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Repealed Legislation Limits Tribunal's Discretion to Grant Extension

Vogelzang v. Ontario Provincial Police Service, 2023 ONCPC 16

The Applicant, a police constable, was convicted on five counts of discreditable conduct under the *Police Services Act*, R.S.O. 1990, c. P. 15 (*"Act")* resulting in a two-year penalty demotion. The Applicant filed a Notice of Appeal on June 29, 2023. The Ontario Provincial Police Service ("OPP") submitted that the appeal should be dismissed as the Notice of Appeal was beyond the 30-day appeal period.

HELD: Appeal dismissed.

DISCUSSION: Both parties acknowledged receiving the decision on May 23, 2023, and noted that it was not publicly posted until June 9, 2023. The Applicant submitted that the 30-day appeal period begins once a decision is posted, or in the alternative s that the Tribunal had jurisdiction to waive the 30-day appeal period. The OPP submitted that the Applicant had until June 22, 2023, to file an appeal and the Tribunal had no jurisdiction to extend a timeline to appeal. Pursuant to section 87(1) the *Act* a Notice of Appeal may be filed by a party within 30-days of receiving the decision. The language is unambiguous, despite the Applicant's submissions that the language does not contemplate the posting date of a decision. Based on the evidence before the Tribunal, the Applicant did not file a Notice of Appeal until June 29, 2023, which did not comply with section 87(1) of the *Act*. In the alternative, the Applicant argued that there was no prejudice to the OPP if the Tribunal granted an extension. The OPP agreed that it would not be prejudiced by the delay but submitted that the Tribunal was bound by its authority under the *Act*. The Tribunal agrees with the OPP, specifically noting that the *Act* previously gave authority to consider an extension under previous section 63(8). However, that section of the *Act* was repealed. The legislative impact of the removal of this section specifically limited the Tribunal's discretion to extend the time for filing appeals. The Tribunal held that the Applicant did not serve Notice of Appeal in compliance with section 87(1) and that the time to appeal cannot be extended. Appeal dismissed.

Court Denies Request that Action is Moot Despite Councillors Removal From Office

Terrigno v Farrell, 2023 ABCA 323 https://canlii.ca/t/k11n4

The Appellants brought an action against the Respondent, who at the time was a City of Calgary councillor alleging a contravention of the pecuniary interest provisions of the ***Municipal Government Act***, RSA 2000, c. M-26. The Appellants sought a declaration that the Respondent has ceased to be qualified to remain as a councillor and be disqualified from the upcoming municipal election. Prior to the action being heard by the Court, a municipal election took place, and the Respondent did not seek re-election. After the election, the Appellant's brought an application to declare the action moot but still recover costs for the steps taken in relation to the action they are no longer interested in pursuing. The Chambers Judge denied the application, and the Appellants appealed.

HELD: Appeal dismissed.

DISCUSSION: The Chambers Judge determined that the Appellants' action was a live controversy that may affect the rights of the parties and failed to declare it moot. On appeal, the Court of Appeal held that the Chambers Judge made no error in reaching this conclusion. The Chambers Judge correctly found that the sections of the *Municipal Government Act*, R.S.A. 2000, c. M- 26 governing the disqualification of councillors provide that an application for declaratory relief under section 175(2) may continue under section 175(4) notwithstanding an intervening election in which the person sought to be disqualified from council does not seek re-election. The Appellants unsuccessfully argued that section 175(4) does not apply as the election in which the Respondent did not run took place *after* the application was filed. The Court of Appeal was not persuaded, finding that the language in section 175(4) was in place to protect democratic governance, and the language unambiguously contemplates applications starting or continuing regardless of whether or when there is an election. The Court of Appeal was satisfied that the issues before the Court remain tangible, notably the costs sought by the Appellants. The Appellants assert that the Respondent did not run for office because of their exposed misconduct, and the Respondent still denies these allegations. Application dismissed.

Court Upholds Human Rights Tribunal Decision: Applicant Failed to Demonstrate Discrimination by City

Wu v. City of Toronto and Toronto Ombudsman, 2023 ONSC 6192

The Applicant alleged that planning employees at the City of Toronto ("City") discriminated against him due to his Chinese origin. He alleged refusal of services on the grounds of race, ancestry, place of origin, and ethnic origin contrary to section 1 of the *Human Rights Code* R.S.O. 1990, c. H. 19. The Human Rights Tribunal ("Tribunal") dismissed the application, and the Applicant sought judicial review arguing that the decision was unreasonable. The City submitted that the judicial review should be dismissed as it was without merit.

HELD: Application dismissed.

DISCUSSION: The Court has jurisdiction to hear applications pursuant to subsection 2(1) and 6(1) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J-1. The standard of review of the administrative decisions on these applications is one of reasonableness. Reasonableness is grounded in the principle that certain questions that come before administrative tribunals, inclusive of the Tribunal, do not lend themselves to one specific or particular result. The Applicant argued that the Tribunal decision was unreasonable as it failed to appreciate the full issue as outlined in his complaint. The City argued that the Applicant failed to demonstrate how the Tribunal decision fell outside the range of reasonable outcomes. The Court was satisfied that the Tribunal reviewed the parties' submissions and evidence, finding that there was no evidence, circumstantial or otherwise, to demonstrate that the Applicant's code-protected characteristics played any role in the treatment by City employees. The Court agreed with the City that the Tribunal's finding was reasonable, was supported by the record and deserving of deference from this Court. Application dismissed.

Court Dismisses City's Interpretation of "Removed" in its Snow By-Law

R. v Gutovich, 2023 BCSC 1938

The Plaintiff, a resident in the City of Vancouver ("City"), was charged by the City with violating the Street and Traffic By-law ("By-law") that states every homeowner "shall, not later than 10am every day, remove snow and ice from any sidewalk" that runs the length of their property. The Plaintiff successfully argued for the charge to be dismissed. The Judicial Justice held that the By-law provides that snow and ice must be "removed" not necessarily cleared, and the photographic evidence revealed that while the sidewalk was not perfectly cleared, some snow had been removed. The Judicial Justice acknowledged that the purpose of the By-law is safety of the public, but refused to accept that the proper interpretation of the By-law is that any amount of snow or ice on a sidewalk constitutes a City hazard. The City appealed arguing that the Judicial Justice made errors of fact and law.

HELD: Appeal dismissed.

DISCUSSION: The City argued that the Judicial Justice made errors of fact by improperly taking judicial notice that snow had been removed from the sidewalk, and improperly withholding judicial notice that snow or ice on a sidewalk constitutes a safety hazard. The Court notes that judicial notice may only be taken in strict circumstances as referred to in the Supreme Court of Canada decision, *R. v. Find*, 2001 SCC 32. Upon review of the evidence, the Court disagreed with the City finding that the Judicial Justice considered the evidence presented at trial, notably her observations from the photographs provided and made a reasonable finding of fact. The Court was not persuaded in the City's position that there were other reasonable explanations as to why the level of snow on the sidewalk was lower, finding it to be mere speculation. Furthermore, the Court did not find it was an error for the Judicial Justice to decline to take judicial notice that a certain amount of snow is unsafe, as the City failed to provide evidence to establish that the Plaintiff's sidewalk was not safe. Lastly, the City argued that the Judicial Justice erred in law by incorrectly interpreting the By-law in finding that it did not require all snow and ice to be removed from the sidewalk. The Court disagreed, finding that the By-law requires the owner of the property to "remove snow and ice from any sidewalk". However, there is no requirement to clear snow, let alone clear all snow. The Court was satisfied that the Judicial Justice clearly assessed the state of the sidewalk in the photographs in making its decision. Appeal dismissed.

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