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Failure of Councillor to Provide Proof of Vaccination Status Found to Undermine Efficacy of Vaccination Policy

This was an application by a former Township councillor for judicial review of the Integrity Commissioner's ("IC's") finding that she had violated the Township's Code of Conduct by failing to comply with its COVID-19 vaccination policy and recommendation of a 90-day suspension, and Council's acceptance of the IC's findings and imposition of the penalty.

The applicant, Cynthia Guerard, was a township councillor of the respondent Municipality for a four-year term ending October 24, 2022. The respondent IC found that Ms. Guerard had violated the municipality's Code of Conduct by failing to comply with the municipality's COVID-19 vaccination policy (the "policy" or "vaccination policy") and recommended that the applicant should be suspended for 90 days. The applicant sought judicial review of both the IC's findings and the penalty imposed by the municipality (together, the "decision") on the basis that the decision infringed her rights pursuant to section 2(b) of the *Canadian Charter of Rights and Freedoms.* She asserted that the effect of the decision made against her had been an infringement of her constitutionally protected right to free expression.

HELD: Application dismissed.

DISCUSSION: The applicant argued that Council's decision to impose the penalty recommended by the IC infringed her right to free expression by punishing her for exercising her right not to speak. She argued that the respondents failed to consider her right to free expression along with related *Charter* values and therefore failed to balance the infringement of her right with the relevant statutory objectives, which she argued rendered the decision incorrect. In the alternative, the applicant argued that the balancing of *Charter* values with statutory objectives was unreasonable. In either case, the applicant asked that the decision be quashed and that the court issue a declaration under section 24(1) of the *Charter* that the decision violated her right to free expression.

The respondents argued that the IC engaged in a meaningful balancing of the applicant's *Charter* rights informed by the relevant *Charter* values and that the result of that exercise was reasonable. They argued that the IC reasonably concluded that the applicant's refusal to abide by the policy would have rendered it unworkable, and therefore that an intrusion on her rights was justified.

Bearing in mind the IC's references to relevant *Charter* values, his effort to impair Ms. Guerard's rights as minimally as possible, and his references to the importance of respect for the *Code of Conduct* and the necessity of being able to apply a vaccination policy, the Ontario Superior Court of Justice found that the IC reasonably engaged in the exercise of the proportionate balancing of relevant *Charter* values against objectives of the *Code of Conduct* and the vaccination policy. The Court found that the IC's analysis of the policy and his conclusion that Ms. Guerard was required to disclose her vaccination status were reasonable. It was found that the basis for the IC's conclusion that the maximum 90-day penalty was appropriate was that Ms. Guerard's non-compliance with the policy showed that she had no respect for it or for Council, and that her failure to answer his question respecting her vaccination status (her failure to cooperate) undermined the efficacy of the policy.

Furthermore, the Court found that the IC's conclusions were supported by evidence and betrayed no improper reasoning. Accordingly, the Court found that the penalty recommended by the IC and adopted by Council was not unreasonable.

Guerard v. The Corporation of the Municipality of Mississippi Mills

Amount of Profit Claimed in Lost Profits Case Can be Kept Confidential

This was an appeal by the City of Montreal against a judgment which issued a confidentiality order applicable to the loss of profits claimed by a contractor following the cancellation of a call for tenders. The City of Montreal issued a call for tenders for the construction of an industrial collector. A specialized construction contractor, EBC, submitted its bid, but did not obtain the contract. There were three bidders. The City rejected one of the three bids and made the prices of the other two bidders public. EBC's bid was nearly $96 million and the second bidder's bid was nearly $133 million. The third bidder contested the City's decision to reject its bid, and the City of Montreal decided to cancel the call for tenders on the grounds that there was a major procedural flaw that irreparably compromised the integrity of the process.

EBC formally demanded that the municipality reinstate the process and award the contract to EBC, which the municipality refused. EBC brought an action for damages against the municipality for lost profits. In its originating application, the contractor did not disclose the amount claimed from the City, merely alleging that it was significantly higher than $100,000. EBC filed a case management notice to obtain a confidentiality order regarding the amount of its claim and the terms protecting the confidentiality of this information when it was provided to the City. This case management notice was not supported by any evidence.

The trial judge set out the applicable legal principles regarding the publicity of judicial proceedings and confidentiality orders. She reiterated the fundamental principles of fairness, integrity, and transparency that govern municipal tendering processes in the public interest. The trial judge concluded that disclosing the amount claimed posed a serious risk to a significant commercial interest, given the future tender in which EBC would certainly wish to participate. Accordingly, the trial judge ordered that the amount remain confidential. The municipality appealed this decision.

HELD: Appeal upheld.

DISCUSSION: The City argued three grounds of appeal which EBC contested: (1) the trial judge made an error of law in interpreting article 12 *of the Code of Civil Procedure* ; (2) the trial judge made an error of fact and of law in ordering the confidentiality of the sum claimed in the absence of a demonstration, on the one hand, of the existence of a serious risk to a significant interest and, on the other hand, of the necessity of making the order to eliminate this risk; and (3) she erred in law by failing to analyze whether the benefits of the confidentiality order outweighed its negative effects.

The Quebec Court of Appeal concluded that article 12 *of the Code of Civil Procedure* allows for the sum claimed in an action to be subject to a confidentiality order. However, the Court of Appeal found that the trial judge made a reviewable error in concluding, in the absence of any evidence, that there was a serious risk threatening a significant interest justifying a confidentiality order, and in failing to analyze whether the order sought complied with the principle of proportionality. The Court of Appeal found that the applicable criteria for granting a confidentiality order were not met.

Furthermore, the trial judge failed to consider the negative effects of this order on the principle of publicity of proceedings.

Consequently, the trial judge's decision was overturned by the Quebec Court of Appeal and the application for a case management notice was dismissed in part.

City of Montreal v. EBC Inc.

Weeds Can Be Held to be a Nuisance Under City's Bylaw

This was a statutory appeal from a municipal committee's review decision. The City of Edmonton issued an order under section 545(1) of the *Municipal Government Act* to remedy nuisances on lands occupied by the occupant, specifically requiring grass/weeds be cut below ten centimeters and the removal of a derelict motorhome. The motorhome sat on a trailer bed which was located on the public City boulevard outside of the lands occupied by the occupant. The motorhome was in a state of disrepair and was not functional. It was partially dismantled with the front panel removed. Various pieces of wire or tubing were observed to be haning inside the front engine area. Pieces of metal containing rust were also observed in the same area.

The order was issued to the property owner following inspections and a violation ticket, which was later withdrawn. The occupant and appellant, Mr. Boonstra, sought a review of the order before the municipality's Community Standards and License Appeal Committee (CSLAC), which is a committee of Edmonton City Council. The CSLAC upheld the order with a minor amendment. Mr. Boonstra appealed the CSLAC's decision to the Alberta Court of King's Bench on grounds that he was allegedly denied procedural fairness.

HELD: Appeal dismissed.

DISCUSSION: The procedural fairness issues considered by the court were the following:

(1) Did Mr. Boonstra have proper notice of and time to prepare for the CSLAC proceedings?
(2) Was Mr. Boonstra provided with adequate disclosure?
(3) Were the CSLAC proceedings tainted by bias or a reasonable apprehension of bias?
(4) Were the CSLAC proceedings otherwise procedurally fair?

The court found that the plaintiff failed to prove that he did not have notice of and time to prepare for the CSLAC proceedings. It was found that notice and disclosure were adequate, and the plaintiff did not request an adjournment or show prejudice. It was found that the plaintiff's request for disclosure of the complainant's identity and enforcement against neighbouring properties was deemed irrelevant to whether a nuisance existed on the lands occupied by Mr. Boonstra.

The court found that the CSLAC's conduct was not biased, and that part of the plaintiff's application had been granted by the CSLAC. Furthermore, a written hearing was permissible, the plaintiff was given the option but chose not to attend in person, and there was no right to face the complainant in these proceedings.

The court held that the CSLAC reasonably applied the bylaw's nuisance definition and provided adequate procedural fairness, including disclosure and notice.

Boonstra v. Edmonton (City)

Reasonable for Municipality to Shut Off Water Supply for Resident that Refused to Replace Water Meter

In this case, the resident, Ms. Beaudoin, brought an application for judicial review to challenge the City of Ottawa's decision to shut off her water supply in November 2024. Ms. Beaudoin's water was shut off because of what the City said was her refusal to allow it to replace her water meter. For approximately 20 months before discontinuing Ms. Beaudoin's water supply, the City had notified her that her water meter needed to be replaced as a condition of continued water service.

City of Ottawa in Ontario embarked on a process of replacing aging water meters, intending to use new technology to improve water consumption tracking and increasing meter reading accuracy by using an encoder receiver transmitter (ERT).

City shut off water supply in November 2024 after 20 months of notices to resident that her water meter needed to be replaced as condition of continued water service — Resident brought application for judicial review —

HELD: Application dismissed.

DISCUSSION: Ms. Beaudoin submitted that the decision to shut off her water was unreasonable, punitive, and carried out in a procedurally unfair manner. The City submitted that the decision to shut off Ms. Beaudoin's water was not subject to judicial review, that Ms. Beaudoin started her application late and should not be granted an extension of time to seek judicial review, and that the application is moot. The City also submitted, in the alternative, that the decision to discontinue Ms. Beaudoin's water supply was reasonable and procedurally fair.

The Ontario Superior Court of Justice found that the application for judicial review was not moot. However, it would find the City's decision to have been reasonable and procedurally fair.

The Court found that there was nothing unreasonable in the City'ss request to install a new water meter on the applicant's property. The City embarked on the process of replacing water meters because the existing meters, which had a lifecycle of up to 25 years, were aging. The replacement of the water meters was intended to use new technology aimed at improving water consumption tracking and increasing meter reading accuracy. With respect to the ERT, the applicant did not point

the court to any independent expert or medical evidence in support of her concerns about its effect. In any event, the ERT could be installed as far as 300 feet from the exterior wall of her home. With respect to alleged privacy impacts, the applicant has been and is prepared to share her water usage for billing purposes. She has not shown why providing more accurate and detailed information to measure water usage is unreasonably invasive.

The Court also found that the City made exhaustive efforts to arrange the installation of a new water meter on the applicant's property before taking the final step of discontinuing her water supply. These efforts started after December 2022 when the ERT module connected to the applicant's old water meter had stopped working and culminated in the final disconnection of her water supply almost two years later.

While discontinuance of water supply had a severe impact on the resident, the City acted in accordance with the express bylaw that permitted it to shut off the water in these circumstances. The City also provided notice in accordance with the bylaw.

Beaudoin v. City of Ottawa

Municipality Under No Private Law Duty to Enforce its Bylaws at Behest of Resident

This was a motion made by the defendant municipality, the Town of East Gwillimbury in Ontario, Canada, seeking dismissal of the plaintiff resident Mr. Barron's action as disclosing no cause of action, and alternatively for an order striking the pleadings as frivolous, vexatious, or abuse of process. The plaintiff Mr. Barron's 202-page draft amended statement of claim had one key complaint, and alleged that the defendant town failed to investigate and enforce its zoning bylaw in relation to alleged transgressions committed by his neighbour. The claim alleged that the neighbour was operating a "contractor yard" on his property, and this key complaint formed a pat of a long-standing neighbour dispute between Mr. Barron and his former neighbour, Mr. Brown. Mr. Barron alleged that Mr. Brown used the neighbouring property as a "staging area" for a construction business, making noise and causing excessive light in the morning hours, thereby disrupting the peaceful enjoyment of the neighbourhood by its residents.

Mr. Barron sought damages in the amount of approximately $1.6 million based on the defendant town's alleged failure to properly investigate and prosecute the alleged bylaw infractions committed by his then-neighbour.

HELD: Motion granted.

DISCUSSION: The plaintiff's action was dismissed without leave to amend. Rule 21.01(1)(b) of the *Rules of Civil Procedure* grants authority to strike a claim where it is "plain and obvious" that the claim has no reasonable prospect of success. On a motion to strike under this Rule, the claim is to be read generously with allowance for drafting deficiencies. No evidence is permissible on such a motion, and the Court generally assumes that the facts pleaded are capable of being proven. The issue is whether the pleading asserts a legally sufficient claim and not whether the plaintiff will likely be able to prove the material facts.

Rule 25.11 and Rule 21.01(3)(d) of the Rules of Civil Procedure grant the Court authority to dismiss or strike claims that are considered "frivolous, vexatious or an abuse of process." The analysis under these rules is somewhat different, though the focus remains on whether it is "plain and obvious" that

the claim must fail because it is fundamentally defective. A claim must only be struck or dismissed in the clearest of cases. A court must consider whether amendment may cure the noted deficiency. Leave to amend a pleading should only be denied in the clearest of cases, particularly in cases where the deficiency may be cured by an appropriate amendment.

The court noted that there appears to be no specific duty upon a municipality to enforce a bylaw which it has enacted in the exercise of a discretionary power. Additionally, the court noted that there are valid policy reasons for the courts not interfering with the exercise of municipal discretion. In short, the court found that the Town was under no private law duty to enforce its bylaws at the behest of a resident.

Given the foregoing, the court was satisfied that the proposed amended statement of claim should be dismissed under Rule 21.01(1)(b) as it is plain and obvious that the claim has no reasonable prospect of success. The action was dismissed.

Barron v. Town of East Gwillimbury