LERNERS

Municipal Montage: A Round-Up of Significant Municipal Cases in Canada

Shannon Gaudet and Kathryn Ball

Toronto (City) v Ontario (Attorney General)

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- During the 2018 Municipal election, Provincial legislation changed the Toronto Ward structure from 47 to 25 wards
- The City challenged the law in court arguing that the legislation violated s. 2(b) of the *Charter* - freedom of expression
  - Superior Court: sided with the City, ordered that the election revert back to 47 wards.
  - The Province appealed: obtained a stay pending appeal, reverting once again to 25 wards

Toronto (City) v Ontario (Attorney General) 2021 SCC 34

Toronto (City) v Ontario (Attorney General)

LERNERS

- The SCC held that the legislation does not violate s. 2(b) of the *Charter* (freedom of expression)
- Unwritten constitutional principles cannot be used to strike down legislation
- As per s. 92(8) of the *Constitution*, provinces have complete jurisdiction over municipalities.
  - a province has “absolute and unfettered legal power to do with them as it wills” (para 2).

Toronto (City) v Ontario (Attorney General) 2021 SCC 34

Singh v. Corporation of the City of Brampton

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- City Councillor Williams running for Provincial Office
- City Council passed a motion to fill the potential vacancy before the vacancy had occurred
- Cllr. Williams voting for her own replacement violates the *Municipal Act, 2001*

Singh v. Corporation of the City of Brampton 2022 ONSC 4059

Alberta March for Life Association v Edmonton (City)

LERNERS

- The City of Edmonton lights up the High Level Bridge to celebrate persons and causes upon request from non-profits
- Denied request from The Alberta March for Life Association (AMLA) to light up bridge for Pro-Life March
- AMLA alleged breach of s. 2(b) of the *Charter*, freedom of expression rights

Alberta March for Life Association v Edmonton (City) 2021 ABQB 802

Alberta March for Life Association v Edmonton (City)

LERNERS

- Court held that AMLA was seeking a positive right
- AMLA failed to prove that municipal government substantially interfered with Freedom of Expression or had Purpose of doing so

Alberta March for Life Association v Edmonton (City) 2021 ABQB 802

Automotive Parts Manufacturers' Association (APMA) v. Boak

LERNERS

- APMA applied for an interlocutory injunction (under s. 101 of *Courts of Justice Act*) prohibiting the Protestors from blocking the Ambassador Bridge
  - City of Windsor (intervener) also applied for injunction under s. 440 of the *Municipal Act*
- Granted – freedom of expression not violated
  - Protestors free to lawfully express views so long as free flow of traffic across Bridge not prevented

Automotive Parts Manufacturers' Association v. Boak 2022 ONSC 1001

The Corporation of the City of Windsor v Persons Unknown

LERNERS

- City of Windsor seeks permanent injunction following interlocutory injunction issued in AP*MA v Boak*
  - Much evidence that injunction and by-laws being violated
- Under s. 440 of the *Municipal Act*, test for a statutory injunction is narrower
  - Breach of the law is considered to be irreparable harm to the public

The Corporation of the City of Windsor v Persons Unknown 2022 ONSC 1168

Hejka v The Regional Municipality of Durham

LERNERS

- Hejka, a person with disabilities, used Durham Region's paratransit services for about 8 years
- In 2021, performed a review and concluded that Hejka was no longer eligible for unconditional door-to-door service.
  - Would instead be eligible for conditional service
  - This included making him provide a personal care assistant at his own expense to ride transit with him

Hejka v The Regional Municipality of Durham 2022 ONCA 2233

Hejka v The Regional Municipality of Durham

LERNERS

- Court of Appeal held that this decision was unreasonable
- The risk to Hejka's safety on conventional transport is a barrier to access
  - Requiring a PSA is creating a further barrier.
- This solution does not meet Hejka's disability related needs
  - It only meets the 'need' of the region to cut down on users of specialized services.

Hejka v The Regional Municipality of Durham 2022 ONCA 2233

Halifax Regional Municipality v Annapolis Group Inc.

LERNERS

- Land owned by Annapolis Group in Halifax was designated for possible future use as a regional park
- Annapolis sought approval to develop their land numerous times between 2007 and 2016
- Sept 2016: HRM passed resolution refusing to allow Annapolis to proceed with development
- Annapolis filed a lawsuit against HRM alleging *de facto* expropriation

Halifax Regional Municipality v Annapolis Group Inc. **2021 NSCA 3**

Halifax Regional Municipality v Annapolis Group Inc.

LERNERS

- The Court of Appeal affirmed that in order to establish de facto expropriation, the owner of the land "must conclusively prove that there has been, in effect, a confiscation of all reasonable private uses of the interest in the land in question and an acquisition of the same by the statutory authority" (Annapolis, para 65)
- Motive is not a consideration

Halifax Regional Municipality v Annapolis Group Inc. **2021 NSCA 3**

Janes v Embree (Town)

LERNERS

- Janes constructed a wharf on land leased to him by Crown
- Following complaints, Town issued order to remove all debris from Property
  - Notice did not mention Right to Appeal
- Trial Judge held that the notice did not conform to s. 404 of *Municipalities Act* but that the Town's actions were still authorized under s. 178.

Janes v Embree (Town) 2022 NLCA 36

Janes v Embree (Town)

LERNERS

- Court of Appeal held that the trial judge erred in considering section 178 in summary trial as it was a question not raised by the parties
- Otherwise upheld the ruling that the Notice given was invalid due to it not including notice of appeal

Janes v Embree (Town) 2022 NLCA 36

Beaulieu et al v Winnipeg (City of) et al

LERNERS

- Appeal of a civil case where City of Winnipeg, Winnipeg Police Services, and defendant Macumber found jointly and severally liable for incident in a hotel room
- Macumber initially raised ineffective assistance of counsel as basis of appeal, which was held to be a conflict of interest requiring separate counsel

Beaulieu et al v Winnipeg (City of) et al 2021 MBCA 93

Beaulieu et al v Winnipeg (City of) et al

LERNERS

- Once ineffective assistance of counsel no longer alleged, Macumber argued inherent conflict of interest (requiring separate counsel)
  - as per s. 88 of the *Police Services Act* which protects members from liability where they act in good faith (but does not protect City)
- The Court of Appeal held that the mere existence of this provision does not give rise to an operative conflict of interest.

Beaulieu et al v Winnipeg (City of) et al 2021 MBCA 93