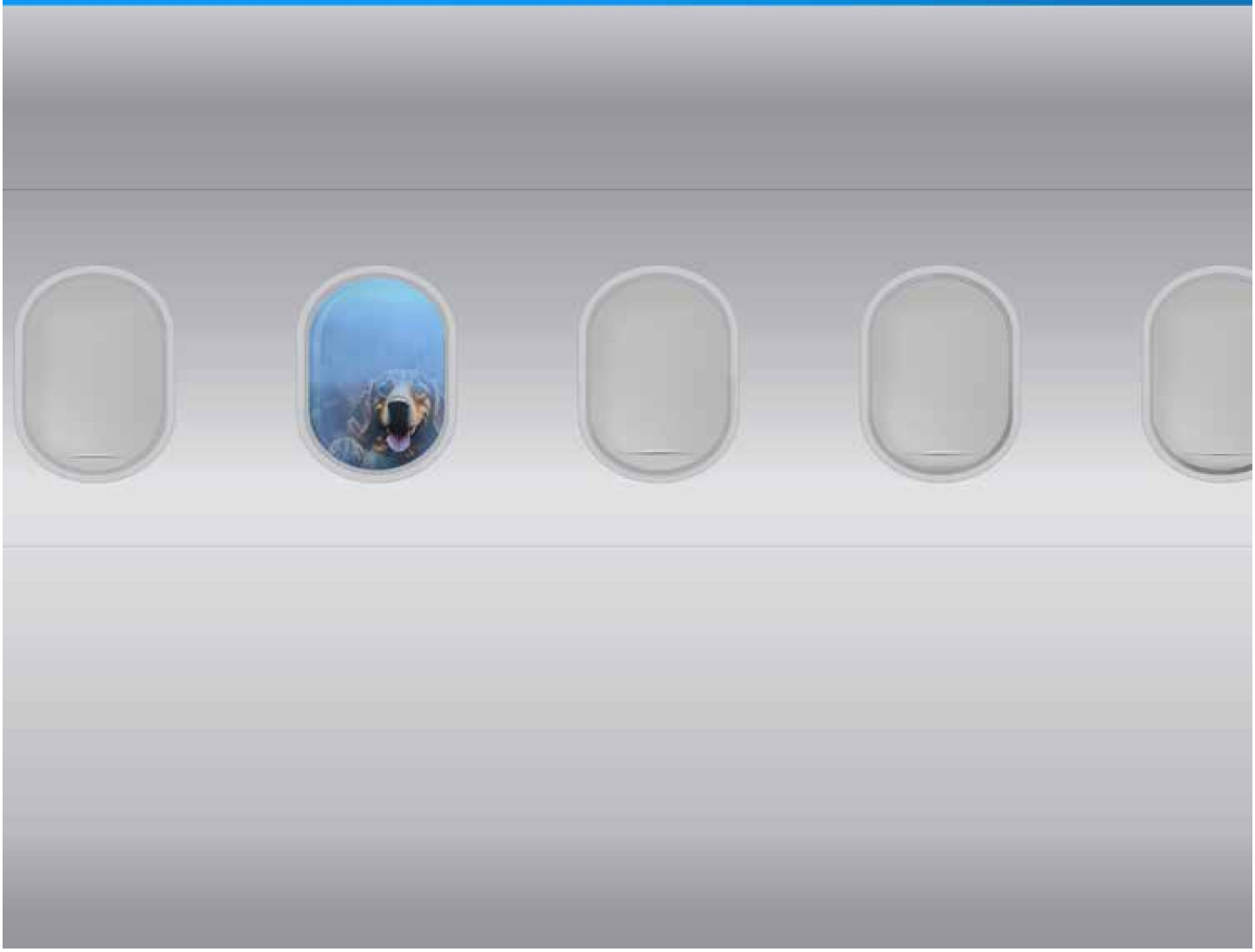
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Flying With Fido: A Brief Survey of Federal Service Animal Law



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FLYING WITH FIDO: A BRIEF SURVEY OF FEDERAL SERVICE ANIMAL LAW

By: Michelle Villareal, Deputy City Attorney, League City, Texas

Every year it seems that more of us are relying on the benefits of "emotional support" creatures, bringing them into previously animal-free environments. While these companions, four-legged or otherwise, undoubtedly provide great benefits, many are not "service animals" for purposes of federal law. Our author explains the regulations governing animals on airlines and related statutory nuances.

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THE PREROGATIVE TO UNSEAT: REMOVING COUNCILMEMBERS FROM COUNCIL COMMITTEES

By: Stephen K. Postema, City Attorney Ret., Ann Arbor, Michigan and Jennifer A. Richards, Assistant City Attorney, Ann Arbor, Michigan

Most city councilmembers comport themselves in a productive and cooperative manner. Occasionally, however, the city or county attorney will be called upon to evaluate the prospects for redressing unprofessional or unethical behavior by a councilmember. One such action may be to remove the member from a committee post. A thorough understanding of the rules and ramifications is required.

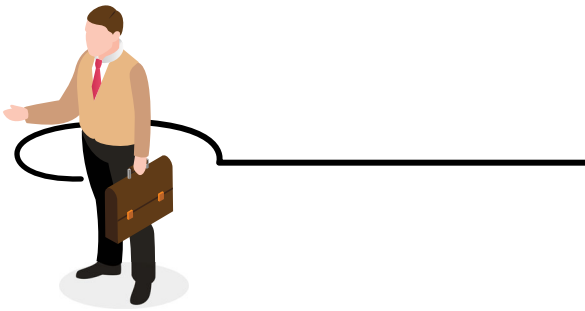
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"WE'RE HIRING, WE JUST NEED YOUR SOCIAL MEDIA LOGINS AND PASSWORDS"

By: Laura S. Burton, Police Attorney, Gastonia, North Carolina

Checking a job applicant's social media activity can provide a wealth of information, potentially revealing troublesome behavior and helping to avoid future problems. But such an inquiry triggers statutory and even constitutional issues, and many jurisdictions prohibit searching through a job seeker's non-public online activity.

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INSIDE CANADA

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

Expanding Borders, Solicitor-Client Privilege, Roadway Spills, and More

Expanding Borders Due to High Population Growth
White City (Town) v Edenwold (Rural Municipality), 2023 SKCA 61 https://canlii.ca/t/jxb5t
The Town of White City ("White City") and the Rural Municipality of Edenwold ("RM") are bordering municipalities experiencing a high rate of population growth. This prompted White City to apply to the Municipal Boundary Committee ("Committee") for an order approving an alteration of the boundaries, ultimately annexing some of RM's land. The Committee dismissed the application, holding that White City did not demonstrate a need for land for future residential growth. White City seeks leave to appeal pursuant to the *Municipal Boards Act*, SS 1988-89, c M-23.2 ("*MBA*").

HELD: Leave to appeal is granted.

DISCUSSION: White City sought leave to appeal on over twenty grounds, noting that the three most important errors of law by the Committee were: first, lack of reasons, second, failure to articulate proper legal tests; and third, failure to address certain evidence. RM submits that the Court does not have jurisdiction to grant leave to appeal. The Court disagrees finding that although the MBA is silent on an appellate role for the Committee, the Court has jurisdiction under s.33.1 to hear a leave application. The test for granting leave is outlined in *Town N Country Mall Inc. v. Moose Jaw (City),* 2022, SKCA 10, asking the Court to consider if White City has proposed a question of sufficient merit or important to warrant the attention for the Court of Appeal. In reviewing the twenty grounds proposed by White City, the Court is satisfied that if collapsed into four questions of law, removing any direct challenges to finding of fact, White City satisfies the test. Not only are the questions not vexatious, and not destined to fail, but a boundary dispute is of fundamental significance to both parties and their residents. Leave to appeal is granted.

Lawyer Properly Refused to Answer Questions: Legal Instruction is Subject to Solicitor-Client Privilege
Raufi v. Toronto (City), 2023 ONSC 4594 https://canlii.ca/t/jzfk2
The Plaintiff was injured during a slip and fall on a City of Toronto ("City") sidewalk during the winter months. The City had contracted winter maintenance to a third-party corporation ("corporation"), and the Plaintiff sought to amend the claim to add the corporation as a Defendant to the action. During cross-examination the Plaintiff's lawyer refused to answer questions posed by the corporation. The corporation brought a motion to compel the Plaintiff's lawyer to answer four specific questions.

HELD: Motion dismissed.

DISCUSSION: The Plaintiff's lawyer refused to answer four specific questions, on the basis of solicitor-client privilege:

1. When the lawyer consented to the Third-Party Claim on November 17, 2019, he had instructions to do so, correct?
2. It wasn't until after the lawyer received the corporation's defense to the Third Party Claim, that he obtained instructions to bring the motion to amend the Statement of Claim, correct?
3. Were instructions obtained, at any point before the corporations defense to the TP claim, not to amend the Statement of Claim to add the corporation?
4. When the Plaintiff consented to the issuance of the Third Party Claim, the lawyer was aware that the corporation had the ability to either respond to the Third Party Claim or plead into the main action under Rule 29, correct?

The Court reviewed the motion and the questions posed by the corporation, finding that they all related to legal instructions provided by the lawyer from his client. Questions regarding lawyer's instructions, and information related to timing and content between a plaintiff and his lawyer, are subject to solicitor-client privilege. The solicitor-client relationship is confidential at common law, and anything that is discussed in seeking or providing legal advice is subject to solicitor-client privilege as recognized by the Supreme Court of Canada as a principle of fundamental justice and has gained constitutional protection under s. 7 of the *Charter of Rights and Freedoms*. The Court held that the four questions were property refused by the lawyer, and not needed to be answered. Motion dismissed.

Does a Spill on a Roadway Trigger a City's Duty of Care?
Cockburn v. City of Richmond, 2023 BCCRT 669 https://canlii.ca/t/jzjzq
While driving her vehicle in the City of Richmond ("City"), the Applicant drove over wet paint on the roadway causing paint to be transferred onto her vehicle wheels and wheel wells. The Applicant brought a claim against the City, claiming negligence for failing to warn drivers about the paint or remove it from the roadway. The City

denies negligence, indicating it was only made aware of the spill from the applicant's complaint.

HELD: Claim dismissed.

DISCUSSION: The onus is on the applicant to prove negligence on a balance of probabilities. To prove negligence the applicant must demonstrate that the City owned her a duty of care, that the City breached the standard of care, that she sustained a loss, and the City's breach caused that loss, *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27. It is well established that the City does not owe a duty of care to public users of property where its actions were based on a policy decision. The exception is if the City's policy decision was made in bad faith. Since spills are sporadic and unpredictable throughout the City, the City relies on a complaint-based Road Maintenance Policy ("Policy"). When the City received the Applicant's complaint, it responded and inspected the City. It was the City's position that its actions were reasonable as it followed its Policy. The Court was satisfied with the City's submission supported by the Policy, internal emails, and information available on the City's website that outlined the complaint process. The Court held that the City did not owe the applicant a duty of care because its actions were in keeping with its Policy, which excludes regular inspections of its roads. The Applicant failed to make submissions that the City's policy was irrational, unreasonable or in bad faith. Claim dismissed.

Timelines are Timelines: Inadequate Medical Evidence to Demonstrate a Disability

Bissonnette v. City of Greater Sudbury, 2023 HRTO 1162 https://canlii.ca/t/jzl8b

The Applicant alleged that the City of Greater Sudbury ("City") failed to accommodate his disability with respect to housing contrary to the *Human Rights Code,* R.S.O. 1990, c. H. 19 ("*Code*"). The City responded that it did not discriminate against the applicant when it required the Applicant complete an annual rental review package in order to continue to receive a rent subsidy at his residence.

HELD: Application dismissed.

DISCUSSION: The Applicant submitted that he is disabled, suffers from major depressive disorder, and as a result of his disability he failed to complete an annual rental review package on time as required by the City. The City discontinued his rental subsidy. The Applicant sought an internal City staff review of the decision, and the City committed to giving him a decision by December 7, 2018. In the application, the Applicant provided that the date of his last incident of discrimination by the City was December 7, 2018, however the application was not filed until January 13, 2020. Section 34 of the *Code*, provides that the Human Rights Tribunal ("Tribunal") has no jurisdiction to deal with allegations in an ap-

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plication that relate to incidents that occurred more than one year prior to filing the application. The exception is if the Applicant can demonstrate that the delay was incurred in good faith and that there will be no substantial prejudice to any party by the delay, *Klein v. Toronto Zionist Council*, 2009 HRTO 241. The Applicant submitted that as a result of his disabilities, he required more time to file the application. The Tribunal, while sympathetic to the applicant, has held that absent medical evidence demonstrating that a disability is so debilitating that it prevents an applicant form pursuing their legal rights under the *Code*, timelines must be met. The Applicant did not provide any medical evidence to support his submission that his disabilities were so debilitating as to prevent him from filing an application with the Tribunal. Application dismissed on the basis that the allegations of discrimination are untimely.

Important Considerations for a Class Action and Settlement Agreement
Steele v. Leduc (City), 2023 ABKB 460 https://canlii.ca/t/jzh3d
The Defendants in this application sought to certify their claim as a class action against the City of Leduc ("City"), and approval of a settlement agreement. The settlement agreement between the parties recognized that gender discrimination, sexual harassment, sexual misconduct and sexual assault (collectively, "sexual misconduct") took place at the City's Fire Department and agreed to provide compensation to those who suffered sexual misconduct.

HELD: Claim certified as class action, and settlement agreement approved.

DISCUSSION: Even though both parties jointly consented to a class action conversation, it must have still satisfied the court that the claim may be appropriately advanced as a class action. In reviewing the submissions, the Court was satisfied that the matter should be certified as a class action proceeding, as there is an identifiable and defined class being, all female current and former employees at the City's Fire Department, the class members raises a common issue being, sexual misconduct, and proceeding by a class action would aid in court efficiency. The parties also jointly sought approval of the settlement agreement. The settlement agreement was modelled after a matter with similar allegations, outlined in *Heyder v. Canada (Attorney General)*, 2019 FC 1477. Similar to *Heyder* the settlement agreement was intended to prevent any retraumatizing of the class members who experienced sexual misconduct through oral testimony. It also outlined the process for a claim for compensation for class members and avoided a potentially lengthy litigation. The Court was satisfied that the settlement agreement was fair, reasonable and in the best interest of the class members. The Court approved the Defendant's claim for a certified class action and settlement agreement.

