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Can I Order a Rack of Ribs, Some Brisket and 95 By-Law Infractions?

***Toronto (City) v. Adamson Barbecue Ltd.*, 2024 ONCJ 422**

The Defendants, collectively the corporation "Adamson Barbeque" and the corporation's sole proprietor, operate as a restaurant and food truck in the City of Toronto ("City"). The Defendants faced 95 charges by the City for violating various by-laws including licensing, parking, and zoning. The Defendants did not appear to dispute the charges, and the matter proceeded to an ex-parte trial under section 54 of the *Provincial Offences Act*, R.S.O. 1990, c. P.33 ("*Act*"). The City successfully applied for the joinder of counts and Defendants as provided for in section 38 of the *Act*, submitting that a single trial for all 95 related charges would be more efficient.

HELD: The sole proprietor found guilty and charges against the corporation dismissed.

DISCUSSION: In reviewing the City's evidence, the Court emphasized the importance of proper business licensing and compliance with municipal by-laws and zoning regulations. The Court was persuaded by the City's evidence that demonstrated the Defendant was not licensed as either a restaurant or a food truck during the offense periods. As a result, the Court found that the sole proprietor was guilty of multiple by-law offences for operating without a licence. By contrast, the Court dismissed the charges against the corporation, finding that the City did not provide persuasive evidence that the corporation was active or responsible for the offenses. The Court highlighted that the only evidence presented was that the corporation existed and relied on *R v. Villaroman*, 2016 SCC 33 to conclude that for a Court to make a finding of guilt based on circumstantial evidence, it must be satisfied that it is the only reasonable conclusion available on the totality of the evidence. The Court held that based on the totality of the evidence, it was unable to find as the only reasonable conclusion, that the corporate defendant was the owner or operator of the business. Charges against the corporation dismissed.

Fulfilling a Records Request: How Thorough of a Search is Thorough Enough?
Toronto (City) (Re), 2024 CanLII 82636 (ON IPC)

The Appellant requested records from the City of Toronto ("City") relating to sidewalk repairs at a specific address. The City provided the records as requested. Upon receiving the records, the Appellant took the position that further records existed. The City maintained that its search was exhaustive, and no further records were available. The Appellant appealed to the Information and Privacy Commissioner of Ontario ("IPC") asserting that the City's search was inadequate.

HELD: City ordered to do a further search.

DISCUSSION: Under section 17 of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 ("*MFIPPA*"), institutions must conduct a reasonable search for records in response to requests. This entails a diligent effort by staff to locate all records related to the request. The City's search was deemed inadequate because it was limited to certain databases and it did not include a search of all possible sources of records, such as physical files and other electronic systems. *MFIPPA* does not mandate proof that no additional records exist but does require a demonstration of a thorough search. The IPC underscored the need for comprehensive efforts by institutions, including the City to ensure all responsive records are identified and disclosed. The IPC ordered the City to perform another search which included emails, invoices and other correspondence to ensure compliance with the *MFIPPA*.

Employer's Responsibilities When Contracting: Control and Due Diligence
R. v. Greater Sudbury (City), 2024 ONSC 3959

An individual died while attempting to cross an under-construction street in the City of Greater Sudbury ("City"). This prompted a Ministry of Labour (the "Crown") investigation resulting in a charge against the City and the construction company under the *Occupational Health and Safety Act ("Act")*. The construction company pleaded' guilty, but the City was acquitted by the trial judge finding that the City was not an employer under the *Act*, or alternatively, it had exercised due diligence. The Superior Court of Justice upheld the trial judge's decision under the *Act*, but did not address the finding that the City acted with due diligence. The Crown appealed. The Ontario Court of Appeal set aside the decision and found the City liable under section 25(1)(c) of the *Act* as an employer. The matter was appealed to the Supreme Court of Canada, which upheld the decision of the Ontario Court of Appeal and remitted the due diligence matter to the Superior Court of Justice. The Crown maintains that the trial judge made overriding and palpable errors to warrant a finding that the City had exercised due diligence. It is the City's position that it exercised due diligence, and there was no overriding or palpable error by the trial judge that would warrant this appeal being granted.

HELD: Appeal dismissed.

DISCUSSION: Under section 25(1)(c) of the *Act*, an employer must exercise due diligence to ensure compliance with safety requirements. The key issue was whether the City, despite its significant control over the project, had exercised due diligence. The Court reviewed, control and delegation finding that the City had control over the project, including oversight of progress and the power to address issues like traffic control. However, the City had delegated control to the construction company. The Court was satisfied that this was disguisable from *Imperial Oil (Re:),* [1993] O.O.H.S.A.D. No. 8 where an owner directly managed the health, safety and compliance leading to liability as a constructor. The Court also reviewed degree of control, finding that although the City did have contractual authority to influence aspects of the project, it did not exercise this authority. The Court concluded that the trial judge had accurately found that the City had relied on the contractor's ability to perform and monitor

the project. The Court was satisfied that the trial judge's findings were supported by the evidence and were not shown to be palpably incorrect. The Court confirmed that the City had acted with due diligence. Appeal dismissed.

Procedural Fairness and the *Construction Act*

Blackstone Paving and Construction Ltd. v. Barrie (City of), 2024 ONSC 4556

The Applicant filed an application to seek leave from the Court for judicial review of an adjudicator decision, which permitted the City of Barrie ("City") to raise new issues in written submissions that were not included in the original submissions pursuant to section 6.4(2) of the *Construction Act ("Act").* The Applicant submitted that the non-compliance with the *Act* was procedurally unfair, as it did not have the opportunity to provide a reply to the new issues raised by the City.

HELD: Application dismissed.

DISCUSSION: The Court's jurisdiction to grant judicial review is outlined in section 13.18(5) of the *Act*. The City argued that the Applicant was not prejudiced as it did not raise new issues in the written submissions, but rather it provided "elaborations" of the reasons already set out. The Court noted that the adjudicator did not expressly resolve the issue of whether the City raised new issues or merely elaborated in its written submissions. However, the Court was satisfied that the issues raised by the City were available prior to the written submissions and were not new to the Applicant. Therefore, the Court agreed with the City's position that the Applicant was not prejudiced. Furthermore, the Court was satisfied that the *Act* does not provide for reply submissions as a right, and no exception was provided to the Applicant. The Court dismissed the Applicant's argument and held that the adjudicator's decision not to permit reply submissions was consistent with the process in the *Act*. The Applicant failed to meet the conjunctive statutory test for procedural fairness as outlined in the *Act* and the application was dismissed.

Three Strikes and You're Out: Employees' Termination Grievance Dismissed

Ottawa (City) v. Amalgamated Transit Union, Local 279, 2024 79209 (ON LA)

The grievor, a former employee at the City of Ottawa ("City") worked as a bus operator for eight years. While in his position at the City, the grievor received a three-day suspension for inappropriate behaviour which included failure to attend anger management courses, failure to stop at multiple stop signs, speeding in a construction zone, and using foul language towards a passenger. After a series of escalating incidents, the City terminated the grievor's employment, leading to this grievance.

HELD: Grievance dismissed.

DISCUSSION: The arbitrator found that the City's termination was justified based on the grievor's repeated disregard for safety regulations and unacceptable conduct. The arbitrator reviewed numerous case law decisions presented by the Union representing the grievor wherein drivers were re-instated following safety violations. The arbitrator specifically noted that in reviewing all of the case law decisions provided, none of them came close to the continuous and flagrant disregard shown by the grievor's actions, of the safety of both his passengers and the public at large. The Union did not disagree with the arbitrator's conclusion but argued that there were other City positions that the grievor could work in as alternative punishments. The arbitrator disagreed, finding that any alternative roles within City departments would not adequately mitigate the risks posed by the former employee's behaviour. The grievance was dismissed.