717**

The Applicant, a resident of the City of London ("City") filed a Human Rights Code, R.S.O. 1990, c. H. 19 ("Code") application alleging discrimination based on age. The Applicant alleged that the City failed to ensure diversity in neighborhood housing based on age near the university campus. As a result, the university neighbourhood was exclusively temporary student housing, resulting in noise, parties, and garbage thrown on her property when she complained. The Applicant submitted that people were being denied into the university neighbourhood based on age, discriminating against anyone who was not a student. The Applicant sought a remedy from the City to ensure diversity in housing through enforcement, licensing or policy.

HELD: Application dismissed.

DISCUSSION: An application before the Human Rights Tribunal ("Tribunal") must fall within the Tribunal's jurisdiction; the case law is clear that an adjudicative body either has jurisdiction or it does not, G.-L. v. OHIP (General Manager), 2014 ONSC 5392. Based on the evidence before the Tribunal, the Applicant resides in the very university neighbourhood she claimed was discriminatory to anyone who was not a student. The Code is prescriptive, meaning that an individual (or neighbour) whose rights have not been infringed cannot bring an application before the Tribunal concerning an issue that they believe is in the public interest. The only exception is if the Applicant can identify a third party whose rights may have been infringed under the Code, and who has consent of that person to bring an application on their behalf. There was no evidence before the Tribunal to suggest that is the case here. The Tribunal held that the applicant had no standing. The Tribunal also questioned whether, if the Applicant was denied housing in the university neighbourhood based on age, would the City be the appropriate party to enforce against or would it be a landlord. Application dismissed.

Adding Additional Plaintiffs After the Limitation Period Expires

Unosi v Coquitlam (City), 2023 BCSC 791

A 2015 municipal waterline break caused significant damage to a commercial unit. The tenant ("Plaintiff") filed a notice of civil claim ("NOCC") against a variety of defendants including the City of Coquitlam ("City"). In 2018, the Plaintiff sought to amend the NOCC to include the landlord as an additional plaintiff to the proceeding. An order was issued by Master Robertson allowing for the landlord to be added. The City appealed the order and argued that the limitation period to add a new party was expired under the Limitation Act, S.B.C. 2012 ("Act").

HELD: Appeal dismissed.

DISCUSSION: On appeal, the Supreme Court of British Columbia noted that it cannot interfere with the decision of a Master unless the ruling is clearly wrong, or if it raises questions vital to the final issue in the case and are reviewed by way of rehearing on the merits Abermin Corp. v. Granges Exploration Ltd. (1990), 45 B.C.L.R. (2d) 188 (S.C.). The Supreme Court determined that adding a party raised questions which were vital to the final issue in the case and reviewed the matter by way of a rehearing on the merits. Relying on the Act that pleadings must occur by one year of filing a claim, the City submitted that the limitation period to add the landlord expired in 2017, and was well expired in 2022 when counsel for the Plaintiff sought to add the landlord. The landlord relied on Smithe Residence Ltd. v. 4 Corners Properties Ltd., 2020 BCCA 227 that provided that a court may order a person to be added as a party if two conditions are met:

1. There may exist between the person and any part to the proceedings a question or issue relating to or connected with:
   - Any relief claimed in the proceeding, or
   - The subject matter of the proceeding, and

2. That in the opinion of the court, it would be just and convenient to determine that question or issue.

The Supreme Court was satisfied that the first factor was met. As for the second, when the limitation period has otherwise expired, there are additional considerations, the Act considers to add or substitute a new party as a plaintiff. In reviewing the evidence, the Supreme Court was satisfied that the City had noticed through the in-trust claim in the NOCC that the landlord may be added, and that the City failed to establish that despite the expiration of the limitation period, that there would be prejudice suffered. Overall, the Supreme Court held that it was just and convenient to add the landlord, even though there was a period of delay. Appeal dismissed.

Applicant Shows High Interest in Amending Payday Loan By-law

Pay2Day Inc. v City of Toronto, 2023 ONSC 2654

The City of Toronto ("City") passed a Payday Loan By-law ("By-law") that set out conditions to be met prior to the City issuing a licence to operate. The Applicant, sought to expand its Payday Loan business operation but was prohibited to do so by provisions under the City By-law. The Applicant sought to quash the By-law arguing that it is ultra vires to the authority granted to the City by the City of Toronto Act, S.O. 2006, c. 11, Sched. A. ("COTA")

HELD: Application dismissed

DISCUSSION: In 2017, the Province of Ontario adopted the Putting Consumers First Act (Consumer Protection Statue Law Amendment), 2017 ("Act"). The Act amended the COTA, adding section 92.1 granting the City authority to pass by-laws with respect to payday loan establishments, define the area of the City in which payday loan establishments may or may not operate, and limit the number of payday loan establishments in any defined area in which they are permitted. Under this authority, the City passed a By-law that limited the number of licenses, restricted locations in the City, and added a grandfather provision to restrict new applicants: only persons applying for a renewal of a valid licence under the By-law may be granted a licence. The Applicant argued that the power to limit payday loan licenses to those who already have a licence is not authority provided under the COTA and argued that the impugned provision should be quashed.

The City argued that the application is moot, as quashing the impugned provision would have no effect on the Applicant, because the Applicant already had a license. Furthermore, the City argued that if the Court were to find that the impugned provision is ultra vires, this would limit the power of the City to reduce the number of payday loan establishments in Toronto, which is the exact intention of the Act. The Court was satisfied that the impugned provisions of the By-law was enacted pursuant to the City's authority under the COTA and highlighted that the very title of the Act addresses the consumer protection nature of the impugned provision. The Court held that the By-law was valid, and furthermore noted that the impugned provisions did not prohibit the operation of all payday loan establishments, evidenced by the over 150 existing licensed establishments in the city of Toronto. Application dismissed.

Limits on Ultimate Limitation Periods

***Tyszko v St. Catharines (City),* 2023 ONSC 2892**

In 2002, the City of St. Catharines ("City") undertook construction to install storm sewers at the Plaintiff's residence. In 2021, the Plaintiff commenced an action against the City for negligence, submitting that the City caused drainage issues. The City sought to dismiss the claim on the basis that it is statute-barred by either the ultimate limitation period or the two-year limitation period in the Limitations Act, 2002, S.O. 2002, c. 24, Sched. B ("Act").

HELD: Action dismissed

DISCUSSION: The Plaintiff submitted that prior to the work undertaken by the City, there were no drainage issues at his property, whereas, now anytime it rains the water flows onto his property opposed to the road. The City does not dispute that there may be drainage issues at the Plaintiff's property. The City's position is rooted in the Act. The City submitted that the Plaintiff waited over 15 years to bring forward a claim. The Act seeks to balance the right of claimants to sue with the right of the defendants to have some certainty and finality in managing their affairs, York Condominium Corporation No. 382 v. Jay-M Holdings Limited, 2007 ONCA 49. The Act provides that there is a 15-year limitation cap on all limitation periods, regardless of discoverability concerns. The onus was on the Plaintiff to bring himself into one of the Act exceptions to the 15-year ultimate limitation period, absent any exception the matter was statute-barred. The Plaintiff submitted evidence that he was in the hospital between March 2018-June 2018. Despite this information, the Court was not persuaded that a 3.5-month incapacity period had any impact. The 15-year limitation period began to run on January 1, 2004, and expired on January 1, 2019, or on April 15, 2019, if extended by the period of incapacity. However, the Plaintiff did not issue a claim until July 2021. Action dismissed.

Questions?

If you have questions or concerns about this Newsletter, difficulty in accessing the Newsletter, or want to contact IMLA, please email info@imla.org. If you can't use or see the links in this message, your system's firewall may be removing them. Please check with your IT staff and "whitelist" this sender - amandakarras@imla.org.

IMLA | 51 Monroe Street, Suite 404, Rockville, MD 20850

Unsubscribe receipts@imla.org

Update Profile |Constant Contact Data Notice

Sent byamandakarras@imla.org