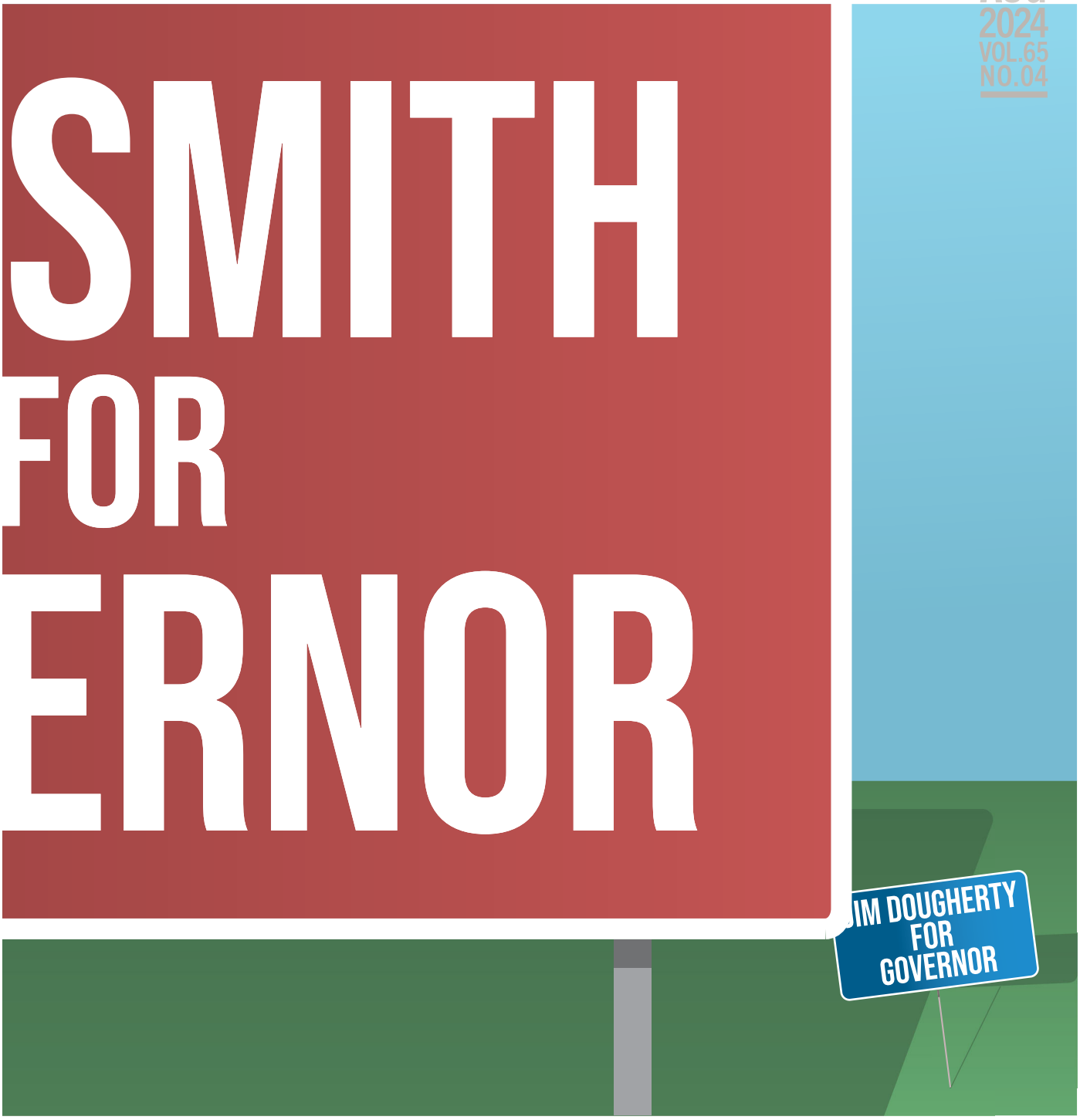
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By: Eric Shytle, General Counsel, Municipal Association of South Carolina, Columbia, South Carolina and Sean Scoopmire, Planning and Law Associate, White & Smith LLC, Greenville, South Carolina

The parameters of First Amendment barriers to content-based sign ordinances continue to evolve in the wake of *Reed*. As our national electoral season approaches, a review of the permissible limits on political signage is in order. Our authors assess the current state of sign law and propose a content-neutral taxonomy.

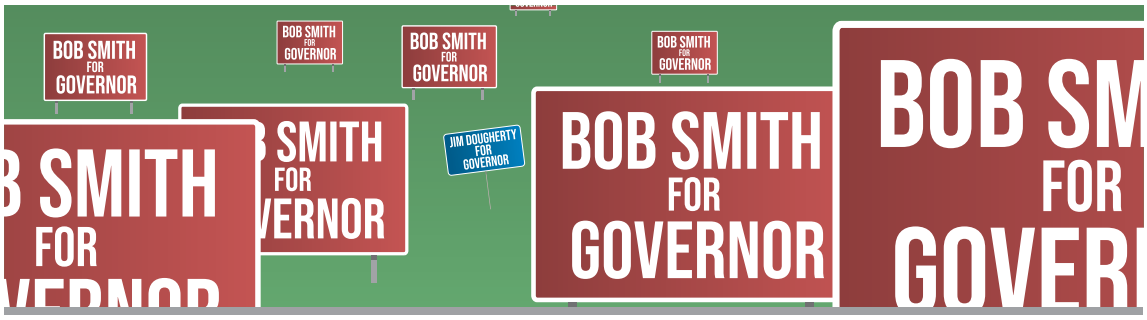
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INDEPENDENT CONTRACTORS AND OVERTIME EXEMPTIONS: THE DOL's LONG-AWAITED RULES

By: Michelle White, Employment Law Associate Attorney, Lloyd Gosselink, Austin, Texas

The question of when overtime is payable—or is not, due to one or more exemptions in the law—is hugely consequential, including to local governments who are collectively among the largest employers in the nation. Recent Department of Labor pronouncements provide additional clarity on the subject.

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INSIDE CANADA

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

Kneeling Buses, Falling Trees, Wayward Trailers, and More.

Discrimination on the City Bus Goes Round and Round
Lavides v. Mississauga (City), 2024 HRTO 723 https://canlii.ca/t/k4vb0
The Applicant alleged discrimination in services based on a disability contrary to the *Human Rights Code*, R.S.O. 1990, c. H. 19 by City of Mississauga ("City") transit operators, on various occasions while riding the City bus.

HELD: Application dismissed.

DISCUSSION: The onus is on the Applicant to prove on a balance of probabilities that her protected characteristics were a factor in the City's actions. The City did not dispute that it is responsible for the conduct of its transit operators but argued that it did not discriminate against the Applicant on any occasion. The Applicant submitted that she was discriminated against by seven different transit operators prior to boarding and disembarking City buses. She alleged that the discrimination occurred when she had to gesture or explicitly ask the transit operators to lower the entrance door to facilitate boarding, colloquially known as "kneeling the bus," even though she had a visible physical disability and walked with a cane. While the Applicant did not provide any evidence to support her claim, the City did acknowledge that each transit operator has many tasks to complete at each stop, and its training practice as outlined in the internal policy "Use of the Bus Accessible Features" requires a transit operator to finish serving one customer prior to serving the next. The City suggested that this practice may have led to a delay in kneeling the bus for the Applicant, but it was due to policy, not the Applicant's disability. The Tribunal was satisfied that on a balance of probabilities the Applicant's disability was not a factor in her interactions with the transit operators. The Tribunal held that it was clear that the Applicant was dissatisfied with the service provided; however the Applicant failed to prove that her disability was a factor in any of her interactions with the City or transit operators. Application dismissed.

An All or Nothing Approach to Tax Exemptions
The Assessor for the City of Winnipeg et al. v. The Board of Revision for the City of Winnipeg et al., 2024 https://canlii.ca/t/k5317
The Assessor for the City of Winnipeg and the City of Winnipeg ("City") appealed the decision of the Board of Revision ("Board") that found that an institution that operates in the City as Aveda Institute and Academy ("Aveda") should receive a 100% exemption from paying school taxes. Aveda argued that the City's appeal is without merit and should be dismissed. The City's application was for the school tax exemption to only apply to 73.6% of Aveda's property.

HELD: Application dismissed.

DISCUSSION: It is undisputed between the parties that Aveda is a seminary of learning, also known as a place of education, within the meaning of section 23(1)(d) of the *Municipal Assessment Act*, C.C.S.M. c. M226 ("*Act*") and as such is entitled to some level of tax exemption. The City relied on the evidence of an inspector, who determined that despite Aveda having a 100% leasehold interest in the property, some of the property was vacant, unused, and looking to be sublet. The calculation presented by the City was that only 73.6% of the property was occupied and used by Aveda for education purposes and therefore the remaining 26.4% of the property was taxable. The City cited section 23(1) of the *Act* which provides that there is an exemption from school taxes if the property is owned by and *used by* a seminary of learning (emphasis added). It was the City's position that the legislative intent of this language was to ensure that only when a property was in use would the school tax exemption apply and as such Aveda was required to pay taxes on the unused

26.4% of the property.

Aveda argued that the entirety of its property as a seminary of learning should be tax exempt, as it is not necessary for every area of every building on the property to be strictly used for educational purposes. Aveda relied on a similar case in *Winnipeg (City) Assessor v. Gateway Soap & Chemical Co. Ltd*, 2004 MBCA 3 which held that the entirety of the property carried out the *objectives* of the corporation and as such the corporation was entirely exempt from municipal taxation. Aveda submitted that similar to *Gateway Soap & Chemical Co. Ltd*, it leases and uses the entire property for the purpose or objective of learning, and as such the school tax exemption applies to the entirety of the property. The Court agreed with Aveda, finding that even though the entire property was not actively used for the purposes of a seminary of learning, the contemplated future uses of the entire property are auxiliary to the use of the property as a seminary of learning. The Court held that the case law does not support the City's position that all portions of the property must be fully utilized by Aveda before a full exemption is granted. Application dismissed.

Don't Park Your Trailer in Your Yard

Hallman v Woodstock (City), 2024 CanLII 51675 (ON LT) https://canlii.ca/t/k5382

The Committee of Adjustment at the City of Woodstock ("City") denied the Appellant's minor variance request to construct a parking pad for a trailer on his single detached dwelling property. The Appellant appealed to the Ontario Land Tribunal ("Tribunal").

HELD: Appeal dismissed.

Discussion: The Appellant appealed to the Tribunal for a minor variance seeking relief from the City's Zoning By-law to permit a trailer to be parked in the exterior side yard of his property, a residential zone. The appellant did not put forward any planning evidence to the Tribunal, but rather explained the practicality of his request. The Appellant submitted that there is a growing trend of both homelessness and crime throughout the City, thereby increasing the risk of a break-in or property theft; therefore he sought to park his trailer on his own property rather than at a storage facility. The City relied on section 45 of the *Planning Act,* R.S.O. 1990, c. P.13 ("*Act*") which outlines the four tests the Appellant bears the onus of demonstrating have been met. Namely, that the requested variance: first, maintains the general intent and purpose of the official plan; second, maintains the general intent and purpose of the zoning by-law; third, is desirable for the appropriate development or use of the land, building or structure; and fourth, is minor in nature. The City argued that as a right, the approval of the variance would directly contradict the City's Official Plan and Zoning By-law which prohibits parking trailers on residential lots and would set an undesirable precedent throughout the City. Furthermore, the intent of the Official Plan and the Zoning By-law is to ensure that driveways of dwellings remain available for parking and in this case, the trailer would not have access leading to the driveway and therefore would require to be driven across the curb, boulevard, and sidewalk, causing damage to public property. The Tribunal was persuaded by the City's evidence and satisfied that the Appellant's variance did not meet the general intent and purpose of the Official Plan or Zoning By-law. Therefore, the variance requested by the Appellant was not minor. The Tribunal held that the application did not comply with the criteria established in section 45 (1) of the *Act*. Appeal dismissed.

Time's Up: No Jurisdiction where the Appeal is Tardy

CIDEX Holdings Ltd. & ALBARI Holdings Ltd. v Calgary (City), 2024 ABLCSAB 10 https://canlii.ca/t/k4tbk

The Appellant received an Order to Comply ("Order") from the City of Calgary ("City") requiring the Appellant to either obtain a building permit and commence work on the property or demolish the structure by a certain date. The Appellant appealed the Order to the City's Licence and Community Standards Appeal Board ("Board"). In response, the City argued that the Board did not have jurisdiction as the appeal was filed after the Order's limitation period.

HELD: Appeal dismissed.

DISCUSSION: The Board's authority to hear appeals is governed by the Licence and Community Standards Appeal Board By-law ("By-law") and section 546 of the *Municipal Government Act*, R.S.A. 2000 c. M-26 ("*Act*"). The language in both the By-law and the *Act* requires a Notice of Appeal to be filed by an appellant within seven days after receiving an Order. The Appellant conceded that the Notice of Appeal was submitted beyond the seven-day timeline and made three separate arguments for why the appeal should still proceed. First, the Appellant relied on the doctrine of legitimate expectations, arguing that the City owes the Appellant the duty of procedural fairness. Since the appeal

Continued on page 29

846 F.3d 391, 396 (D.C. Cir. 2017).
56. *Act Now to Stop War*, 846 F.3d at 396.
57. The court noted that the local law applied to postings on the District's lampposts, which were a limited or designated public forum. "But once [the District] allows members of the public to post signs on its lampposts, the government lacks the power to restrict expression because of its message, its ideas, its subject matter, or its content." *Act Now to Stop War*, 846 F.3d at 403 (cleaned up). Therefore, the court's holding did not depend on forum analysis, and its conclusion should permit similar laws applicable even to traditional public forums.
58. The Fifth Circuit Court of Appeals considered and rejected the D.C. Circuit's analysis in *Reagan Nat'l Advert. of Austin, Inc. v. City of Austin*, 972 F.3d 696 (5th Cir. 2020) – the very case about off-premises sign regulations that was reversed by the United States Supreme Court in *Reagan National Advertising*, 596 U.S. 61. "We do not see, as the D.C. Circuit does, an exception for mere 'cursory' inquiries into content in the holding of *Reed*." *Reagan Nat'l Advert. of Austin*, 972 F.3d at 705. zUnfortunately, the Supreme Court, in reversing this decision, did not discuss event-based durational limits in its opinion.
59. *www.RicardoPacheco.com v. City of Baldwin Park*, No. 216CV-09167CASGJSX, 2017 WL 2962772, at *7 (C.D. Cal. July 10, 2017).
60. *See, e.g.,* Whitton v. City of Gladstone, 54 F.3d 1400, 1408 (8th Cir. 1995).
61. Collier v. City of Tacoma, 854 P.2d 1046, 1057 (Wash. 1993) ("Tacoma has not shown that its restrictive time period of 60 days, even if evenhandedly applied to all temporary signs, reasonably and adequately provides for the exercise of political speech.").
62. Arlington Cnty. Republican Comm. v. Arlington Cnty., 983 F.2d 587, 593 (4th Cir. 1993).

was already scheduled before the Board, the Appellant argued it had a legitimate expectation that the hearing would be proceed: Second, the Appellant relied on the doctrine of estoppel relying on *Immeubles Jacques Robitaille Inc. v. Quebec (City)*, 2014 SCC 34 for the principle that when a public authority makes a clear and unambiguous promise to its citizens to induce the citizens to perform certain acts, the public authority is estopped from not following through on the promise. The Appellant argued that after it filled an appeal it received a hearing notice letter from the Board which constituted a promise that the hearing would proceed. Third, the Appellant relied on the doctrine of relief from forfeiture, relying on *Saskatchewan River Bungalows Ltd. v. Maritime Life Assurance Co*., [1994] 2 SCR 490 to put forward the argument that it had an honest belief the appeal was submitted on time and there would be no prejudice to the City if the appeal were to proceed.

The Board disagreed with the Appellant. The Board's authority to hear an appeal is clearly outlined in both the By-law and the *Act* and neither provides authority to the Board to vary a timeline or extend a deadline. In doing so the Board would be in contravention of both. The Board held that the doctrines of legitimate expectation and estoppel do not apply; furthermore there was no reasonable expectation nor promise that the Board would hear and decide an appeal regardless of whether the appeal deadlines had been followed. Appeal dismissed.

If a Tree Falls on a Motorhome, Is it the City's Fault?
Morissette v. City of Courtenay, 2024 BCCRT 528 https://canlii.ca/t/k542h
The Applicant, a resident of the City of Courtenay ("City") filed a claim seeking property damage caused by a City tree that fell on his motorhome. The City submitted that it is not legally responsible for the damage caused by the fallen City tree as it acted reasonably and in accordance with its Tree Removal Policy ("Policy").

HELD: Claim dismissed.

DISCUSSION: The Applicant submitted that the City was negligent by not dealing with the trees in the vicinity of his property in a timely manner despite ongoing complaints. The City submitted that it responded to the Applicant's complaints in compliance with its reactive Policy and sent an arborist to review and assess the trees in the vicinity of the Applicant's home. The 2018 arborist risk assessment found that the trees located within the vicinity of the Applicant's home were at a low risk of falling, a follow up re-assessment was completed in 2020 which recommended mitigation of the trees in one year or less. In compliance with the assessment, the City removed some of the trees in the area; however, one tree that was toppled but not removed fell on the Applicant's motorhome. The City argued that it did not breach a standard of care as it followed the steps of its Policy by completing a risk assessment reactively when it received a complaint, and removed the trees based on a risk assessment and available resources. Furthermore, the Applicant bears the onus to prove that the City's actions fell below the required standard of care. The Court was not satisfied that the Applicant provided any persuasive evidence from an arborist or expert to suggest that the City's risk assessment was unreasonable. Therefore, the Court held that the City was not negligent. Claim dismissed. ML