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Water Wars: Interstate Compacts And The Supreme Court's Equitable Apportionment Jurisprudence

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INSIDE CANADA

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Permit Issued by Municipality is Not "Continuing Act or Omission" under Ontario Limitations Act
***Huether v. Sharpe* 2025 ONCA 140**
https://canlii.ca/t/k9ns4

The respondents alleged that the appellant, the Corporation of the Ontario Township of McMurrich Monteith (the "Township") failed to properly supervise the construction of a dwelling built on residential property in the Township between 1986 and 1987. The Township issued a residential building permit to the property owner in 1986. The respondents purchased the property in 2021 and discovered significant defects in the dwelling's foundation. In February 2022, the respondents commenced a negligence action against the Township for failure to supervise construction of the dwelling and to conduct required inspections.

The Township moved for summary judgment on the basis that it had issued the building permit for the dwelling in 1986, arguing that any alleged negligence on its part occurred more than three decades ago and the respondents' claim was barred by the ultimate 15-year limitation period in section 15(2) of the *Limitations Act*, 2002, S.O. 2002 c. 24, Sched. B. The Township's summary judgment motion was dismissed. The trial judge found that the Township had a statutory obligation to protect the health and safety of the public by enforcing minimum construction standards for buildings, and failed to monitor the construction and complete all necessary inspections of the dwelling. The trial judge found the alleged negligence was ongoing and continuous, and therefore the limitations period pursuant to the *Limitations Act* had not expired. The Township appealed.

HELD: Appeal allowed.

DISCUSSION: The appeal court found that the limitation period had expired. The trial judge had failed to properly interpret the meaning of a "continuous act or omission" and incorrectly concluded that the ultimate limitation period in s. 15(2) of the *Limitations Act* had not commenced running in respect of the respondents' claim. The appeal court confirmed that a "continuing act or omission" requires succession or repetition of actionable conduct, which was not present in this case.. The appeal court further found that the trial judge, while not defining the parameters of the "duty to monitor," "clearly went beyond the existing common law duty regarding the conduct of inspections," by requiring some form of "regular surveillance" or continuous monitoring of building permit files until such time as the building was substantially complete, the conditions for occupancy were met, and the building permit was closed. The relevant factor was that the Township treated the relevant permit as if it were closed and ceased to have any role or involvement with the construction, and any negligence had already previously occurred. It was held that the respondents' claim that the Township had a "duty to monitor" open permit files did not amount to a continuing act or omission.

Refusal of License for Cannabis Store is Reasonable
***Canna Northwest Enterprise Inc. v. Salt Spring Island Local Trust Committee* 2025 BCCA 47**
https://canlii.ca/t/k9dlp

This appeal arises from the unsuccessful judicial review of the Salt Spring Island Local Trust Committee's ("LTC's") decision denying the appellant's application for approval to open a cannabis store on the island in June 2023. In British Columbia, a license is required to operate a retail cannabis business. The *Cannabis Control and Licensing Act*, S.B.C. 2018, c. 29 (the "*Act*") requires license applications to be made to the general manager of the Liquor and Cannabis Review Board ("LCRB"); however, s. 33(1) of the *Act* prohibits the general manager from issuing a license unless the local government or Indigenous nation for the proposed location gives a positive recommendation. Due to the LTC's decision, Canna could not obtain a license from the LCRB. The appellant, Canna, sought judicial review of the LTC's decision, arguing it was unreasonable and procedurally unfair. The Chambers judge dismissed Canna's petition

and Canna appealed to the British Columbia Court of Appeal on the same grounds.

HELD: Appeal dismissed.

DISCUSSION: The British Columbia Court of Appeal held that LTC's decision was reasonable. Section 33(3) of the Act directed local governments to gather the views of residents of the area and s. 13(4) of the associated Regulation directed local governments to consider views of "nearby residents." The law did not preclude local governments from considering views of others. The appeal court found that the LTC did not exceed its mandate by considering opposition expressed after the public meeting and after the staff report had been prepared. The process for soliciting public input with respect to retail cannabis store applications was in addition to LTC's usual decision-making process, which included input from both staff and the public. The appeal court held that the LTC did not exceed its mandate by considering views expressed by members of the public who did not reside at or own property within 500 metres of the proposed cannabis store location, or from those who expressed their views in correspondence after the public meeting ended. The LTC was not an adjudicative body and was not conducting a public hearing, and the LTC's consideration of the application was not based on "evidence" in the technical sense but rather was based on its interpretation of the views of its constituents, including but not limited to those within 500 metres of the proposed cannabis store location. Trustees were concerned about both market saturation and the proposed location.

Given the transparency of the process, LTC's failure to identify proximity to another cannabis store, competition, or market saturation in its decision did not render it unreasonable. The decision not to approve the application was reasonable because it complied with the regulatory requirement that location be considered, and was intelligible, transparent, and justified. The appellant had notice of and an opportunity to respond to residents' concerns. The appeal court found that Canna was not denied procedural fairness and LTC's process was procedurally fair.

Declaratory Relief Cannot Be Sought Without Exercise of a Statutory Power
Westcoast Association for Property Rights v. British Columbia 2025 BCSC 296
https://canlii.ca/t/k9nrz

This was a petition by a property owners' association for declaratory relief pursuant to s. 2(2) of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 41 that, if granted, would minimize the negative impact of sections 14 and 36 of the *Short-Term Rental Accommodations Act*, S.B.C. 2023, c. 32 ("STRAA") and would help to ensure the continued use of the owners' properties for short-term rentals, as well as for a declaration that the effect of the STRAA amounted to expropriation.

The STRAA was enacted by the provincial legislature in British Columbia in 2023 in response to the housing crisis that British Columbia is facing, in which it has become increasingly difficult to buy affordable homes throughout the province. As the crisis has increased, so too has the growth in short-term rentals, through platforms such as Airbnb and Vrbo. The STRAA is a means of returning short-term rentals to the long-term housing market. Among other things, it prohibits property owners from using their properties for short-term rentals of less than 90 days (s. 14), and eliminates, for short-term rentals, the statutory non-conforming use protections under the *Local Government Act*, R.S.B.C., 2015, c. 1 ("LGA") and the *Vancouver Charter*, S.B.C. 1953, c. 55 (s. 36).

The petitioner, Westcoast Association for Property Rights (the "Association"), is a society whose members include property owners who rent out their properties for short-term rentals. The petitioner asserted that the business operations of the Association's members would be negatively impacted by the STRAA. In particular, the Association argued that sections 14 and 36 wrongfully eliminated the ongoing legal use of their properties, extinguished their rights to continue their lawful business activities, and would result in the destruction of a substantial number of small businesses. The province argued that the petition was premature, as a decision had not yet been made regarding a potential contravention of the STRAA, and accordingly, there was no basis for judicial review as sought. On this basis, the province applied for an order to strike the petition.

HELD: Order to Strike Allowed.

DISCUSSION: The British Columbia Supreme Court determined that the petition was premature and should be struck. The court concluded that since there was no exercise (actual, proposed, or purported) of a statutory power, there was no foundation upon which to obtain or grant discretionary declaratory relief. With no foundation to support any basis for a proceeding that may be brought by petition, the petition was dismissed. However, for certainty, the court stated that this conclusion does not preclude subsequent proceedings in respect of the matters raised in the petition in appropriate circumstances – that is, upon the exercise of a statutory power.

Continued on page 30

Inside Canada *cont'd from page 25*

Municipality has Authority to Pass City-Wide Re-Zoning Bylaw
Lehodey v. Calgary (City) 2025 ABKB 8
https://canlii.ca/t/k8m50

This was an application by owners for a judicial review of a rezoning decision made by the City of Calgary ("City").. Aimed at increasing density, the City rezoned virtually all low-density zoned properties in the City – 311,570 properties overall. A group of property owners challenged the rezoning on the grounds that the City lacked the statutory authority under the *Municipal Government Act*, RSA 2000, c M-26 ("MGA") to enact a city-wide re-zoning bylaw and on the basis that the City failed to provide procedural fairness.

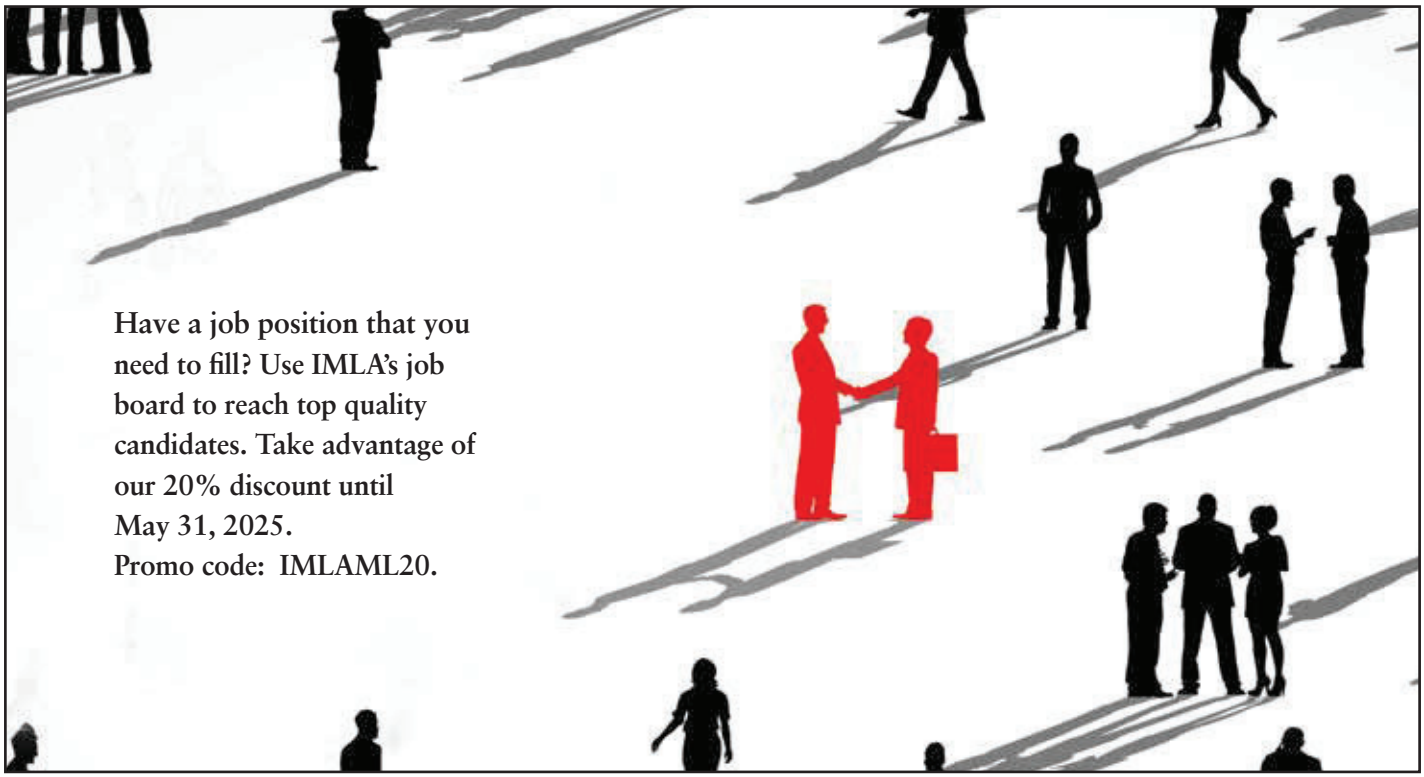
HELD: Application dismissed.

DISCUSSION: The issues were whether the MGA authorized the City to make the city-wide rezoning change, whether the City was procedurally fair in such rezoning, and whether a pro-change city councillor had a closed mind during the hearings and the vote, and if so, whether that closed mind invalidated the amending bylaw.

The Alberta Court of King's Bench found that the MGA empowered the City to enact the amending bylaw, the City was procedurally fair in enacting it, and the councillor was open to persuasion during the hearing. The MGA does not require the City to discern each neighbourhood's core characteristics, assign neighbourhoods to zoning districts based on those characteristics, and decide on the permitted and discretionary uses for each district in light of those characteristics. Given the legislative nature of the new bylaw process, the applicants were found to have received sufficient procedural fairness via notice of the proposed changes and an opportunity to provide input at the public hearing. The evidence did not show that any closed-mindedness continued at any bylaw hearing.

Limitation Period in Saskatchewan Cities Act Applies to City Non-Profit Corporation
Edge v. Moose Jaw Downtown and Soccer/Field-House Facilities Inc. 2025 SKCA 17
https://canlii.ca/t/k9k8x

The central issue in this case was whether the one-year limitation period in s. 307(1) of *The Cities Act*, SS 2002, c C-11.1 (the "Act") applied to a wrongful dismissal claim against a city-controlled corporation and its directors. Moose Jaw Downtown and Soccer/Field House Facilities Inc. ("DFHF") was a non-profit corporation established by the City of Moose Jaw in Saskatchewan, Canada, to manage certain real estate and public facilities owned by City. The plaintiff, Graham Edge, was dismissed as general manager of



DFHF on or about May 25, 2018. He subsequently brought an action against DFHF and its directors more than one year later for wrongful dismissal in the Court of King's Bench. A Chambers judge found that the limitation period in s. 307(1) of the Act applied and that the statement of claim was issued and served after the limitation period had expired. The judge determined that the action was therefore statute-barred in its entirety and struck the statement of claim. The plaintiff appealed on the basis that the Chambers judge erred in finding that the limitation period in s. 307(1) applied to his wrongful dismissal claim against DFHF. He asserted that the limitation period only applies where the cause of action is correlated to the exercise of a public power or duty and does not apply to employment relationships.

HELD: Appeal allowed in part; certain matters remitted to Chambers judge.

DISCUSSION: The appeal court was not persuaded by the argument that the limitation period should only apply where the cause of action is correlated to the exercise of public power or duty and should not apply to employment relationships. The appeal court found that the Chambers judge made no error in concluding that s. 307(1) of Act applied to the wrongful dismissal claim against DFHF.

In the proceedings before the Chambers judge and on this appeal, the parties agreed that the term "city" in s. 307(1) of the Act included DFHF. This is because under s. 301.1, "city" included "controlled corporation", and the parties agreed that DFHF was a controlled corporation as defined in s. 2(1) of the Act. Therefore, the limitation period in s. 307(1) of the Act was applicable, in general terms, to claims against DFHF.

However, the appeal court found that the Chambers judge erred in summarily determining that the limitation period in s. 307(1) of the Act applied against the directors of DFHF. There was an arguable issue as to whether the plaintiff's claims against the directors, who were materially different from employees, were barred by the expiry of the limitation period on the basis that the claims against employees acting in the course of their duties were barred. Although it was not disputed that the term "city" in s. 307(1) of the Act included DFHF because it was a controlled corporation, the parties did not agree that this term also included individual directors of DFHF. Given the dispute over the application of the limitation period, it was not plain and obvious that the reasoning in case law which supported the interpretation that "city" in s. 307(1) of the Act applied also included directors of DFHF, because the factual and legal landscape was materially different in the case at bar. ML

