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Municipal Lawyer

THE JOURNAL OF LOCAL GOVERNMENT LAW

JUL AUG
2026
VOL.67
NO.04



WEARABLE TECHNOLOGY IN THE WORKPLACE

MODEL GUIDELINES FOR THE USE OF ARTIFICIAL INTELLIGENCE

CROSSING THE RUBICON

What the Proposed Rewrite of Uniform Guidance Means

INSIDE CANADA

The Golden Rule, Land Use, Easement Damage, Abnormal Disturbances, and One Bite at the Cherry

Contributed by
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Kamloops, BC



REGULATORY CASES ARE NOT EXEMPT FROM THE "GOLDEN RULE" APPLIED IN CRIMINAL CASES.

R v. Eau Claire Distillery Ltd, 2025 ABCA 331

https://canlii.ca/t/kfn3d

The Deputy Fire Chief and Safety Codes Officer ("SCO") for the Town of Turner Valley served Eau Claire Distillery Ltd. ("Eau Claire") with an order directing them to provide an assessment indicating the extent of hazards in their building and their processes to allow the SCO to determine Eau Claire's compliance with the Fire Code. Eau Claire did not comply with the order by the deadline of January 31, 2021. On March 1, 2021, Eau Claire was served with an Information charging that on or about February 1, 2021, it had contravened the *Safety Codes Act*, RSA 2000, c S-1 ("Act") by failing to carry out the actions required by the order. Eau Claire was convicted on February 24, 2023. Relying on s. 67(5) of the Act, which states that a person who is guilty of an offence

Conley appealed the City's decision to grant the development permit to the SDAB arguing, among other things, that this was an eight-unit apartment building disguised as a townhouse.

is liable on conviction for each day or part of a day on which the offence occurs or continues, the Crown argued that Eau Claire should be fined for each day from February 1, 2021 up to and including the date of conviction on February 24, 2023. Relying on the "golden rule" from *The Queen v Côté*, 1977 CanLII 1 (SCC), at 13 ("*Côté*"), that an accused must be provided with enough information to be reasonably informed of the transaction alleged against them, the trial judge refused the Crown's request. Because the Information stated that Eau Claire failed to comply with the order from February 1, 2021, Eau Claire had only been convicted with an offence related to the period of time from February 1, 2021 to March 1, 2021, when the Information was laid. The Crown appealed the sentence to the Court of King's Bench and further argued that Eau Claire should be liable for daily fines until the date the SCO confirmed that Eau Claire had come into compliance on November 7, 2023. The reviewing judge suggested that the "golden rule" from *Côté* did not apply to strict liability offences, and fined Eau Claire for each day as suggested by the Crown. Eau Claire appealed the sentence.

Held:

Appeal allowed and original sentence restored.

Discussion:

The Court held that strict liability offences are not exempt from the "golden rule" in *Côté*. The Crown commenced proceedings against Eau Claire by laying an Information using the procedure set out for summary conviction offences in the *Criminal Code*, RSC 1985, c C-46 ("CC"). Sections 581(3) and 795 of the CC require an Information to contain sufficient detail of the circumstances of the offence alleged to give the accused reasonable information with respect to the act or omission to be proved against them and to identify the transaction referred to. The Information laid in this case charged Eau Claire with failing to carry out the actions specified in the order on or about the 1st day of February, 2021. The Court held that based on this wording, the trial judge reasonably concluded the non-compliance for which Eau Claire had been given notice was restricted to the period between the February 1 date specified in the information and the date when the Information was laid on March 1, 2021.



Self-represented citizens not expected to articulate issues before boards as clearly as lawyers.

Conley v Calgary (City), 2026 ABCA 105

https://canlii.ca/t/kk775

Several neighbours ("Conley") sought leave to appeal the City of Calgary's ("City") Subdivision Development Appeal Board's ("SDAB") decision approving a development permit granted by the City for a single townhouse building, four secondary suites, and two detached garages. Pursuant to the City's *Land Use Bylaw* IP2007, ("Bylaw"), the neighbourhood was designated as a "Residential - Grade-Oriented

...while no easement may grant exclusive and unrestricted use of the subject land, as this would amount to a transfer of underlying title, the owners of a dominant tenement are entitled to every reasonable use of an easement for its granted purpose.

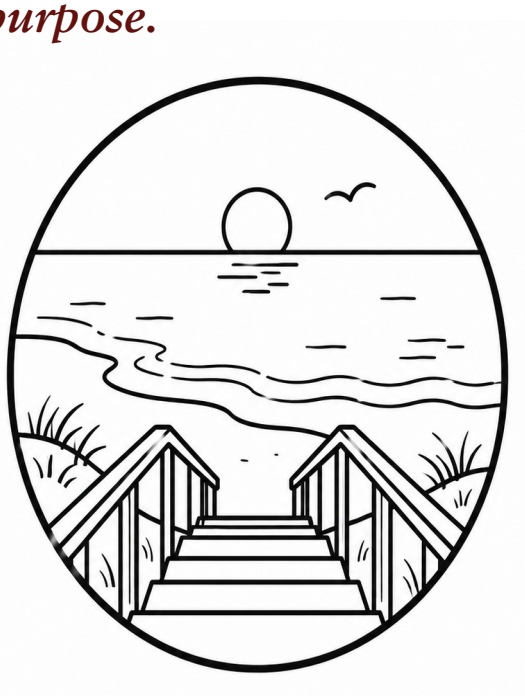
Infill" (R-CG) land use district. The proposed development was approved as a "discretionary use" and included a building with four above-grade units and four below-grade units, each of which would have its own at-grade entrance, and two detached garages. Conley appealed the City's decision to grant the development permit to the SDAB arguing, among other things, that this was an eight-unit apartment building disguised as a townhouse. The SDAB did not vary the use approved by the City. Conley sought leave to appeal on the grounds that the SDAB erred in law or jurisdiction by misinterpreting the definitions of "townhouse" and "secondary suite" in the Bylaw, by approving a development that is not allowed under the Bylaw, and by failing to provide adequate reasons for its decision. The developers argued that Conley did not raise the issue of the misclassification of the approved development before the SDAB, and that adequacy of reasons is not a standalone ground of appeal.

Held:

Permission to appeal granted on both grounds.

Discussion:

The Court held that before evaluating whether it is appropriate to make an exception to permit appellate consideration of a new issue, the Court must determine whether the issue is genuinely new in the sense of being legally and factually distinct from the issues raised at first instance. The Court accepted that it is not unusual for parties to an appeal to take a different approach on an existing point or to make additional submissions relating to the existing issue on appeal. The Court observed that this is particularly so on review of board decisions, given that many people are self-represented before a board but may be represented on the appeal. The Court agreed with the developers that Conley's specific theory of statutory interpretation regarding the definition of "townhouse" was not clearly articulated before the SDAB, but the broader issue of the applicable use under the Bylaw was. The Court went on to hold that while a challenge to sufficiency of reasons will rarely be considered a question of law of sufficient importance to warrant appellate review, conclusory reasons that fail to disclose a reasonable basis for a board's conclusion may ground appellate intervention. Where, as here, the sufficiency of reasons argument is intertwined with the interpretation issue upon which permission to appeal was being granted, there was no harm in granting permission to appeal on the sufficiency of reasons issue as well.



Possibility of damage from reasonable use of easement not unreasonable interference with landowner's rights.

Armstrong v North Saanich (District), 2025 BCCA 277; leave to SCC refused, 2026 CanLII 44898

https://canlii.ca/t/kdp4f

Armstrong purchased their property ("Lot B", the servient tenement) in 2018. At the time of the purchase, there was an easement registered on title over a 25-metre-long strip of land along the lot's western property line. This easement connects Lot A (the dominant tenement) to the beach below and is Lot A's only way to access the beach owned by the Crown. Lot A is owned by Grier and Alger ("Grier"). Grier built some stairs down to the beach on the easement without obtaining the appropriate permits from North Saanich District ("District") and

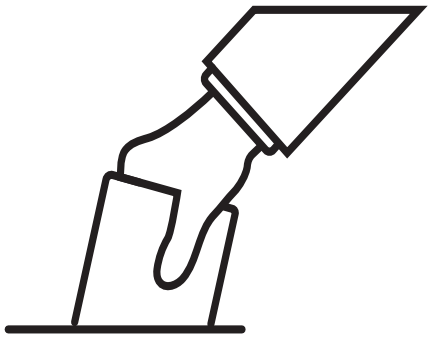
without Armstrong's permission. Following communications with both landowners, the District granted the relevant permits, subject to conditions and pending a decision from the Court as to the parties' respective property rights. The express terms of the easement grant the owners of Lot A the right to travel over the relevant portion of Lot B to and from the beach. Grier brought a petition seeking a declaration that the easement entitled them to build the staircase as a necessary ancillary right to the use and enjoyment of the easement. Armstrong brought a petition for judicial review of the District's decision to process and issue permits for the stairs and applied for an order that the stairs be removed. The petitions were heard together, and the chambers judge granted Grier's petition, dismissed Armstrong's petition, and dismissed the request for the stairs' removal. Armstrong appealed.

Held:

Appeal dismissed.

Discussion:

The Court held that while no easement may grant exclusive and unrestricted use of the subject land, as this would amount to a transfer of underlying title, the owners of a dominant tenement are entitled to every reasonable use of an easement for its granted purpose. Accordingly, the grant of an easement *prima facie* implies a grant of any ancillary rights that are necessary for the comfortable use and enjoyment of the easement in accord with its purpose. The purpose of the easement was to facilitate access to and from the waterfront on foot. The chambers judge found that the slope is quite steep in some places and did not consider it reasonable to expect the owners of the dominant tenement to risk their safety in using the easement to access the waterfront. The Court agreed and considered a right to build stairs upon the subject land was reasonably necessary for the comfortable use and enjoyment of the easement in accord with its purpose. The construction of the stairs did not offend the principle that the scope and use of an easement by the owner of the dominant tenement ought not to interfere unreasonably with the servient owner's use and enjoyment of their land. The possibility that some damage may result (or *may* have resulted) from the stairs is not, without more, sufficient to establish an unreasonable interference with the Armstrong's rights in respect of their land, since the use of many common easements carries a theoretical risk of damage. In any event, there was no evidence that any damage had occurred.



Judging the wisdom of political decisions should be left to voters, not the courts.

City of Brossard v Belmamoun, 2025 QCCA 1011

https://canlii.ca/t/kdtcc

The City of Brossard ("City") was founded in 1958 and began significant development spanning several decades. Located within the ring road close to the City of Montréal, the City focused on strengthening its commercial centres and consolidating its urban development. Belmamoun was a representative plaintiff in a class action brought by citizens residing in a section of the City. Once a peaceful rural area, this section gradually transformed to become, in effect, a transit road linking busy boulevards, one of which adjoined a shopping complex. The development and growth of the areas surrounding the section led to a significant increase in vehicle traffic, generating an increase in noise, dust, and vibration that led to the class action. The Superior Court found the City liable without fault pursuant to article 976 of the *Civil Code of Quebec* ("CCQ"), which sets out a positive obligation to tolerate normal annoyances between neighbours and to compensate for abnormal inconveniences. The City was ordered to pay damages after the Superior Court determined that the City could not rely on the common law doctrine of qualified immunity. The City appealed.

Held:

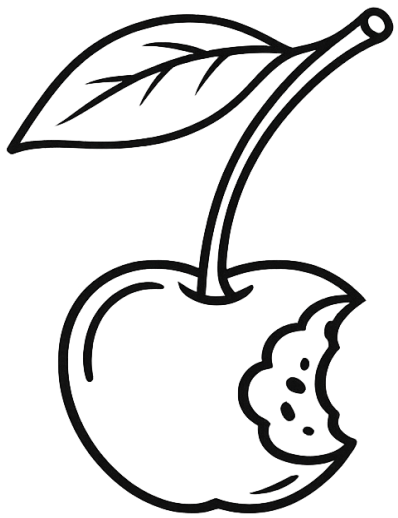
Appeal allowed and the class action dismissed.

Discussion:

The Quebec Court of Appeal determined that article 976 of the CCQ applies only to "neighbours", which requires physical proximity between the properties, and a legal link with them. That is, "both the person who suffers the abnormal disturbance and the person responsible for it must be owners or tenants of a property, or otherwise holders of a right of enjoyment or use over it," resulting in the creation of a no-fault

...the facts were clear, the narrative of events was not complicated, the evidence was not technical, and Smith's repeated lack of compliance with his legal obligation to make the building habitable in a timely way was undisputed.

liability regime [at paras 30-31]. The Court found that the increase in traffic on the section and its effects on the lives and peace of mind of its inhabitants resulted from a succession of political and regulatory decisions made by the City over several decades. These decisions were found to relate to the development, planning, and urbanization of the City's territory and did not fall within the scope of the exercise of the right of ownership required for article 976 of the CCQ to apply. The Court went on to find that even if the City's decisions could be considered related to the exercise of the right of ownership, the City could rely on the common law doctrine of qualified immunity. Qualified immunity applies to fundamental policy decisions based on public policy considerations such as economic, social, or political factors, provided they are not irrational or made in bad faith, even if the decisions are contested or detrimental to some people. An elected body must have all the latitude necessary to make and implement political decisions that affect its citizens. The balancing of conflicting interests involved in political decision-making should be left to voters, not the courts. Because the City's actions clearly fell within the political sphere, qualified immunity would apply.



Litigants entitled to only "one bite at the cherry" and cannot allege corruption when cases fail on their merits.

Smith v City of Winnipeg, 2024 MBKB 78; 2025 MBCA 15; leave to SCC refused: 2026 CanLII 41511

https://canlii.ca/t/k51r6, https://canlii.ca/t/k9n5w

Smith purchased a derelict multi-residential property in the City of Winnipeg ("City") with the intention of making it a home and office. A dispute arose between Smith and the City over the renovation of the building, culminating in 2011 when Smith refused the City access to the building to inspect the ongoing renovations. A Notice of Inspection was served on Smith, and an inspection was ultimately conducted. The City took enforcement action against Smith due to the poor condition of the building and Smith's refusal to bring it to a habitable standard. Smith contested the violation notices but was eventually convicted of them. Appeals of the convictions were unsuccessful. Smith commenced an action against the City relating to the enforcement of its by-laws but was similarly unsuccessful, and subsequent appeals were dismissed. Smith commenced applications to challenge the tax sale of the property and the City's attempt to inspect the property to enforce its by-laws, which were also dismissed. In 2019, Smith commenced two tort actions, which were consolidated in 2023 with another outstanding action, all of which alleged a series of abuses of authority and corruption by municipal officials in relation to the renovation dispute. The City moved for summary judgment, seeking dismissal of the consolidated claims.

Held:

Motion for summary judgment granted and claims dismissed.

Discussion:

Court of King's Bench Justice Lanchbery J. reviewed each of the legal actions brought by Smith

against the City and how each was concluded. Lanchbery J. also noted several occasions when Smith could have challenged the City's actions but did not. Lanchbery J. determined that Smith had provided no evidence to support his allegations of abuses of authority and corruption by the various municipal officials, effectively finding them to be conspiracy theories advanced against the officials because Smith's previous legal actions and applications were unsuccessful on their merits. In Lanchbery J.'s view, the facts were clear, the narrative of events was not complicated, the evidence was not technical, and Smith's repeated lack of compliance with his legal obligation to make the building habitable in a timely way was undisputed. Smith appealed Lanchbery J.'s decision to the Manitoba Court of Appeal, which found that much of Smith's appeal and submissions were an attempt to re-litigate issues that had been decided against him in other cases that had been concluded. The Court of Appeal found Smith's activities to be inappropriate because a litigant is entitled to only "one bite at the cherry" [at para 6]. ML

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at Omni Shoreham Hotel

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April 16 – 19, 2027

2028 IMLA Mid-Year Seminar, Washington, D.C.
April 6 – 9, 2028

2029 IMLA Mid-Year Seminar, Washington, D.C.
April 20 – 23, 2029

CONFERENCES

2026 IMLA 91st Annual Conference, Salt Lake City, Utah
Hyatt Regency Salt Lake City
September 23 – 27, 2026

2027 IMLA 92nd Annual Conference, Denver, Colorado
Hyatt Regency Denver Convention Ctr
October 14 – 18, 2027

2028 IMLA 93rd Annual Conference, Chicago, Illinois
Hyatt Regency Chicago
September 9 – 13, 2028

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2026 International Comparative Law Program
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