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MUNICIPAL BULWARKS: THE BATTLE FOR CORPORATE ACCOUNTABILITY

Local governments are a transformative force in redressing a wide range of injuries to their communities, achieving significant settlements and changing corporate behavior.

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Local governments are a transformative force in redressing a wide range of injuries to their communities, achieving significant settlements and changing corporate behavior. As their effectiveness has increased, often through the use of outside counsel, municipalities face a growing campaign to slow their momentum.

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INSIDE CANADA

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

Ungracious Candidates, Contentious Rideshares, Hydrovac Squabbles, and More

Unsuccessful Candidate Challenges Validity of Mayoral Election
Clarke v. Toronto (City), 2023 ONSC 6495 https://canlii.ca/t/k16j8
The Applicant, an unsuccessful candidate for the 2023 mayoral election in the City of Toronto (City), filed an application challenging the election results pursuant to s. 83 of the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, Sched ("*Act*"). The City argued that the application should be dismissed as frivolous or vexatious pursuant to Rule 2.1.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

HELD: Application dismissed.

DISCUSSION: The Applicant argued that debate organizers relied on flawed subjective election pollsters to determine which candidates for mayor to include in debates, that ultimately allowed those candidates to attract more media attention. The Applicant further argued that the six candidates that were included in the debates unfairly received more media coverage than the other 96 candidates. It was the Applicant's position that the election was rigged and Ms. Olivia Chow, the successful mayoral candidate, did not win the election fairly through democratic means. The City relied on Rule 2.1.01, which permits the Court to nip the proceeding in the bud (*Gao v. Ontario (Workplace Safety and Insurance Board)*, 2014 ONSC 6100, if it appears to be frivolous or vexatious or otherwise an abuse of process of the Court. The City submitted that the Court should use its discretion to rigorously enforce such Rules to dismiss the proceeding as it lacks legal basis and will inevitably fail. The Court agreed with the City, finding that the application was frivolous and vexatious and would inevitably fail. The *Act* provides that the Court shall not determine an election to be invalid if the election was conducted in accordance with the principles of the *Act*, and the *Act* does not regulate the conduct of debate organizers, pollsters, or the media. Application dismissed pursuant to Rule 2.1.01.

Developing: Uber Challenges Cap on Rideshare Licenses Uber_CoT_NoA_12.04.23_CV-23-710729.pdf | Powered by Box
At an October 11, 2023, meeting of Toronto City Council, the Council introduced and passed a motion capping the number of rideshare licences amid a debate about the need to reduce gas emissions in the taxi and ride-sharing industry to meet the longer-term goal of transiting the industry to zero emission vehicles by 2030. City Council argued that the cap would reduce pollution and congestion in the core of the City.

Uber Canada (Uber) has filed a notice of application, alleging that the cap was enacted in bad faith and contrary to the City's own procedural bylaws. The application requests that the Court quash the City By-law that implements a cap on ride-share company driver licences for illegality under section 214(1) of the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sch. A ("*Act*"). Uber's position is that the City failed to provide public notice of the licence cap, contrary to the *Act*, that the City enacted the licence cap in bad faith absent staff recommendation or stakeholder consultation, and that the cap unlawfully discriminates in the administration of the City's licensing scheme. Uber submits that a cap in the number of licenses is a significant legislative step that radically changes the licensing scheme set out in the City's Licensing By-law, and to so implement such a change, the City was required to give public notice.

It is Uber's position that the cap on the number of licenses should be stayed pending the disposition of the application. At this time the application is still before the Court.

City's Obligations Justifying Denial of Advertisements
Association for Reformed Political Action Canada v. Hamilton (City of), 2023 ONSC 6443 https://canlii.ca/t/k18gt

The Applicant, a grassroots Christian political advocacy organization, submitted a proposed advertisement which stated "We're for woman's rights" with a photo of four women of various ages, including an ultrasound scan of a fetus captioned "Hers. Hers. Hers. And Hers." to the City of Hamilton (City) to be posted on City transit vehicles. The City rejected the ad. The City found that the words "And Hers" below the picture of the ultrasound "would need to be revised so as to not reflect personhood in relation to the [fetus] image" in order to be consistent with the Canadian Code of Advertising Standards, Clause 1 and the *Criminal Code*, R.S.C.1985, c. C-46. The Applicant filed an application for judicial review.

HELD: Application granted.

DISCUSSION: The Applicant argued that the City's decision to reject the ad violated section 2(b) of the Canadian Charter of Rights and Freedoms, which protects freedom of expression. Prior to the hearing, the City agreed with the Applicant's position that the City had not provided adequate reasons in its decision as required by the Supreme Court of Canada's decisions in *Dore v. Barreau du Quebec*, 2012 SCC 12 and *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12. Specifically, the City's decision was silent on the Applicant's right to freedom of expression balanced against the City's statutory obligations. It was the City's position that the Court should decline to consider what the City may have considered but did not communicate and remit the matter back for the City to undertake a fulsome analysis with detailed reasons as was done in *Guelph and Area Right to Life v. City of Guelph*, 2022 ONSC 43. The Applicant disagreed. The Applicant argued that the Court should hear the argument on the application and issue an order that the City accept the ad, ultimately seeking a determination from the Court that a fetus is a person, and therefore the ad should be posted on City transit vehicles. The Court disagreed with the Applicant and revisited the specifics of the application. The application raised concerns that the City failed to conduct a robust *Dore* and *Loyola* analysis, and in doing so infringed on the Applicant's rights. The Court agreed that the City failed to take these steps. The Court, consistent with the long-standing practice on judicial review, saw no unfairness in remitting the matter back to the City, the original decision-maker, rather than stepping in at this stage to provide reasons on the issue. Application for judicial review granted.

Hydrovac Waste Management Facility is Not General Industrial Use

Gellarne Holdings (2001) Ltd v Edmonton (City), 2023 ABCA 327 https://canlii.ca/t/k14rg

The City of Edmonton (City) approved a development permit to the Respondent for a property with a proposed use as a hydrovac waste management facility. The Appellant, a neighbouring property owner, appealed the development permit to the Land and Property Rights Tribunal (Tribunal). The Tribunal denied the Appellant's appeal, finding that the proposed use was a General Industrial Use and upheld the permit. The Appellant appealed.

HELD: Appeal granted.

DISCUSSION: The Respondent's position is that the proposed use of its property as a hydrovac waste management facility is a General Industrial Use, and the development permit was properly approved. The Appellant argued that the proposed use is a Major Impact Utility Service or a Minor Impact Utility Service and is not a General Industrial Use; therefore, the Tribunal erred in law by finding that the Respondent's proposed use of the land was a General Industrial Use and upheld the permit. General Industrial Uses, Major Impact Utility Services and Minor Impact Utility Services are all defined in the City Zoning By-law. If a development is a Major Impact Utility Service or a Minor Impact Utility Service, it is not a General Industrial Use. In other words, Major Impact Utility Services and Minor Impact Utility Services are exclusions from a General Industrial Use. Both parties conceded that there was a two-prong analysis to demonstrate a General Industrial Use and made arguments on both prongs to the Tribunal: first, does the use as presented fit within the uses or activities listed in section 430 of the City Zoning By-law and second, if yes, does it fall within one of the specific exclusions, including Major and Minor Impact Utility Services.

The Court found that despite both parties making arguments on both prongs, the Tribunal Decision did not include either an express conclusion or any reasoning on the second prong, which was ultimately the crux of the Appellant's appeal. The Court held that the Tribunal's decision lacked justification and reasonableness on the central issue of whether the Respondent's proposed use is excluded as a permitted use on the property by virtue of being a Major or Minor Impact Utility Service. The Appellant met the burden of demonstrating that the Tribunal Decision was unreasonable, the appeal was granted, and the matter was remitted to the Tribunal for reconsideration. ML