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Legal Implications of Internal Policies Designed to Disincentivize Dangerous Driving By City Staff

Edmonton (City) v Amalgamated Transit Union, Local No. 569, 2023 ABCA 241

The City of Edmonton ("City") passed an internal policy on photo radar and red-light cameras that directly impacted public transit employees. If employees exceeded the speed limit or ran a red light, tickets were issued to the owner of the vehicle, the City. Under the policy, the City would pay the ticket and then take steps to identify the employee to seek reimbursement. The policy imposed further disciplinary measures and if an employee refused to reimburse the ticket, the employee could be disciplined up to and including termination. The Transit Union ("Respondent") filed a policy grievance challenging the City's policy. The grievance was heard by the Alberta Labour Relations Board ("Board"). The Board held that the policy was disciplinary and unreasonable, and voided the policy. As a remedy, the Board directed the City to make all employees whole through reimbursement. The City sought permission to appeal the decision of the Board.

HELD: Application denied.

DISCUSSION: The City submitted that the Board's finding erred on the law of indemnity. The City unsuccessfully attempted to justify the policy on the basis that it was compensatory, and the steps to offset any loss for which the employee incurred were reasonable. The Court disagreed with the City. At no point before the Board did the City make an argument for the common law of indemnity. Thereby the Court found no reason to interfere with the Board's conclusion that the policy was disciplinary and unreasonable.
In reviewing the remedy applied by the Board, the Court was satisfied that all discipline issued under the policy was also void as a result of the Board's findings. The Supreme Court of Canada has made it clear that deference is owed to the remedial choices of arbitrators who must retain flexibility in their decision making, *Nor-Man Regional Health Authority v. Manitoba Association of Health Care Professionals,* 2011 SCC 59. The Court was satisfied that the Board had discretion to apply a remedy it saw as fit, and the City being required to reimburse employees under the now-void policy to make them whole, was not an unusual or unreasonable remedy. Application for permission to appeal is denied.

There are Two Things Guaranteed In Life: Death and Taxes

Spong v. The Corporation of the City of Duncan, 2023 BCCRT 730

The applicant, a resident in the City of Duncan ("City") filed a claim against the City when he received a 32.5% property tax assessment increase, alleging that it was unreasonable. The City agreed that property taxes have increased. The City submitted that property taxes apply to all residents in property classes equally, thereby it has no authority to modify an individual resident's tax bill.

HELD: Claim dismissed.

DISCUSSION: The Civil Resolution Tribunal ("Tribunal") issued a preliminary decision, finding that it did not have jurisdiction to address the legitimacy of the applicant's property value assessment increase. Rather, its jurisdiction was limited to considering the applicant's claim for damages arising from a negligent property tax assessment. The onus was on the applicant to demonstrate his claim on a balance of probabilities that the City owed him a duty of care, the City failed to meet that duty, and the failure resulted in the claimed damages, *Mustapha v. Culligan of Canada Ltd.,* 2008 SCC 27.

The Tribunal agreed that the City owes a duty of care to all of its taxpayers to accurately calculate property taxes but did not find that the applicant demonstrated that the City breached this duty when calculating his 2022 property tax assessment. The applicant provided limited evidence in his submissions, asserting instead that *he can provide* documents or evidence, without actually doing so. The Tribunal determined that the City under the *Community Charter*, SBC 2003, Chapter 26, has authority to generate revenue by levying property taxes. Further, it also provides the City Council authority to set property value tax rates by by-law based on the assessed value of the land and or improvements. The City submitted evidence that persuaded the Tribunal that the tax rates set and calculated by City Staff were aligned with the by-laws duly passed by Council. The Tribunal held that the applicant did not prove that the City's calculations of his property tax assessment were incorrect. Thereby, the applicant did not demonstrate that the City failed to meet its duty of care; claim dismissed.

Performance Issues Do Not Rise to the Level to Support a Human Rights Claim

Barragan v. Mississauga (City), 2023 HRTO 1305

The applicant, a temporary employee at the City of Mississauga ("City") filed a human rights application, alleging discrimination with respect to employment because of race, colour, place of origin, citizenship and ethnic origin contrary to the *Human Rights Code*, R.S.O. 1990, c. H. 19 ("*Code*"). The applicant alleged that he was not re-hired because he is neither white nor a citizen of Canada by birth. The City contended that it owes a duty to the applicant, but submitted the applicant had performance issues, and as a result was not re-hired.
HELD: Application dismissed.

DISCUSSION: The Human Rights Tribunal has jurisdiction over allegations or claims of unfairness only related to the *Code*, *Hay v. Ontario (Human Rights Tribunal),* 2014 ONSC 2858. The Divisional Court in *Mehedi v. Mondalez Bakery,* 2023 ONSC 1737, has held that a Tribunal's decision to dismiss an application for lack of jurisdiction is reasonable. Before the City is to make further submissions, the onus is on the applicant to demonstrate a connection between the alleged discrimination of not being re-hired at the City, and the *Code* enumerated ground(s). The Tribunal was not persuaded by the evidence submitted by the applicant, finding that he failed to point to *any* evidence that may be reasonably available to him to make a connection to the prohibited Code grounds. Even if the allegations in the application were true, the Tribunal was unable to find that it had a reasonable prospect of success. Application dismissed.

Ladies and Gentlemen, Don't Start Your Engines… There's an Injunction

The Corporation of the Town of Wasaga Beach v. Persons Unknown, 2023 ONSC 4929

An annual unsanctioned car rally prompted the Town of Wasaga Beach ("Town") to bring an *ex parte* motion for an injunction to restrain the unknown respondents from violating the Town's Car Rally By-law. Since 2020, the unsanctioned event attracted thousands of individuals to the Town, resulting in damage to public and private property and costing the Town thousands of dollars, none of which was recovered. The Town submitted evidence of social media posts indicating that the unsanctioned event was being planned again for Fall 2023.

HELD: Injunction granted.

DISCUSSION: Section 440 of the Municipal Act, 2001 permits a municipality to bring an application to restrain a person from contravening a by-law. The unsanctioned car rally is organized online, without any identifiable organizer or promoter. Case law from across Canada permits an injunction to be granted by the Court to an unknown person, and procedural fairness is met so long as the three prong *RJR-MacDonald Inc v. Canada (Attorney General),* [1994] 1. S.C.R. 311 test is satisfied. The Court applied a modified test for an injunction to allow the Town to enforce its by-laws. When it is alleged that a municipal by-law is being breached, as is the matter before the Court, the emphasis for injunctive purposes is on whether there is a serious question to be tried. The onus is on the Town to satisfy this one prong, there is no need to demonstrate that the Town will suffer irreparable harm or consider the balance of convenience. If the prong is met, the usual remedy is for the Court to grant the injunction that restrains the ongoing by-law breach.

The Town provided compelling evidence of the unsanctioned car rally scheduled for Fall 2023, the previous costs incurred by the Town, the dedicated emergency resources required to respond to the unsanctioned event, and the private and public property damages. The Court was satisfied on the evidence and the law that it was appropriate to grant an *ex parte* injunction. The Court granted the injunction and ordered the Town to prepare a press release with a link to the Order that warned attending or promoting the car rally is not only a bylaw violation but a breach of the Court order.

Time to take out the Trash, or is it?

Clarington (Municipality) v. Van Drunen and Sons Gravel Limited, 2023 ONCJ 272

The Corporation of the Municipality of Clarington ("Municipality") charged Van Drunen and Sons Gravel Limited ("defendant") for placing a bin encumbering a roadway, contrary to the by-law. At trial, the defendant brought a motion for a non-suit, requesting that the charge be dismissed.

HELD: Motion for a non-suit is granted.

DISCUSSION: In a motion for a non-suit the question for the Court is whether the prosecution has established a *prima facie* case. The Court is not to make findings of credibility or assess reliability. The test is whether there is some evidence, either direct or circumstantial, on all the elements of the offence upon which there could be a conviction, *R v. Charemski,* [1998] 1 S.C.R. 679. The Municipality submitted the defendant's placement of a large bin attached to a truck on the roadway was contrary to the by-law. To support its charge under the by-law, the Municipality relied on staff observation of vehicles swerving into the other lane of traffic to get by the bin. The Court found that waiting for oncoming traffic to pass before going around the bin would not impede any vehicle from passing along the roadway. Furthermore, the Court took issue with the Municipality's depiction of the bin as an unmovable object, while the photographic evidence depicts the bin attached to a truck. The Court was most compelled by the defendant's argument that the Municipality failed to present evidence that it was in care and control of the bin. The defendant's name was on the bin, however the driver's door of the truck to which the bin was coupled also stated Birk's Landscaping Inc. The defendant submitted that Birk's Landscaping Inc. obtained a Road Occupancy Permit from the Municipality.

The Court took issue with the Municipality's lack of evidence of an investigation to determine whether it was the defendant or Birk's Landscaping Inc. that was responsible for placing the bin on the roadway and allegedly encumbering the roadway. Furthermore, the Road Occupancy

Permit allowed equipment on the highway between 7am-6pm, the evidence from the Municipality was that the equipment was on the roadway between these hours. The Court was not satisfied that the Municipality provided evidence that could identify that the defendant had care and control over the bin that was placed on the roadway, furthermore the Road Occupancy Permit permitted the bin to be on the roadway. The Court found there was no evidence to constitute the offence being committed, and the motion for a non-suit is granted.

Questions?

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