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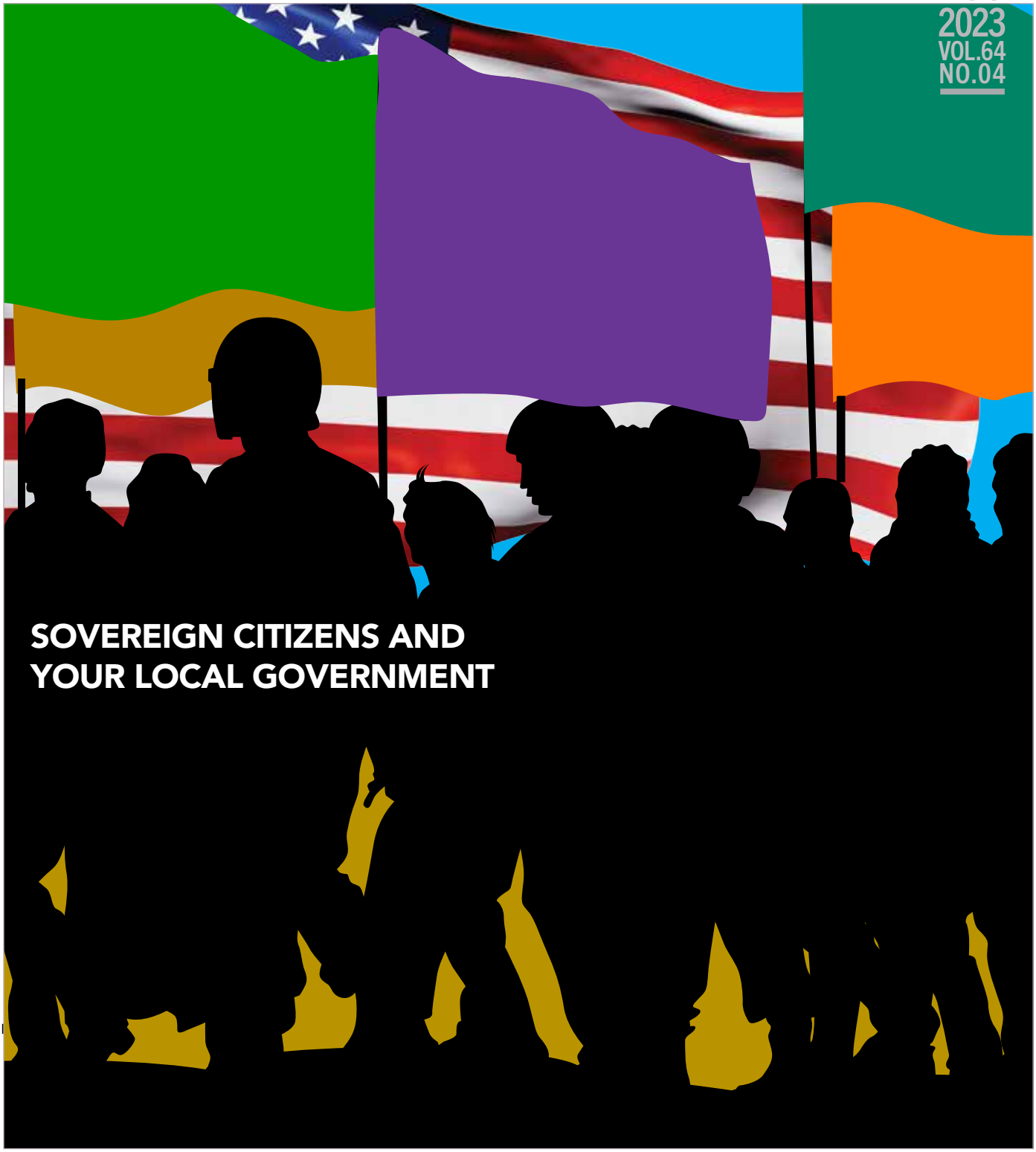

SOVEREIGN CITIZENS AND YOUR LOCAL GOVERNMENT

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SOVEREIGN CITIZENS AND YOUR LOCAL GOVERNMENT

By: Judith El Masri, Executive Vice President, The Randle Law Office, Houston, Texas

As Americans debate the merits of liberal or conservative policies, the proper functioning of legislative, executive, and judicial branches, and the appropriate balancing of state versus federal authority, another faction disavows the very legitimacy of any government. Ignoring authority and challenging laws at every turn, the sovereign citizen presents unique challenges for local government attorneys.

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INSIDE CANADA

By: MONICA CIRIELLO,
Director of Municipal Law and Licensing Compliance, City of Hamilton, Ontario

Unconvincing Evidence, "Local Boards," Personal Information, and More

Absent Palpable and Overriding Error, Court of Appeal Does Not Interfere with Findings
Viceversa Developments Inc v The City of Winnipeg, 2023 MBCA 52 https://canlii.ca/t/jxnwd
The Appellant acquired property from the Canadian National Railway in the City of Winnipeg ("City"), it included a roadway, sidewalk, and bicycle/pedestrian path ("Roadway"). The Appellant planned to re-develop the property by constructing a condominium building and filed an application to the City to amend the existing Zoning By-law, to allow for the Property to be zoned Commercial District, C2. After a few years, the complexity and magnitude of the re-development was apparent. The Appellant failed to secure approvals from all three levels of government, causing delays in the development application. Despite the delays, the City granted the Appellant several extensions, but denied the third extension request. As a result, an amended Zoning By-law never came into force, and the City did not prepare a Zoning Agreement. The Appellant alleged that the City was negligent in failing to complete certain steps necessary to bring into force amendments to a Zoning By-law, causing damages.

HELD: Appeal dismissed.

DISCUSSION: The trial judge agreed with the Appellant that the City's failure to prepare a Zoning By-law amendment and Zoning Agreement was negligent. However, despite the City's negligence it did not cause the Appellant any legally compensable damages. The trial judge found based on the evidence that even if the City had produced a Zoning Agreement, the Appellant would not have signed off on it. The Appellant argued that it would have signed off on the conditions to secure the C2 zoning, however the trial judge was not persuaded by the evidence presented nor the testimony of the Appellant's principal, Mr. Katz. The trial judge found Mr. Katz was not a credible witness, as his testimony was at odds with the lengthy history between the two parties. On appeal, the Court found that absent a palpable and overriding error it ought not to interfere with factual findings made by the trial judge simply because it may or may not agree, *Housen v. Nikolaisen,* 2002 SCC 33. The Court was satisfied that the trial judge's credibility assessment was reasonably supported by the evidence. No palpable or overring error. Appeal dismissed.

City Did Not Retaliate When It Suspended a Volunteer
Xu v. City of Toronto, 2023 HRTO 882 https://canlii.ca/t/jxmv8
The Applicant, a table tennis program volunteer at the City of Toronto ("City"), alleges that the City suspended him from his volunteer role in retaliation for filing a Human Rights Tribunal of Ontario ("TAribunal") application. In response, the Applicant filed another Tribunal application against the City.

HELD: Application dismissed.

DISCUSSION: The Applicant relied on section 8 of the *Human Rights Code*, R.S.O. 1990, c. H. 19 ("*Code")* which prohibits reprisal. In *Noble v. York University,* 2010 HRTO 878. the Tribunal set out the three-prong test for reprisal:
a) an action taken against, or threat made to, the applicant;
b) the alleged action or threat is related to the applicant having claimed, or attempted to enforce a right under the *Code,* and
c) an intention on the part of the respondent to retaliate for the claim or attempt to enforce the right. The requisite intention to retaliate can be inferred from the overall evidence.

It was uncontested by both parties that the Applicant brought a previous Tribunal application against the City, and that following the Tribunal's dismissal of the application the City suspended the Applicant. The Tribunal held that this

met the first prong. However, the Tribunal was not satisfied that the Applicant established on a balance of probabilities that the second and third prongs were met, specifically that the City's actions related to the Applicant's Tribunal application. The Tribunal was persuaded by the City's evidence that the suspension was given in response to the Applicant's conduct towards City staff. The suspension letter provided explicit details, including events, dates and rationale for the suspension all unrelated to the *Code*. The suspension letter referenced prior verbal and written warnings given to the Applicant, and furthermore evidence revealed that following the suspension the Applicant's inappropriate behaviour against City staff continued. The Tribunal was satisfied that there was strong evidence justifying the City's suspension letter and it was not in retaliation of the Tribunal application. Application dismissed.

Unconstitutionality Does Not Circumvent Exclusive Jurisdiction
Prodaniuk v Calgary (City), 2023 ABCA 165 https://canlii.ca/t/jxb2g
The Appellant, a member of the City of Calgary Police Service ("CPS"), appealed the decision of the chambers judge that struck her claim for lack of jurisdiction. The Appellant alleged that while employed at the CPS she was subject to unfair treatment, sexual harassment, and discrimination in the workplace. The chambers judge found that the Appellant's claim was related to workplace conditions and held that it fell under the exclusive jurisdiction of the collective agreement between the Appellant and her employer, the City of Calgary ("City"). She appealed.

HELD: Appeal dismissed; cross appeal is allowed.

DISCUSSION: The Appellant's position was that in a workplace, victims of harassment are predominantly women, and it is not unusual for women, inclusive of the Appellant, to delay reporting harassment to their employer. The Appellant raised the 60-day limitation period in the collective agreement preventing grievances as the crux of the appeal. The Appellant argues that the limitation period is an unconstitutional denial of her access to justice that violates s. 96 of the *Constitution Act, 1867* and s. 15 of the *Canadian Charter of Rights and Freedoms*. The remedy sought by the Appellant was a declaration of invalidity, a remedy that only a Superior Court may grant, *Nova Scotia (Workers' Compensation Board) v. Laseur,* 2003 SCC 54. The Court of Appeal was not persuaded; the Appellant cannot circumvent the exclusive jurisdiction model simply by alleging unconstitutionality, as it is not the test to require a court to assume jurisdiction over a matter. The Court agreed with the City, that at its core the claim before the Court was a workplace issue, and the *Constitutional* or *Charter* claims are at best an ancillary element. Having concluded that the claim was a workplace issue, the Court reviewed whether the collective agreement provided the remedy required to resolve the dispute. The Court found that the collective agreement procedures were effective, and thereby the chambers judge did not err. Appeal dismissed. The Court granted a cross appeal by the Calgary Police Association, finding that the chamber judge erred in finding that the Appellant might be open to financial compensation or damages under the *Societies Act*, RSA 2000, c S-14 and the *Business Corporations Act*, RSA 2000, c. B-9. The Court held that the statutory labour relations regime forecloses the Court's residual discretion, and the chamber judge erred by going beyond that finding.

What is a "Local Board"?
County of Lambton Community Development Corporation v Municipal Property Assessment Corporation et al., 2023 ONSC 3434 https://canlii.ca/t/jxjhv
The Appellant is a not-for-profit community development corporation also known as the County of Lambton Community Development Corporation ("CLCDC"). The CLCDC's sole purpose is to operate the Western Sarnia-Lambton Research Park located in the City of Sarnia. The CLCDC unsuccessfully sought a declaration that it was a "local board" as defined by the *Municipal Affairs Act,* R.S.O. 1990, c. M46 to be exempt from taxation pursuant to the *Assessment Act*, R.S.O. 1990, c. A. 31. The CLCDC appealed.

HELD: Appeal dismissed.

DISCUSSION: In Ontario all real property is liable to assessment and taxation under the *Assessment Act* unless it is among other things, a local board as defined pursuant to the *Municipal Affairs Act*. A local board is defined as:

"local board" means a school board, municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power or authority under any general or special Act with respect to any of the affairs or purposes, including school purposes, of a municipality or of two or more municipalities or parts thereof.

In support of dismissing the application, the application judge relied on the Ontario Court of Appeal decision, *Ontario Ombudsman v.*

Continued on page 33

Notes

1. To read about notable Supreme Court decisions, visit the IMLA Blog at https://imla.org/blog/.
2. Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 842-43 (1984).
3. *Id*. at 843.
4. *Id*. at 866.
5. Loper Bright Enterprises, Inc. v. Raimondo, 45 F.4th 359, 363 (D.C. Cir. 2022), *cert. granted in part sub nom*. Loper Bright Enterprises v. Raimondo, No. 22-451, 2023 WL 3158352 (U.S. May 1, 2023); 16 U.S.C. § 1801(b)(1).
6. Loper 45 F. 4th at 364.
7. *Id*.
8. *Id*.
9. *Id*.
10. *Id*. at 366-69.
11. *Id*. at 369.
12. *Id*.
13. Loper Bright Enterprises, Inc. v. Raimondo, 45 F.4th at 374 (D.C. Cir. 2022) (Walker, J., dissenting).
14. *Id*.
15. *See* Department of the Treasury, 31 CRF Part 35, Coronavirus State and Local Fiscal Recovery Funds.
16. *See* Luke Phillips, Chevron in the States? Not So Much, 89 MISS. L.J. 313, 315 (2020) (noting "[f]ourteen states and the District of Columbia apply Chevron-type deference" to state administrative agencies' interpretation of state statutes); see also Joseph Diedrich, Judicial Deference to Municipal Interpretation, 49 Fordham Urb. L.J. 807 (2022) (discussing state court deference to municipal interpretation of municipal ordinances).
17. Beaulieu v. City of Alabaster, 454 F.3d 1219, 1232 (11th Cir. 2006).
18. IMLA will not be participating as an amicus in this case but will be monitoring the case closely and will provide updates to our members regarding the outcome.
19. *See* City of Arlington, Tex. v. F.C.C., 569 U.S. 290, 316 (2013) (Roberts, C.J. dissenting) (objecting to application of Chevron deference joined by Justice Alito and citing to Marbury v. Madison for the proposition that "[i]t is emphatically the province and duty of the judicial department to say what the law is.")
20. Lindke v. Freed, 37 F.4th 1199, 1204 (6th Cir. 2022), *cert. granted*, No. 22-611, 2023 WL 3046121 (U.S. Apr. 24, 2023).
21. *Id*. at 1202-03.
22. *Id*. at 1203.
23. *Id*. at 1205-06.
24. *Id*.
25. *Id*. at 1205.
26. *Id*. at 1205-06 discussing Knight First Amend. Inst. v. Trump, 928 F.3d 226 (2d Cir. 2019).
27. Lindke, 37 F.4th at 1206.
28. Garnier v. O'Connor-Ratcliff, 41 F.4th 1158, 1170 (9th Cir. 2022), *cert. granted*, No. 22-324, 2023 WL 3046119 (U.S. Apr. 24, 2023)
29. *Id*. at 1170-71.
30. *Id*. at 1171.
31. *Id*. at 1172.

Inside Canada *cont'd from page 31*

Hamilton (City), 2018 ONCA 502: "where a class of things is modified by general wording that expands the class, the general wording is usually restricted to things of the same type as listed items (*ejusdem generis*). The application judged applied *ejusdem generis* to the facts at issue and held that all the named entities in the definition of local board provide services which are integral to the day-to-day operation of a city. However, the CLCDC does not provide this same type of service; therefore it was not exempt from taxation.

On appeal the Divisional Court agreed with the application judged, finding that the CLCDC is dissimilar to the entities listed in the "local board" definition, notably that it was created to administer and operate the Research Park and does not provide any core municipal services. The Divisional Court held that the application judge was correct in its finding. Appeal dismissed.

When is a City Compelled to Disclose Personal Information under *MFIPPA*?

Toronto (City) (Re), 2023 CanLII 49382 (ON IPC) https://canlii.ca/t/jxkmk

Following a by-law enforcement investigation by the City of Toronto ("City") at the Appellant's business, the Appellant filed a freedom of information request under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56 ("*MFIPPA*"). The Appellant sought records, photos, correspondence and the identity of the complainant. The City granted partial access to the request, withholding personal information about the complainant under section 14(1) of the *MFIPPA*. The Appellant appealed the City's decision to the Information and Privacy Commissioner of Ontario ("IPC").

HELD: Appeal dismissed.

DISCUSSION: The IPC reviewed whether the City was correct in withholding the complainant's personal information under section 14(1) of *MFIPPA*. Section 14(1) is not without exceptions,: if there are certain factors present then the City is compelled to disclose personal information. Notably, section 14(1)(f) requires the City to disclose personal information only if doing so would not be an "unjustified invasion of personal privacy". The IPC noted that a disclosure of personal information is an unjustified invasion of personal privacy if it was collected as part of an investigation into a violation of the law. In finding this, the IPC was satisfied that the complainants' information was collected following a complaint and a subsequent by-law investigation against the Appellant. The IPC held that the disclosure of the complainant's information would rise to the level of an unjustified invasion of the complainant's personal privacy, and is therefore exempt under section 14(1). ML