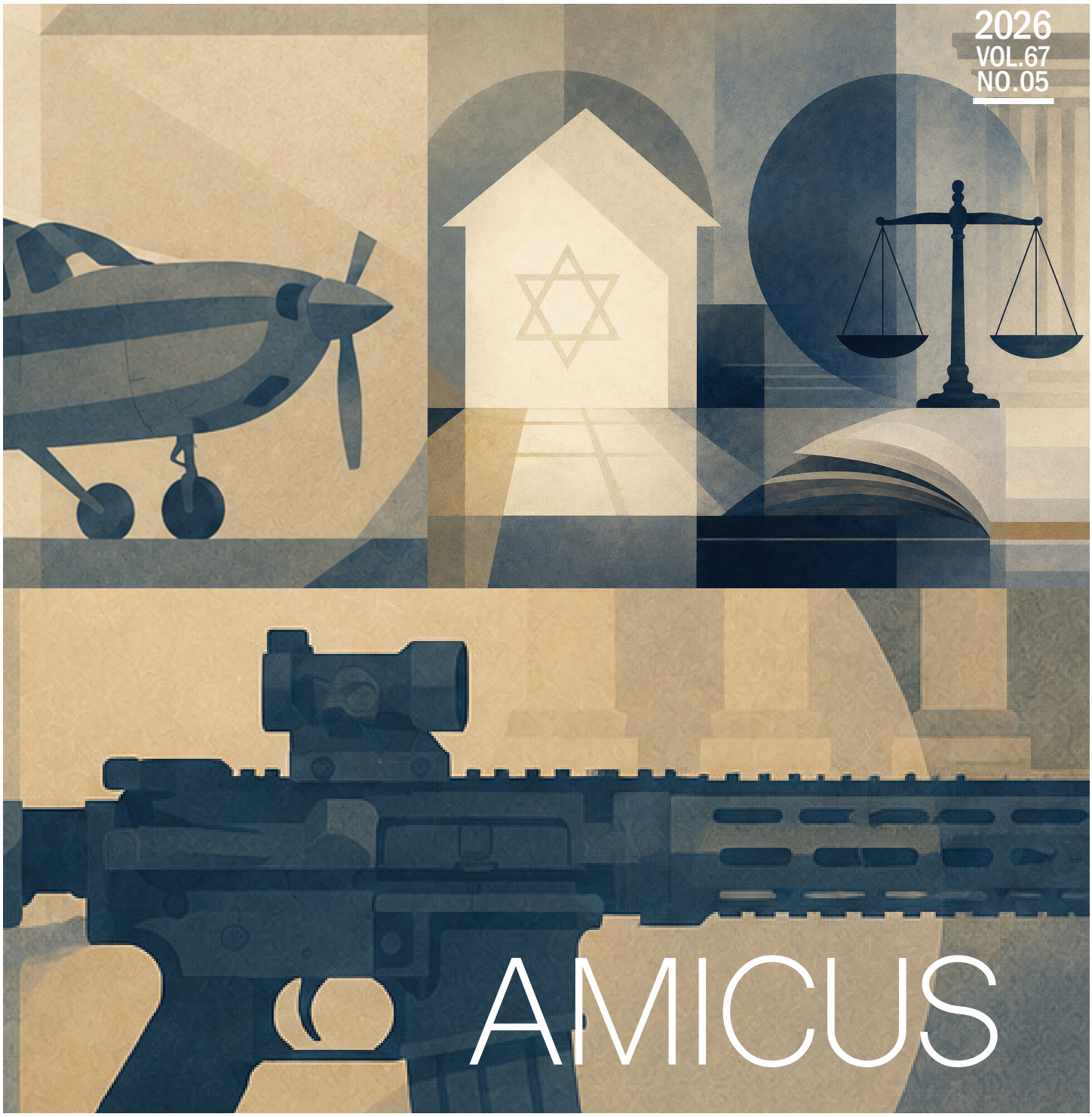
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INSIDE CANADA

Appraisals, Acting in Bad Faith, Secondary Uses, Planning, and Homelessness Discrimination

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USING MULTIPLE RENTS FROM A SINGLE PROPERTY DOES NOT FIT WITHIN THE DEFINITION OF MASS APPRAISAL.

SBLP Southland Mall Inc v Regina (City), 2025 SKCA 126

https://canlii.ca/t/kh624

For the 2019 annual municipal property tax assessment, the City of Regina ("City") assessed Southland Mall ("Southland") in the same stratum as Cornwall Centre to produce a single market rent estimate in three different categories. Using the income approach to value, Southland was assessed at approximately $135 million. Southland unsuccessfully challenged this assessment at the Board of Revision ("Board"). Southland appealed to the Assessment Appeals Committee ("Committee") and argued that the Board erred by determining that more than one property's rents are required to create a mass appraisal model. In the alternative, Southland argued that assessors can properly make adjustments within a rent model using rents from one property, and that is what should have been done in their case. Southland contended that Cornwall Centre should have been considered a substratum by itself and then the City's model modified for the substratum based on Southland's own rents. The Committee disagreed and upheld Southland's assessment. Southland appealed to the Saskatchewan Court of Appeal, arguing that the Committee erred in law when it determined that more than one property's

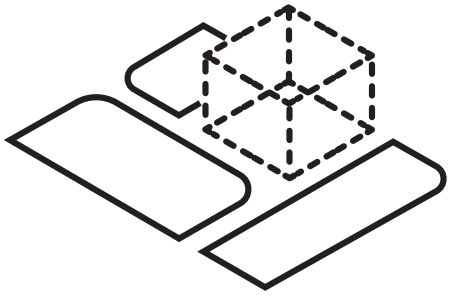
rents are required within a rent model or within a stratification within a rent model when an assessment is performed.

Held:

Appeal dismissed.

Discussion:

The Cities Act, SS 2002, c C-11.1 ("Act") requires that all non-regulated properties be appraised using the market valuation standard. Accordingly, all cities in Saskatchewan must use mass appraisal. Mass appraisal involves assessing the market values of a group of similar properties and must employ common data from different properties when building a model. In short, mass appraisal requires an assessor to use certain standard appraisal methods to prepare assessments for a group of properties instead of for individual properties. The system depends on classifying properties into groups with similar value-driven characteristics. Thus, as a matter of law, the Act requires assessors to assess multiple properties and then determine the tax liability for all of them based on a statistical model using common data from those properties. Using multiple rents from a single property cannot fit within the definition of mass appraisal. Stratification must use factors related to the comparability of the subject properties, such as a property's physical characteristics, market conditions, and legal restrictions on land use. Using a single property's rents to create its own substratum does not relate the comparability of that property to others. Accordingly, while an assessor can create substrata for individual properties, they cannot do so based on a single property's rents. If they could, then every property could be its own substratum, which violates the concept and purpose of mass appraisal. The Court held that the Committee did not err when it concluded that the assessor could not use a property's own rents as a basis for adjusting the model or for sub-stratifying properties.



Municipality acted in bad faith stopping project by repealing bylaw passed to permit it.

Jean c Municipalité de Saint-Stanislas-de-Kostka, 2026 QCCS 522

https://canlii.ca/t/kjdj1

Jean purchased a lot located in the H-19 zone of the Municipality's Bylaw 330. Only "single-family dwellings" and "detached buildings" were allowed in the H-19 zone at that time. Jean filed an application to amend By-law 330 to allow construction of two townhouses, each comprising three dwellings in a row pattern, with one on each of two lots to be created by a subdivision. The application included an architectural site plan. Bylaw 371 was eventually adopted to amend Bylaw 330, to allow Jean's project as filed to proceed. Jean filed an application for subdivision and a building permit and was led to believe the project was proceeding. Technical problems arose, some neighbours voiced opposition to the project, and the Municipality became aware that there was a problem in the drafting of By-law 371 because three-family residences could not be built in a row townhouse based on definitions contained in the bylaw. As a result, at a special meeting held without notice to Jean, the Municipality repealed the bylaw amendment allowing Jean's project, in part, on the basis that the bylaw only permitted single-family and detached dwellings. The Municipality then refused to issue the building permit Jean sought. Jean brought a motion for judicial review of the Municipality's decision.

Held:

Jean's application allowed in part.

Discussion:

The Court found that there was negligence in the drafting and adoption of the amended bylaw allowing Jean's project, although the municipal councillors were not acting in bad faith when they adopted it. On the contrary, the Court held, the Municipality wanted to accommodate Jean. However, the drafting error was magnified by the failure of the municipal officials who assisted Jean to identify the error and was aggravated when two municipal employees who discovered the error failed to report it to Jean, as she was being assured the project was proceeding. The Court found the Municipality's conduct wrongful and that Jean's request complied with the regulations that everyone believed to be applicable and was complete. Repeal of Bylaw 371 was done in breach of procedural fairness and in bad faith. Accordingly, the Court determined that the bylaw's repeal

is unenforceable against Jean, and she may file a new application in accordance with the regulations in force before the bylaw's repeal. The Court would not order the issuance of any permits but allowed Jean to file plans in this regard.



Convenience store not permitted secondary use on residential property with single dwelling.

Ajayi v City of Moncton, 2026 NBKB 150

https://canlii.ca/t/km5sd

The City of Moncton ("City") received complaints that Ajayi was operating a convenience store from the garage of their residence. The City considered the operation of a convenience store on Ajayi's property a violation of the City's zoning bylaw and advised Ajayi accordingly. Ajayi moved the convenience store from the garage to a storage unit located on the same property. The City brought an application for an order requiring Ajayi to comply with the zoning bylaw, cease operating a convenience store on their property, dismantle the convenience store components, and authorize municipal enforcement. Ajayi applied for a stay of ongoing enforcement actions pending a final determination by the Court of the interpretation of the zoning bylaw and of their right to procedural fairness. The parties agreed that Ajayi's property is zoned R3 and that R3 zoning permits certain secondary uses outlined in Table 12.2 of the bylaw. Table 12.2 lists the secondary land uses permitted within each residential zone and provides permission for a "[c]onvenience store (max 120 m2) or personal service shop within a multiple unit dwelling containing more than 24 units" in residential zone R3. Ajayi maintained that the zoning bylaw did not apply and that the City improperly enforced it.

Held:

City's application allowed in part, Ajayi's application dismissed.

Discussion:

The issue was whether the trailing modifier "within a multiple unit dwelling containing more than 24 units" applies to both a convenience store and a personal service shop or solely to a personal service shop. The Court held that, on its face, the trailing modifier created an ambiguity as to its application to convenience stores that must be resolved by considering the text, the intent, and the purpose and scheme of the bylaw as a whole. The Court observed that the bylaw provides for several residential zones. Zone R3 designates a multiple-unit dwelling zone, whereas the other zones are single-unit dwelling zones. Convenience stores and personal service shops are permitted only as secondary uses in the multiple-unit dwelling zone R3. Considering the scheme, intent, and purpose of the bylaw, it follows that secondary uses contemplated by this provision are meant to provide convenience and services to residents while maintaining the residential character of the neighbourhood. Forcing both a convenience store and a personal service shop to be anchored in a 24+ unit building protected the zone's primary residential scheme. Further, the higher density of a 24+ unit building brought the need for convenience stores and personal service shops. Therefore, the Court concluded that the bylaw only permitted a convenience store in zone R3 as a secondary use within a multiple-unit dwelling containing more than 24 units and ordered Ajayi to cease operating a convenience store on their property. The Court declined to order the dismantling of any structure because the City had not established that any structure on the property violated the bylaw. The Court dismissed Ajayi's application because it had already determined all issues.



Rejection of a development permit for discretionary use must be clearly articulated and based on a legitimate planning reason.

1381034 Alberta Ltd v Calgary (Subdivision and Development Appeal Board), 2026 ABCA 228

https://canlii.ca/t/kltdt

1381034 Alberta Ltd. "Developer" owns land in the city of Calgary zoned residential-grade oriented infill under Calgary's Land Use Bylaw ("LUB"), which is part of Calgary's densification initiative. The purposes of this zone include accommodating a wide range of grade-oriented development, secondary suites, and site and building designs adaptable to evolving household needs. Calgary's Development Authority approved the Developer's application as a discretionary use for an eight-plex townhouse, with four primary suites, four secondary suites, and a detached four-car garage. This approval



was overturned by Calgary's Subdivision and Development Appeal Board ("SDAB"). The SDAB confirmed the proposed development was a discretionary use, the proposed development complied with all requirements for maximum density, building height, rear building height, front setback, side setbacks, number of parking stalls, size of parking stalls, number of storage units, and parcel coverage, and stated that its decision was guided by the LUB, the Municipal Development Plan, and the Bowness Area Redevelopment Plan. However, the SDAB observed that compliance with the LUB is not the only consideration. Due to its scope and scale, the SDAB found that the proposed development was dissimilar to almost all other properties on the block and was insensitive to and incompatible with the existing character and scale of the adjacent properties and the neighbourhood. They held that while a development need not be identical to its surroundings, this development was simply too far out of scale.

Held:

Appeal allowed, matter returned to SDAB for redetermination.

Discussion:

The Court held that the SDAB cannot reject a development permit for a discretionary use without having a legitimate planning reason for doing so. The SDAB failed to provide an interpretation of "insensitive" or "incompatible" and did not meaningfully explain how the proposed development was insensitive or incompatible. The SDAB did not explain the magnitude or nature of the incompatibility, other than to say that the Developer's suggestions for change would be insufficient. Given that "compatibility" is not a defined term in the bylaw, the Court observed that the SDAB did not explain what definition of "compatibility" they used. The SDAB also failed to explain why an eight-plex was incompatible in this neighbourhood when there are other multi-family developments on the same block, including an approved ten-plex. In short, the Court held that the SDAB's reasons "are deficient because they fail to disclose why or how or on what evidence the tribunal reached its conclusion" [at para 25]. The SDAB's decision was conclusory when it was required to articulate some basis for its conclusion that the development was "insensitive" and "too far out of scale" given the development's compliance with the LUB. While the SDAB is not required to define the scope of possible permissible future development in the abstract, it must not leave the Developer guessing about how to revise their proposal or consider other uses. Because the deficiencies in the SDAB's reasons were such that the basis for the outcome it reached was not transparent and intelligible, the matter was returned to them for redetermination in accordance with the Court's decision.

Homelessness is an analogous ground attracting Charter protection from discrimination.

The Regional Municipality of Waterloo v Named Respondents and Persons Unknown, 2026 ONSC 2971

https://canlii.ca/t/kl47w

The Regional Municipality of Waterloo ("Waterloo") owns a gravel lot in Kitchener, Ontario ("Property") where a homeless encampment has been located since 2021. The number of homeless people in Waterloo significantly exceeds the number of available shelter beds and other housing options. Waterloo requires vacant possession of the Property to construct a transit hub that will benefit all of Waterloo. Waterloo passed a site-specific by-law to provide for vacant possession of the Property with a plan to provide alternative accommodation for those residing there. The bylaw banned the erection of temporary structures and permitted immediate police enforcement against "non-residents" of the encampment, defined as individuals assumed to have started residing on the Property after the bylaw's public notice date, regardless of whether alternative housing is available to them. Waterloo applied for a declaration that the bylaw complied with the *Canadian Charter of Rights and Freedoms* ("*Charter*"). If the bylaw was not *Charter* compliant, Waterloo asked for Court direction regarding the steps

required to close the encampment. The residents of the encampment ("Respondents") cross-applied for a declaration that the bylaw violated their s. 7 *Charter* right to life, liberty, and security of the person contrary to the principles of fundamental justice, and their s. 15(1) *Charter* equality rights.

Held:

Waterloo's application dismissed, Respondents' application granted in part.

Discussion:

The Court acknowledged Waterloo Council's inherent public-interest function as a democratically elected body, the need to respect decisions made by such bodies, and that addressing the homelessness crisis involves policy and legislative choices within the primary purview of government. The Court also noted that the Respondents are rights bearers no less entitled than any other Canadian citizens to the full benefit and protection of the *Charter*. The Court made clear that there is no unconstrained right to live wherever one pleases. However, the Court found the Respondent's s. 7 *Charter* rights to be breached contrary to the principles of fundamental justice; specifically, in a manner grossly disproportionate to the bylaw's object. The Court also found a breach of the Respondent's s. 15 *Charter* equality rights. The Court determined that homelessness should be recognized as an analogous ground for the purposes of s. 15: a distinction based on homelessness may violate the dignity of members of the group because such status is likely to give rise to stereotypical reasoning; homelessness is a constructively immutable characteristic; the homeless are a historically disadvantaged group in addition to being a discrete and insular minority; and they lack political power, making them vulnerable to having their interests overlooked and their rights to equal concern and respect violated. The bylaw imposed a burden or denied a benefit in a way that reinforced, perpetuated, or exacerbated a disadvantage suffered by members of the group. The bylaw could not be justified under s. 1 of the *Charter*. The encampment was the only place in Waterloo where it was not illegal for homeless people to set up a structure, and Waterloo clearly stated that if the encampment was cleared, it was not prepared to allow homeless people to shelter outdoors anywhere on Waterloo property. To address disproportionate impact and individualized accessibility needs, an accommodation plan that fulfills Waterloo's obligations would need to include an alternative lawful encampment site as a last resort, or a tenting protocol that provides access to essential services on par with the current encampment.

M.



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