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FEDERAL IMMIGRATION LAW AND LOCAL AUTHORITY—WHERE IS THE LINE?

By: Amanda Karras, IMLA Executive Director and General Counsel, Rockville, Maryland

The new Administration seeks increased action by local governments regarding undocumented aliens, including communicating their whereabouts and detaining them for apprehension by federal authorities. These policies test the line between federal prerogative and the Tenth Amendment, permissible detainers and the Fourth Amendment, and much more.

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LOCAL GOVERNMENT'S GROWING ROLE IN HOUSING AFFORDABILITY

By: Kevin Ramakrishna, Shareholder, and Joseph Shumow, Shareholder, Reinhart, Boerner, Van Deuren, S.C., Madison, Wisconsin

As housing becomes unaffordable for an ever-increasing number of constituents, municipalities are called upon to do more. Alongside zoning, density changes, and similar local mechanisms, Federal programs--including tax credits and other incentives--can be part of the solution for local governments.

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UNDERSTANDING AND USING ARTIFICIAL INTELLIGENCE FOR MUNICIPAL ATTORNEYS

By: James E. "Jeb" Brown, Senior Counsel, Liebert Cassidy Whitmore, Los Angeles, California. and John G. Peters, Jr., Ph.D. John G. Peters, Jr. & Associates, Henderson, Nevada

Initially perceived by many of us as a vehicle amassing the world's greatest repository of data and content to derive instant answers and more creative writing, AI's transformative potential is now becoming evident. Municipal lawyering will clearly be affected, and IMLA members need to be prepared.

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INSIDE CANADA

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

Deferral Denied, Housing By-Law Upheld, Trails Protected, and More

Reopening v. Unreasonable Delay: A Municipal Perspective on *Jordan* and s.11(b)
Toronto (City) v. Agrippa, 2025 ONCJ 46 https://canlii.ca/t/k92p7

The Applicant was charged with three offences and was served roadside provincial offence notices, which included the option to request a trial within 15 days. The Applicant failed to file within the required timeframe and was convicted. Subsequently, the Applicant filed an application to reopen the matter, which was granted, and a new trial was ordered. The Applicant then brought an application against the City of Toronto (City) for a stay of proceedings, arguing that the total delay of 22 months and 16 days exceeded the 18-month ceiling established in *R. v. Jordan*, 2016 SCC 27. The Applicant attributed the delay to the City's actions, while the City argued that a significant portion of the delay should be deducted as defence delay or neutral time.

HELD: Application dismissed.

DISCUSSION: The central issue before the Court was the calculation of delay under section 11(b) of the *Canadian Charter of Rights and Freedoms* in light of the Supreme Court's decisions in *R. v. Jordan* and *R. v. Cody*, 2017 SCC 31. The Applicant contended that the time taken to reopen the case and proceed to trial should count towards the total delay. In contrast, the City maintained that the reopening process was analogous to an appeal and should not be included in the net delay calculation. The Court relied on *R. v. Potvin*, [1993] 2 SCR 880, which established that section 11(b) does not apply to individuals who have been convicted, as they are no longer considered "persons charged." The Court found no distinction between a party to an appeal and a party to a reopening application, as both mechanisms serve to correct a prior conviction and restore the individual's ability to defend against the charges. Therefore, the period in which the Applicant was a convicted person, rather than a charged person, was not considered delay attributable to the Crown.

While section 11(b) protections apply from the date of the offence, the Court emphasized that time must be assessed based on its nature. In this case, after deducting five months and three weeks of neutral and defence delay, the net delay was calculated at just under 17 months—below the 18-month threshold established in Jordan. The Court dismissed the Applicant's request for a stay of proceedings, concluding that the net delay did not exceed the presumptive ceiling. The ruling reaffirms that reopening applications, like appeals, do not reset the section 11(b) clock in a way that counts toward unreasonable delay. As a result, the application was dismissed, and the matter will proceed to trial.

Human Rights and Municipal Licensing: No Code Violation Without Clear Nexus
Hyka v. Toronto (City), 2025 HRTO 211 https://canlii.ca/t/k9849

The Applicant filed an application alleging discrimination based on place of origin and reprisal under the *Human Rights Code*, *R.S.O. 1990, c. H.19 (Code)*. The Applicant asserted that the City of Toronto (City) denied his short-term rental license application due to his place of origin and in retaliation for engaging legal representation.

HELD: Application dismissed.

DISCUSSION: The Human Rights Tribunal of Ontario (Tribunal) reinforced that its jurisdiction is strictly limited to enforcing the *Code*, meaning it cannot adjudicate general claims of unfairness unless directly linked to an enumerated ground. Simply experiencing adverse treatment does not amount to discrimination under the *Code*. The Tribunal found that the Applicant's submissions failed to provide more than a bald assertion, lacking specific facts that would establish a discriminatory motive behind the City's decision. The Tribunal also

addressed the claim of reprisal, noting that under section 8 of the *Code*, protection against reprisal applies only when an individual is penalized for enforcing their rights, initiating or participating in *Code*-related proceedings, or refusing to infringe another person's rights. The Applicant argued that the City's refusal to provide specific reasons for the short-term license denial constituted reprisal. However, the Tribunal found no connection between the City's actions and any attempt by the claimant to exercise or enforce a right under the *Code*. Without this link, the Tribunal held that the reprisal claim could not succeed.

Finally, the Tribunal examined the Applicant's assertion that the City's inspector had inquired about his place of origin during a property inspection. While the Applicant suggested that this question influenced the license denial, the Tribunal determined that it was asked in a conversational manner, likely in connection with reviewing the Applicant's identification, rather than as a discriminatory act. Since the Applicant did not present further evidence showing how this inquiry led to an adverse decision, the claim of discrimination based on place of origin was dismissed. The Tribunal held that the Applicant did not provide substantive evidence supporting either discrimination or reprisal, and therefore the application fell outside its jurisdiction. Application dismissed.

Deferral Under the Human Rights Code: Tribunal's Analysis of Parallel Proceedings
Kosiner v. City of Toronto, 2025 HRTO 241 https://canlii.ca/t/k9859

The Applicant filed an application against the City of Toronto (City) alleging discrimination based on disability concerning goods, services, and facilities, as well as contracts, contrary to the *Human Rights Code,* R.S.O. 1990, c. H.19 (*Code*). The application stemmed from the issuance of a parking violation notice for failing to display an original accessible parking permit, despite the Applicant presenting a certified true copy. The Applicant argued that the City failed to accommodate his disability by not accepting the certified copy as valid. In response to the application, the City submitted an application requesting that the Human Rights Tribunal of Ontario (Tribunal) defer the case, citing an ongoing proceeding before the Administrative Penalty Tribunal (APT) related to the same set of facts. The City did not provide substantive submissions regarding the Applicant's allegations of discrimination.

HELD: Request to defer is denied.

DISCUSSION: The Tribunal examined whether to defer the application under section 45 of the Code, which permits deferral when another legal proceeding is dealing with the same issues. The Applicant acknowledged that he had challenged the parking violation before the APT but argued that significant delay in scheduling a hearing had essentially rendered his case statute-barred under *R. v. Jordan*, 2016 SCC 27, which establishes presumptive time limits for legal proceedings. As of the Tribunal's review, no hearing had been scheduled at the APT. The Tribunal had concerns about whether the APT matter was truly "ongoing" as suggested by the City or even capable of resolving the dispute. The City, who requested deferral, provided minimal information in response and failed to address the Applicant's arguments regarding Jordan. Despite the Tribunal's directive to submit additional details, including the status of the APT matter and any scheduled hearing dates, the City failed to do so. The Tribunal, therefore, lacked sufficient evidence to determine whether the APT process was a legitimate parallel proceeding warranting deferral under section 45. Relying on previous case law, including *Baghdasserians v. 674469 Ontario* 2008 HRTO 404, the Tribunal emphasized that deferral is not automatic and must be assessed in context. A mere risk of inconsistent findings is insufficient. Based on the City's failure to substantiate its request, the Tribunal denied the deferral.

Unsuccessful Challenge to the City of Windsor's Residential Licensing By-law
Windsor Housing Providers Inc. v. Windsor (City), 2025 ONCA 78 https://canlii.ca/t/k98hn

The City of Windsor (City) enacted a Residential Licensing By-law (By-law) as a two-year pilot project to regulate rental housing in Wards 1 and 2. The By-law aimed to protect tenant health and safety, with City Council set to decide after the pilot whether to expand or rescind it. The Appellants, a coalition of Windsor landlords, challenged the By-law, arguing it was enacted in bad faith, was arbitrary, and exceeded the City's authority. The Appellants claimed it violated sections 2, 6, 8, 11, and 15 of the *Canadian Charter of Rights and Freedoms* and conflicted with provincial laws. The application judge dismissed their challenge, and the Appellants appealed.

HELD: Appeal dismissed.

DISCUSSION: The Court found no errors in the application judge's decision. The Court rejected the Appellants' claims that the By-

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Practice Tips *cont'd from page 33*

you are more likely to be disappointed if your client orders something that is not on the menu.

Tip #8: Inject a Reasonable Amount of Emotion

Discussing a legal issue with a client can sometimes lead an attorney to being too objective about a matter. As a counselor, attorneys can sometimes try to be above the emotional turmoil a particular issue presents. It is true this can be very helpful, especially when trying to "read the room" composed of a governing body. But sometimes a little emotion, be it humor or frustration, or even disappointment, can be helpful to show this legal issue has a real impact on officials, employees, vendors, or residents. This is certainly dependent on the matter at hand, the background, the body itself, or the attorney. It needs to be based on real emotion. Faking a feeling is counterproductive and will probably land flat. But suppressing a real feeling may cause others to think they should, too. And nothing engages a client more than feelings of anger, frustration, gratitude, or disbelief. If the emotion is reasonable, it is okay to validate it.

CONCLUSION

Effective communication is not always easy, but it rewards those who persevere. It requires adequate preparation, a predisposition toward teaching others, a willingness to engage on an intellectual and emotional level, and a degree of social intuition. It can seem frustrating when compared to consulting with a single decisionmaker, but often the varied experiences and backgrounds that a collective governing body brings to a meeting with its attorney contributes to a more robust and thorough discussion. And if that is the ultimate result of the consultation, then the government attorney has truly served the city well. ML

Inside Canada *cont'd from page 23*

law was arbitrary or discriminatory, reaffirming that the City has broad legislative authority to regulate local matters. The Court was satisfied that the judge had properly assessed whether the By-law was passed in good faith and concluded that it served a legitimate public interest. The Appellants argued the By-law was *ultra vires* and unconstitutional, claiming it conflicted with provincial and federal law.

The Court disagreed, emphasizing that municipal by-laws should be interpreted as consistent with senior legislation unless a direct conflict exists *Croplife Canada v. Toronto*, 2005 ON CA 15709. The Appellants failed to demonstrate that any provision of the By-law contravened or contradicted the Charter or other provincial statutes. Further, the Court noted that municipalities have broad discretion in how they implement policies, including phased rollouts such as pilot projects. The By-law's selective application to certain wards did not render it invalid. As the application judge found, there was no evidence to support the Appellants' suggestion that the pilot project improperly targeted student housing. Since the Appellants did not establish any legal basis for quashing the By-law, the appeal was dismissed.

Court Upholds City's Right to Protect Public Trails

Melson v. Kawartha Lakes (City), 2025 ONSC 752 https://canlii.ca/t/k98gw

The Applicant owned property adjacent to the Victoria Rail Trail (Trail), a recreational corridor maintained by the City of Kawartha Lakes (City). The Applicant operated a peat extraction business that required industrial trucks to cross the Trail. However, the entrance he used was unauthorized by the City, creating safety risks for pedestrians, cyclists, and snowmobilers using the Trail. The Applicant continued to use the unauthorized entrance, despite multiple demands from the City to cease. In response, the City commissioned a land survey in 2019 to confirm property boundaries and, in 2020, installed concrete bollards to block access. The City maintained that the Applicant had a lawful access point via Superior Road but was not using it. In 2021, the Applicant filed an application seeking a declaration that the bollards trespassed on his property and an injunction for their removal. However, the Applicant failed to properly file or serve his application materials, leaving the Court to proceed based on the City's evidence.

HELD: Application dismissed.

DISCUSSION: The City's land survey confirmed that the bollards were placed entirely on public land. The Applicant provided no survey evidence to support his trespass claim and later shifted his argument, asserting a prescriptive easement over the Trail. To establish a prescriptive easement, an Applicant must show continuous, uninterrupted, open, and peaceful use for at least 20 years without permission. However, aerial photographs demonstrated that the entrance point used by the Applicant did not exist before 2013, failing to meet the 20-year requirement. Additionally, the City had issued Trespass Notices in 2018 and blocked access in 2020, further breaking any claim of uninterrupted use. The Court held that while it dealt with this application on its merits, but was also satisfied that the application was moot, as the Applicant had lost possession of the property due to a mortgage default, and the mortgagee had consented to the bollards remaining in place. Application dismissed. ML