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Extern! Extern! Read All About Them!

Law schools want to place them, law students seek the opportunity, and local government law offices can benefit.



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INSIDE CANADA

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

Demolitions, Political Signage, Underpaid Welders, and More

Ambiguous Sign By-law Results in Charter Challenge
Kaps v Surrey (City),
2023 BCSC 1844 https://canlii.ca/t/k0q8j
The City of Surrey (City) broadened the definition of "political sign" in its Sign By-law, which ultimately covered political issues, as opposed to city, provincial and federal election signs. The petitioners, residents of the City, challenged the constitutionality of the amendments, arguing that the provisions infringed section 2(b) of the *Canadian Charter of Rights and Freedoms (Charter)*, that guarantees constitutional protection of political expression. The Court held that the amendments gave rise to an ambiguity that arguably prohibited posting signage including "Get Vaccinated" or "Save the Whales" on private property except during specified periods of time. The Court agreed that the ambiguity caused a constitutional restriction that violated the *Charter* but did not declare the Sign By-law invalid on constitutional grounds. The Court granted interim relief and directed the City to amend the Sign By-law to eliminate the ambiguity but did not grant special costs.

HELD: Application for special costs dismissed.

DISCUSSION: The petitioners relied on ***Carter v. Canada (Attorney General)***, 2015 SCC 5, submitting a public interest rationale for awarding special costs. They argued that this is a truly exceptional public interest case that warranted special costs as residents had been compelled to defend themselves against the unconstitutional actions of the local government. Further, the petitioners submitted that the City's actions had far-reaching implications, including the potential to negatively impact varying grassroots organizations that are fundamental to a democracy. The City submitted that it was the successful party as the Court had rightfully refused to grant the relief sought by the petitioners, namely a declaration of invalidity on constitutional grounds; as such, no costs were warranted. In the alternative, the City submitted that the petitioners were not entitled to costs as the City never intended for the amendments to limit freedom of expression. The Court clarified that the City was not the successful party to the proceeding, but rather that the petitioners appropriately sought judicial review of the Sign By-law amendments and had obtained a remedy. That remedy was not costs, but rather an order to have the City amend the Sign By-law to remove the ambiguity that triggered the petitioners' constitutional concerns. The Court was satisfied that this was the appropriate remedy and was not persuaded that the *Carter* public interest rule applied as this was not a truly exceptional matter of public interest. The petitioner's application for special costs was dismissed.

City Fair Wage Action Did not Deprive Employer of Procedural Fairness
1460973 Ontario Ltd. v. City of Toronto,
2023 ONSC 5213 https://canlii.ca/t/k07w5
The Applicant has a construction contract with the City of Toronto (City), and a condition of the contract is that it is required to pay its employees a minimum hourly wage in compliance with the City's Fair Wage Policy (Policy). The City's Fair Wage Office (Office) received and investigated a complaint that the Applicant did not pay a welding employee in compliance with the Policy. The Office found that the Applicant violated the Policy, prompting the Applicant to file an application that it was denied procedural fairness.

HELD: Application dismissed.

DISCUSSION: The Applicant submitted it was deprived procedural fairness because it was not given fair notice and adequate disclosure from the Office. The Court disagreed. The evidence between the Office and the Applicant demonstrated ongoing dialogue including notice of the investigation and the scope, namely whether the employee's work qualified him as a welder under the Policy. The Applicant undertook several opportunities to provide verbal and written submissions on the issue, suggesting that the employee was a "stud welder" which not the same as a journeyman skilled welder. The Office considered this in its decision and noted that the Policy did not distinguish or define different types of welders or skilled vs. unskilled work; rather the Policy applied if the employee worked as a welder. The Policy does not require that a worker be certified as a welder to be entitled to the rate of pay guaranteed to welders under the category. The Court was not persuaded by the Applicant's arguments that it was deprived procedural fairness and found that the decision rendered by the Office was reasonable. Application dismissed.

Housing Shortage is No Excuse for Violating City's Building By-laws
Surrey (City) v Sidhu,
2023 BCSC 1837 https://canlii.ca/t/k0rws
The City brought a petition to seek demolition of the Respondents' laneway home and an extension to their

main home, collectively referred to as the "Structures." The Structures were constructed in violation of the City's Building By-law with no building permits or inspections, resulting in square footage that exceeded the permitted size and violated setback requirements. The Respondents acknowledge that the Structures violate the City's Building By-law but submit that given the housing crisis, the City's demolition order is wasteful and drastic.

HELD: Demolition order granted.

DISCUSSION: The City relied on its authority under the Building By-law to regulate construction, alteration, repair or demolition of buildings, as well as the Zoning By-law to regulate the location, use, and height of buildings on land in the City. The City submitted that the Structures must be demolished as they violate a number of By-laws and were constructed without any of the required permits or inspections. The Respondent accepted that it violated City By-laws but argued first, that given the housing shortage it is wasteful to destroy the Structures which are perfectly good rental units. In support of its argument the Respondent relied on the *Build More Houses and Rental Units Policy* issued by the British Columbia Provincial Government. The Court was not persuaded that the Provincial Government wanted to encourage the unlawful construction of dwellings or rental units as a part of its housing policy. Second, the Respondent submitted that it is willing to work with the City to retroactively bring the Structures into compliance with all City By-laws. The Court disagreed that this was appropriate.

The Court held that based on the evidence, there was a clear and ongoing flagrant breach of City By-laws: the Structures were built without permits and inspections, exceeded square footage and setback regulations--all of this despite the City's ongoing correspondence with the Respondent during construction. The Court found that the Respondents gambled that they could expand the Structures on their property, create rental units without obtaining permits and not be caught by the City; the Respondents

Supreme Court *cont'd from page 27*

1. Grutter v. Bollinger, 539 U.S. 306 (2003).
2. *Id.* at 343.
3. Collectively, the two *Students for Fair Admissions* cases drew more than 170 amicus briefs between the Supreme Court's petition and merits stages.
4. Students for Fair Admissions, Inc. v. Pres. and Fellows of Harvard College, no. 20-1199 (U.S. June 29, 2023), on appeal from the First Circuit (Justice Jackson recused herself from this case due to her prior membership on Harvard University's Board of Regents).
5. Students for Fair Admissions, Inc. v. University of North Carolina, no. 21-707 (U.S. June 29, 2023)., on appeal from the U.S. District Court for the Middle District of North Carolina.
6. Students for Fair Admissions, Inc. v. Pres. and Fellows of Harvard College, 143 S. Ct. 2141 (2023).
7.*Id.* at 2175.
8. 488 U.S. 469 (plurality opinion). *See* City of Chicago Disparity Study for Construction Contracts (2021), https://www.chicago.gov/content/dam/city/depts/dps/Outreach/City%20of%20Chicago%20Disparity%20Study%20for%20Construction%20Contracts%202021.pdf; *see also* City of St. Petersburg Disparity Study ("The standard for measuring evidence of disparity in public contracting is set forth in the 1989 United States Supreme Court decision of *City of Richmond v. J.A. Croson Co.*."), https://cms5.revize.com/revize/stpete/Business/Economic%20Development/docs/City%20of%20St.%20Petersburg%20Disparity%20Study%20Report.pdf.
9. City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989).
10.*Students for Fair Admissions,* 143 S. Ct. 2141 at 2162.
11. *Croson*, supra n. 9, at 500 (*citing* Wygant v. Jackson Board of Education, 476 U.S. 267, 277 (1986)(plurality opinion)).
12. *Croson, supra* n.9, at 492.
13. *Id.* at 471.
15. Ultima Servs. Corp. v. U.S. Dep't of Agric., No. 220CV00041DCLCCRW, 2023 WL 4633481, at *24 (E.D. Tenn. July 19, 2023)(citing *Students for Fair Admissions.*, 143 S. Ct. at 2162, 2166).
16. *Ultima*, 2023 WL 4633481, at *31.
17. *Id.* at *18.
18. *Id.* at *1.
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.* at *15 n.8; *see* Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 215 (1995)(applying the reasoning in *Bolling*, 347 U.S. at 497, which discussed school desegregation, to a federal program designed to provide highway contracts to disadvantaged business enterprises).
28. See *Croson*, 488 U.S. at 498–504.
29. *Id.* (emphasis added).
30. *Croson,* 488 U.S. at 470.
31. *Ultima*, 2023 WL 4633481, at *14.
32. *Id. See Croson*, 488 U.S. at 507–08.
33. SBA, *8(a) application submissions temporarily suspended*, https://www.sba.gov/federal-contracting/contracting-assistance-programs/8a-business-development-program (last visited Sept. 25, 2023).
34. *Id. See* Guide for Writing a Social Disadvantage Narrative, https://sbaone.atlassian.net/wiki/spaces/CKB/pages/2768076819/Guide+for+Writing+a+Social+Disadvantage+Narrative(Owned by Fazila Sunbal, Last updated: Sept. 5, 2023).
35. 15 U.S.C. §§ 631, 637(a)(6)(A).
36. *Id.* (emphasis added)(https://www.sba.gov/federal-contracting/contracting-assistance-programs/8a-business-development-program).
37. Houston Code § 15-81(a).
38. Complaint at 2, Landscape Consultants of Texas, Inc. v. City of Houston, (S.D. Tex. Sept. 19, 2023)(No. 23-3516).
39. City of Chicago Disparity Study for Construction Contracts (2021), https://www.chicago.gov/content/dam/city/depts/dps/Outreach/City%20of%20Chicago%20Disparity%20Study%20for%20Construction%20Contracts%202021.pdf
40. *See supra* n. 25.
41. *See Croson, supra* n. 9; *see also* Wygant v. Jackson Bd. of Educ., 476 U.S. 267 (1986)(plurality opinion); *Adarand, supra* n. 27 (plurality holding that racial classifications are subject to strict scrutiny).