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Court Grants Extension When City Filed Wrong Motion

City of Toronto v. Minto (Mimico) Inc., 2024 ONSC 2674

The City of Toronto ("City") brought a motion for an extension of time to file an application for judicial review of a site alteration decision by the Ontario Land Tribunal ("Tribunal"). The City argued that the Tribunal acted outside its jurisdiction of the *City of Toronto Act,* 2006, S.O. 2006, c. 11 to determine that the Respondent's site plan application was complete when the Respondent had failed to attend a pre-application consultation ("PAC") as required by the City By-law.

HELD: Motion granted.

DISCUSSION: The City sought an extension from the Court, having initiated the application for judicial review seven weeks after the 30-day deadline contrary to the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1 ("*JRPA*"). A Court may authorize an extension if it is satisfied of the merits of the application and that no substantial prejudice or hardship will result in any person affected by reason of the delay. The Court was satisfied that the City offered an acceptable explanation for the delay, finding that it did file a motion for leave to appeal within the required 15-day period. However, the leave to appeal was barred by s. 114(4.8) of the *Ontario Land Tribunal Act*, 2021, S.O. 2021, c. 4, Sched. 6, once aware, the City quickly initiated the motion for an extension of time. The Court stated that the City's initial challenge of the Tribunal's decision by motion for leave to appeal was sufficient to explain its delay. Next the Court considered the merits of the application for an extension, finding the City's submission persuasive that the Tribunal effectively invalidated the PAC requirement in its City By-law. The Court was satisfied that the City had raised a position of sufficient merit to be determined by the Court. Motion for an extension of time granted.

Can you Discriminate if its for 30 Minutes or Less?

Smrekar v. City of Richmond and another, 2024 BCHRT 132

The Complainant, an employee at the City of Richmond ("City") alleged discrimination based on race, colour, place or origin and ancestry, contrary to the *Human Rights Code* ("*Code*") when she

was temporarily asked to leave the workplace upon return from Hong Kong in January 2020. The City conceded that the Complainant was asked to leave the workplace temporarily for health and safety concerns but denied discrimination.

HELD: Complaint dismissed.

DISCUSSION: The onus was on the City to establish a basis to dismiss the application for no reasonable prospect of success. The City submitted that in January 2020 the Public Healthy Agency of Canada issued warnings for travellers to China referencing a new coronavirus, including screening protocols and self-isolation requirements. This information prompted management to ask the Complainant to temporarily leave the office upon return from Hong Kong until the City's health and safety department advised on next steps. The City submitted evidence that the Complainant was out of the office for less than 30 minutes and then returned. The City did not dispute the Complainant's protected characteristic, but argued that the Complainant was not adversely impacted in employment within the meaning of the *Code*. The Tribunal agreed. The Tribunal held that the impact of this incident alone, being out of the workplace for less than 30 minutes, was not enough to rise to the level of discrimination at a hearing. While the Tribunal sympathized with the Complainant's situation, there was no reasonable prospect of success. Complaint dismissed.

Not in my Backyard? Actually, Yes, in Your Backyard with a Patio

1000758840 Ontario Ltd v. The City of Toronto, 2024 ONSC 1835

The Applicants, collectively made up of residents living in proximity to a proposed shelter in the City of Toronto ("City") sought a declaration from the Court under Rule 14 of the *Rules of Civil Procedure*, RRO 1990, Reg 194 ("*Rules*") that the proposed property was not permitted under the City's Zoning By-law.

HELD: Application dismissed

DISCUSSION: It is the City's position that the Applicant's erred by bringing an application under the *Rules* as the proper route was to bring an appeal under the *Building Code Act*, 1992, S.O. 1992, c. 23 ("*Act*"). Furthermore, the City argued that an appeal under the *Act* should fail as it relied on the Chief Building Official's ("CBO") decision that the property conforms with all Zoning By-laws, and all other applicable law. The Applicant argued that it cannot be required to proceed under the *Act*, because there was still an outstanding patio permit for consideration, and therefore no final decision by the CBO for the Court to review. The City conceded that a patio permit was outstanding but that the CBO's decision includes a reference to the patio. The Court agreed with the City, finding that the decision at issue for consideration is the decision of the CBO. The Court next considered the merits of the appeal under the *Act*. The Applicant unsuccessfully submitted that the proposed shelter was not permitted under the City's Zoning By-law due to the proposed patio on the property. The Court disagreed. In reviewing the zoning of the property, it found that the use of a supervised residential facility providing short-term emergency accommodation and support was an approved use and because the CBO had not yet made a decision with respect to the patio there was no error in his decision. The Court held that it would be premature to step in and consider the issue while a decision was pending. Application dismissed.

The Missing Fundamental Freedom… Expression, Religion, Peaceful Assembly and Right to Let Your Lawn Grow Out of Control

Ruck v. City of Mississauga, 2024 ONSC 2579

The City of Mississauga ("City") took enforcement action against the Applicant for contravening the City's Nuisance Weed and Tall Grass Control By-law ("By-law"). The Applicant filed an application seeking to have the City's By-law declared both *ultra vires* and unconstitutional as a violation of his freedom of expression under section 2(b) of the *Canadian Charter or Rights and Freedoms ("Charter")*. The Applicant argued that he should be entitled to grow tall grasses on his property and the By-law prohibited him from expressing himself.

HELD: Application dismissed.

DISCUSSION: The Court relied on the persuasive but non-binding provincial court decision *Bell v. Toronto (City),* [1996] O.J. No. 3146 (Ont. Prov. Div) to find that a property owner's garden or "gardening" is a form of expression, that is intended to be protected by section 2(b) of the *Charter*. The City agreed that its By-law prevents the Applicant from expressing himself, but argues that the purpose of the By-law is to ameliorate the harmful effects of weeds and tall grasses and is thereby saved under section 1 of the *Charter*. The question for the Court is whether the City satisfied the two prong Oakes Test (*R v. Oakes* [1986] 1 S.C.R. 103) to justify an infringement of a Charter right. First, the Court was satisfied that the concern the City was addressing with the By-law was pressing and substantial, is it protected residents from noxious weeds and other negative impacts associated with tall grasses. Second, the Court was satisfied that the By-law was minimally impairing, finding that the By-law was reasonable as it provides for limitations but not total prohibitions. The Court held that the benefits of the By-law outweighs its deleterious effects, and therefore the By-law does not violate the Charter.

Court Held that City Did Not Owe a Duty a Care When it Followed its Policy

Drinkwater v. The Corporation of the City of Victoria, 2024 BCCRT 454

Mr. Drinkwater and Ms. Malo, collectively referred to as the Applicants, were driving together in a vehicle on a City of Victoria ("City") roadway, when their vehicle hit a pothole and sustained damages. The Applicants sought damages for the vehicle. The City argued it is not liable for damages as it relied on its Road Failure and Pothole Repair Policy and Procedure ("Policy").

HELD: Claim dismissed.

DISCUSSION: The City raised a preliminary issue of standing, arguing that to have standing a party must have a legally recognized interest in the claims made, *Extra Gift Exchange Inc., et al v. Ernest & Twins Ventures (PP) Ltd., et al,* 2007 BCSC 426. The Tribunal agreed with the City finding that the vehicle belongs solely to Ms. Malo, as such the Tribunal dismissed the claims of Mr. Drinkwater finding that he did not have property interest in the vehicle in which he claimed damages.

To prove negligence, the onus was on Ms. Malo to prove on a balance of probabilities that the City owed a duty of care, that the City breached the applicable standard of care, and that the Ms. Malo sustained foreseeable losses and that the loss was a result of the City's breach. Ms. Malo argued that the City as the owner of the road was negligent and responsible for damages the unrepaired pothole caused to her vehicle. The City argued that it relied on its Policy which outlines the City's reactive complaint driven system. The City's records submitted into evidence before the Tribunal was that a complaint came in about the pothole the day after Ms. Malo's accident, and the City in

compliance with its Policy, promptly dispatched a crew to fill the pothole the next day. Based on the evidence, the Tribunal was satisfied that the City followed its own Policy once the pothole was reported. Therefore, because the City did not know about the pothole in advance of Ms. Malo's incident, the City did not owe Ms. Malo a duty of care and was thereby not liable in negligence for the pothole. Claim dismissed.