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Appeal Dismissed for Lack of Legal Significance

Edmonton (City) v. Mudge, 2024 ABCA 377

The Applicant was convicted under the City of Edmonton ("City") Animal Licensing and Control By-law. This By-law mandates that an owner, or any person responsible for the care or control of a dog, nuisance dog, or restricted dog, ensure that the animal does not bark in a manner likely to disturb the peace. The Applicant appealed the conviction, but the appeal was dismissed by a summary conviction appeal judge. The judge found that the Applicant had failed to raise either a question of law or a question of law and fact that would justify the appeal. The Applicant then sought to appeal to the Court of Appeal ("Court").

HELD: Appeal dismissed.

DISCUSSION: There is no automatic right to appeal from a summary conviction appeal. Section 19 of the *Provincial Offences Procedure Act*, RSA 2000, c P-34, provides that an appeal to the Court is only permitted if it raises a question of law that is of sufficient importance to warrant further appeal. The Applicant contends that several errors of law were made during the proceedings, each of which, according to the Applicant, raised a substantial legal question. The Applicant cites procedural issues that the initial hearing was conducted before a commissioner rather than a committee, there was a failure to call all of the witnesses, and there was a failure of the City to follow the Alberta Crown Prosecutor Service's Practice Protocol, which requires prosecutor consent in certain situations.

The Court found that the initial hearing had been properly conducted before a commissioner, and that the commissioner had correctly noted that the prosecution was responsible for proving the essential elements of the offence, regardless of whether the original investigator was called as a witness. The Court also determined that the Crown Practice Protocol was not relevant to this case. The Court held that the Applicant had not raised a legal question of sufficient public importance to justify the appeal. The Court referenced R v. Sampson, 2015 ABCA 184, clarifying that "importance" refers to the public significance of the issue, rather than the importance of the matter to the Applicant personally. Appeal dismissed.

Balancing Public Safety and Financial Hardship in Taxi Driver's Licence Revocation

Shahzad Cheema v. Calgary (City), 2024 ABLCSAB 19

Following an investigation of inappropriate behaviour, an enforcement officer with the City of Calgary ("City") revoked the Appellant's taxi licence, effective immediately, for a period of five years. The Appellant appealed the decision to the Licence and Community Standards Appeal Board ("Board").

HELD: Revocation upheld, reduced from five to two years.

DISCUSSION: Under Section 160(1) of the City's Livery Transport By-law, City employees are delegated with authority to revoke licences. The City received a complaint of alleged misconduct from a licenced taxicab company that the Appellant had been overcharging, failing to provide receipts, leaving the fare meter running after drop-offs, and inappropriately touching a passenger, which was captured on video. Upon investigation, the Appellant's licence was revoked. The City argued that its responsibility is to protect public safety, health, and welfare. The Board agreed, and concluded that the Appellant's actions, including inappropriate physical conduct and overcharging passengers, posed a serious and ongoing threat to public safety. The Board found the evidence, particularly the video footage, to be compelling, and the Appellant did not dispute his behavior, particularly towards the female passenger or the frequency of the overcharges. Rather the Appellant argued concerns of financial hardship.

In response to the Appellant's claims of financial hardship and lack of intent to harm his passengers, the Board considered the impact of the revocation on his livelihood. The Board referred to 289 Ontario Inc. v. Leamington (Municipality), 2021 ONSC 6510, where the Ontario Superior Court of Justice weighed the public interest in safety against an Appellant's financial interests. The Court determined that the need for a safe taxi service outweighed any appellant's pecuniary interests. The Board applied similar reasoning, ultimately reducing the suspension period from five years to two years but affirming the revocation. The Board attempted to balance the Appellant's personal circumstances with the need to protect public safety and trust in the licensing system. Revocation upheld.

Court Relieves Applicants from Serving 311,570 Affected Property Owners

Lehodey v. Calgary (City), 2024 ABKB 668

The Applicants, representing approximately 300 affected property owners, brought forward an application for judicial review to challenge the City of Calgary's ("City") rezoning bylaw. To ensure compliance with Rule 3.15(3) of the Alberta Rules of Court, which governs the service requirements for an originating application for judicial review, the Applicants sought guidance from the Court to determine if they were required to serve their application individually on the owners of the 311,570 low-density properties impacted by the bylaw.

HELD: The Court ruled that the Applicants need not individually serve all 311,570 affected property owners.

DISCUSSION: The City argued that, in accordance with Rule 3.15(3), every property owner affected by the rezoning bylaw would be directly impacted by the judicial review. This was

because the bylaw could result in different zoning classifications for each affected property. The Applicants questioned whether each property owner needed to be individually served under Rule 3.15(3). The Court agreed with the City's interpretation that property owners could be subject to different zoning regulations, thus being "directly affected" by the judicial review. However, the Court concluded that individual service on all 311,570 property owners was not required. The Applicants had sufficiently notified the public by placing advertisements in local newspapers and other media outlets, ensuring broad awareness of the bylaw and the judicial review proceedings.

The Court cited Rule 11.27(1), which allows for validation of service if the method used is likely to bring the document to the attention of the person to be served. In Wennekers v. Kingsway General Insurance Company, 2009 ABCA 422, and Hansraj v. Ao, 2004 ABCA 223, the Court confirmed that newspaper advertisements can fulfill this requirement. The Court found the advertisements placed on October 26, 2024, provided sufficient notice to the affected parties, satisfying the "likely to bring to attention" standard. Citing BC Teachers' Federation v. Superintendent of Financial Institutions, 1997 CanLII 1921, the Court emphasized the impracticality of requiring the Applicants to serve each of the 311,570 property owners individually. Given the vast number of affected individuals, it would be virtually impossible to achieve personal service. The Court validated the Applicants' service efforts, permitting the judicial review to proceed to a substantive hearing, rather than halting it due to impractical service requirements.

Appeal Granted: Court Finds Partial Summary Judgment Inappropriate

Passmore v. Hamilton (City), 2024 ONCA 825

The Appellant appeals a judgment granting summary judgment in favor of the City of Hamilton ("City") in a personal injury case. The Appellant, a passenger on a Hamilton Street Railway ("HSR"), was injured when the driver, a City employee, hit the brakes, causing the Appellant to fall. The Appellant brought a claim against the driver, the City, and the HSR (collectively the "Defendants"). After the pre-trial conference, the Defendants argued that the City was improperly named as a defendant. The City then brought a motion to dismiss the claim against it, which the motion judge granted, dismissing the claim against the City. The motion judge acknowledged that the Appellant had valid arguments for liability against the City but deemed them to be of academic interest only. The Appellant appealed to the Court of Appeal.

HELD: Appeal granted.

DISCUSSION: The crux of the Appellant's appeal was whether the partial summary judgment was appropriately granted. The Appellant argued that the motion judge did not adequately consider the criteria for granting partial summary judgment, as outlined in Malik v. Attia, 2020 ONCA 787. These criteria include cost-effectiveness, efficiency, and preventing inconsistent findings. The City argued that the motion judge correctly determined that there was no genuine issue requiring a trial under Hyrniak v. Mauldin, 2014 SCC7. The Court held that the motion judge failed to discuss the appropriateness of partial summary judgment, and the Defendants could not address this issue on appeal.

The Court also emphasized that granting partial summary judgment would not have resulted in time or cost savings. The City's motion came after the pre-trial conference, and the trial was already scheduled. The motion required extensive briefing and cross-examination that could have been addressed during the trial. The Appellant's claim of joint liability against the City and

HSR meant that the same issues and evidence would be adjudicated at trial, making partial summary judgment inappropriate in this case. The Court held that the motion for partial summary judgment should not have been granted, and the case should proceed to trial with all parties. Appeal granted.

Human Rights Complaint Dismissed: No Evidence of Discriminatory Hiring Practices

Duan v. City of Calgary, 2024 AHRC 140

The Complainant, a former employee at the City of Calgary ("City"), sought a review of the Director's decision to dismiss his human rights complaint under the Alberta Human Rights Act. The Complainant alleged that he had been discriminated against in the area of employment on the grounds of age, ancestry, race, and color, contrary to Section 7(1) of the Act. The Complainant's claim stemmed from his belief that he had been unfairly passed over for positions with the City following a 2019 layoff and restructuring.

HELD: Complaint dismissed.

DISCUSSION: The Human Rights Tribunal of Alberta ("Tribunal") held that the Director did not err when concluding that the Complainant failed to provide sufficient evidence linking his protected characteristics to the alleged discriminatory actions. The Complainant asserted that his protected grounds influenced the City's hiring decisions, the evidence established otherwise. The City's hiring process was based on objective criteria unrelated to these characteristics. The City provided evidence that it employed a structured evaluation system, assessing candidates on factors such as customer focus, communication skills, and conflict management. The Complainant received a lower rating on these factors compared to the selected candidates, and there is no indication that his race, ancestry, or other protected characteristics were considered. Regarding the alleged error in excluding the complainant from subsequent job competitions, the City acknowledged the mistake and rectified it, inviting the Complainant to apply for further positions. There was no evidence that the City's administrative error was connected to any form of discrimination. The Tribunal cited Moore v. British Columbia (Education) which requires a Complainant to demonstrate that his protected characteristic was a factor in the adverse treatment he received. The Tribunal was not persuaded by the evidence presented by the Complainant and held that the Complainant was not successful in the hiring process due to his performance on the evaluation criteria, not because of any discriminatory actions by the City. The Tribunal upheld the Director's decision to dismiss the complaint as there is no reasonable prospect that the complaint would succeed at a hearing.