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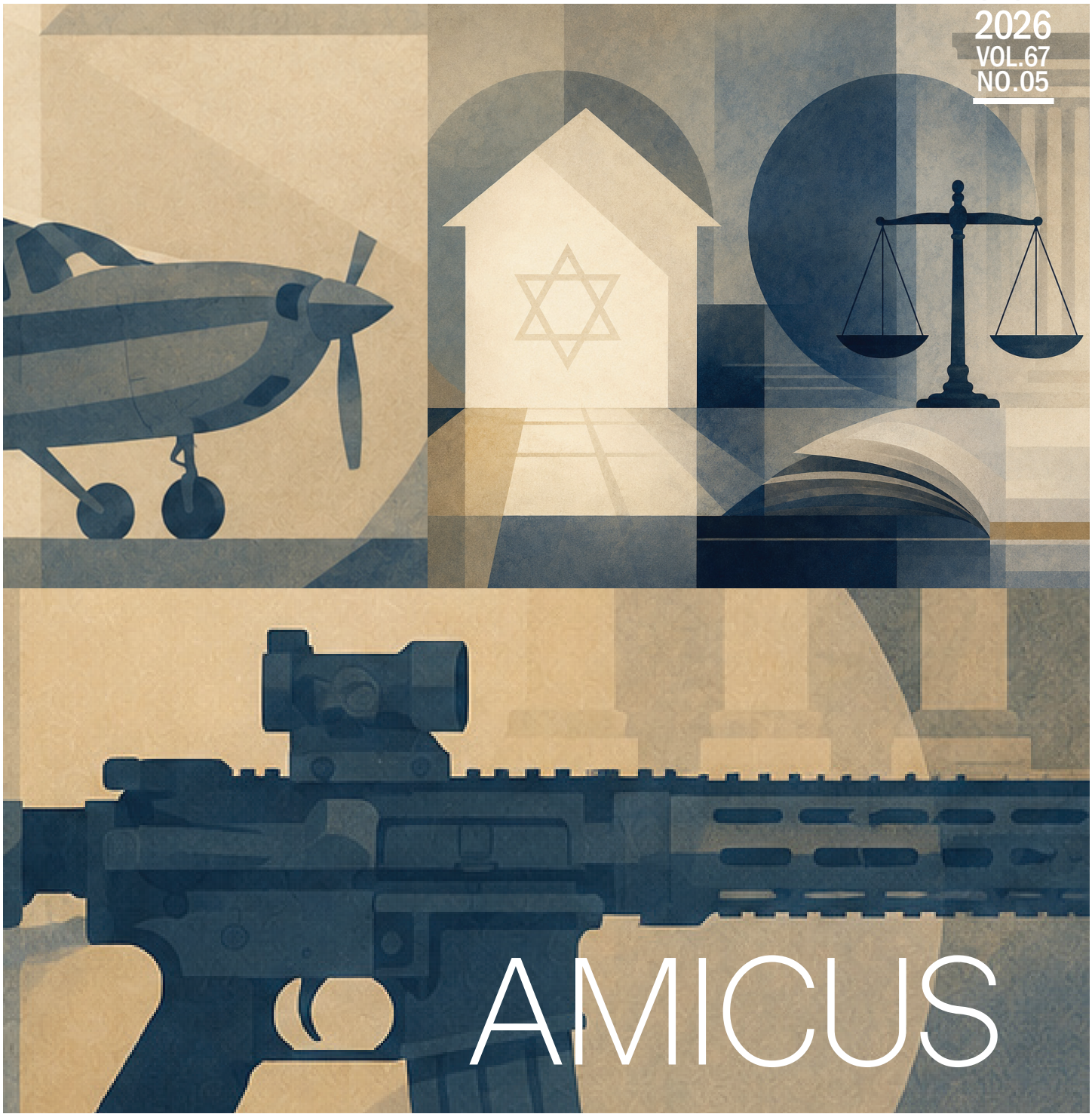

AMICUS



LETTER FROM THE PRESIDENT

By Susana Alcala Wood
City Attorney
San Jose, California

Dear Colleagues,

Here we are in September with only four months left in 2026. I'm sure many of you share my feeling that we still have so much work to do in 2026, but we are rapidly losing calendar days to get it all done. I think that's the definition of a public agency attorney's work: never enough time, never enough resources, and still we get it done. Of course, as IMLA members, we all know one of the most important resources we have is this organization and its members.

I was already acutely aware of how much my involvement with IMLA enhanced the services I provided to my city. But serving as President this past year, I am even more in awe of everything behind the scenes that goes into making sure we have the resources available to us. Starting with the stellar staff led by the incomparable and brilliant Executive Director Amanda Karras, Deputy General Counsel Erich Eiselt who oversees our robust legal advocacy function, miracle worker Jennifer Ruhe who as Deputy Executive Director somehow manages to be handling everything, everywhere, all the time, Assistant General Counsel Deanna Shahmani who manages to wrangle all of us to create our outstanding educational programs, Associate Counsel Sean Cooley who although he is a new addition, already feels like he's been here all along, and Trina, Caroline, Carolina, and Avery who do so much to make everything IMLA does runs as smoothly as possible – especially at our in-person conferences. And a shout-out to Christine Dodd, who is our amazing magazine editor, and the one and only Chuck Thompson, who shares outstanding legal analysis and makes us laugh at the same time. I know my fellow Board members agree that IMLA is so effective and impactful because of the strength of this tremendous staff. So, I invite you: next time you see any of them, whether virtually or in person, take a second to thank them for their work on our behalf!

I'm really looking forward to seeing so many of you in beautiful Salt Lake City at our annual conference. Staff has been hard at work planning sessions on important, timely topics for our education and discussion, and working with the host committee to arrange land tours and various networking events.

My year as president will conclude at the conference when we welcome our incoming president, Beth Anne Childs, from Oklahoma. I have worked with Beth Anne for several years now on the Board, and we will be in excellent hands under her leadership. Thank you to everyone for the support this year; it's been the highlight of my career to serve as IMLA's president. I hope to connect with as many of you as possible in Salt Lake – so please stop me and say hi.

See you soon,

Susana

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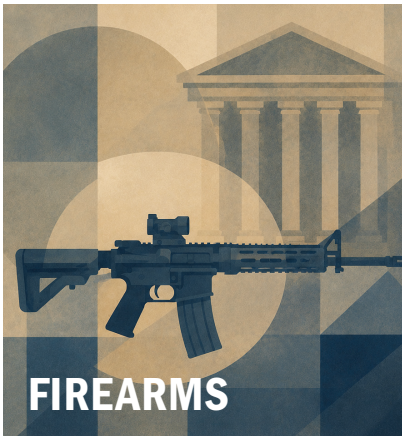

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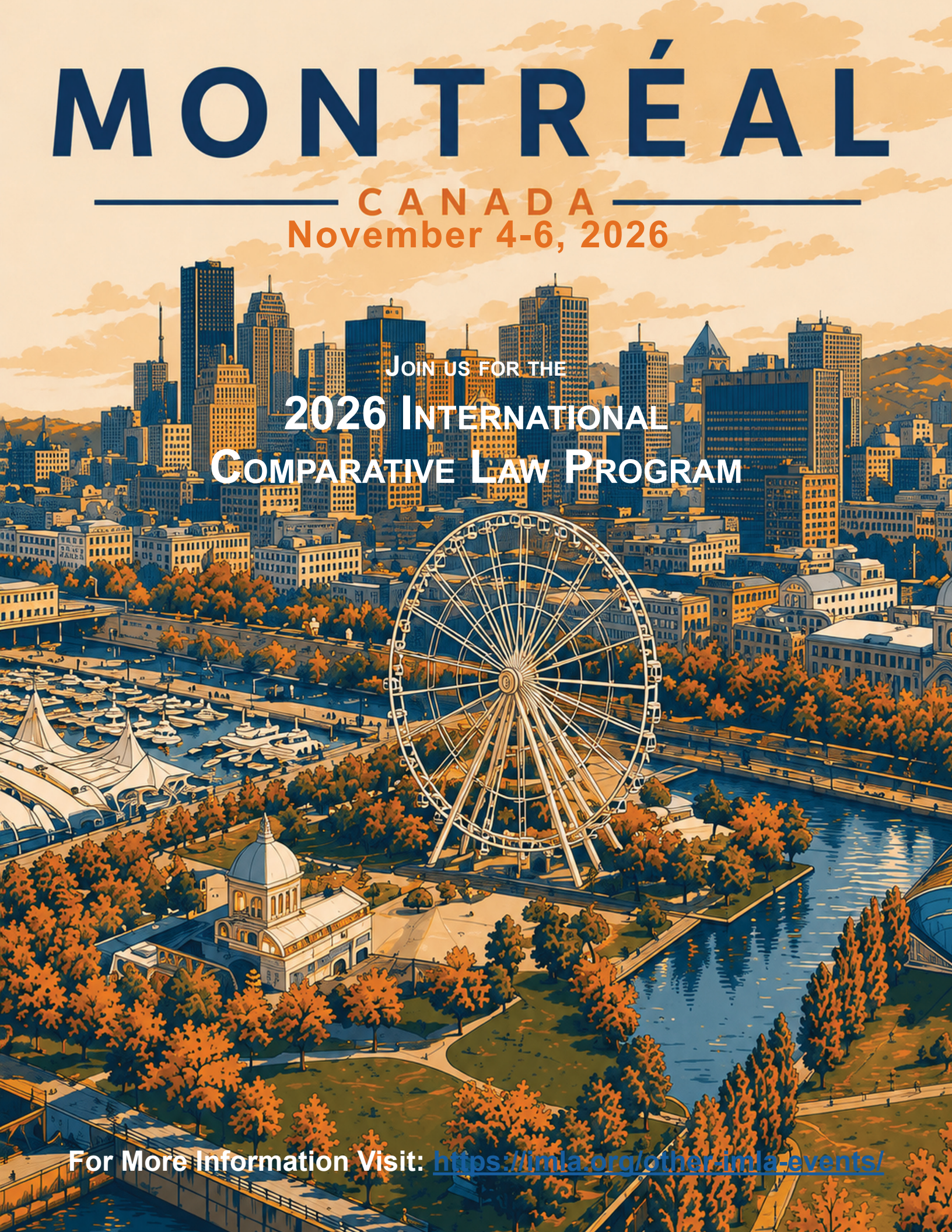
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AWARDS & SCHOLARSHIPS

2026 IMLA DeWitt F. "Mac" McCarley

SCHOLARSHIP WINNERS:

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Assistant Counsel for the Unified Government of Wyandotte County /Kansas City, Kansas

CAROLINE LETTRICH
Assistant Director of Law City of Cleveland


Caroline Lettrich


Dilini Lankachandra

As part of its commitment to building generational involvement in local government law, IMLA created the McCarley Scholarships, named in honor of Dewitt F. "Mac" McCarley. Mac has practiced municipal law for more than 45 years, having served as the Charlotte, North Carolina City Attorney from 1994 to 2011 and continuing as a partner at Parker Poe where he focuses on local government matters, including service as the town attorney for Southern Pines. Mac was an IMLA President, a recipient of the Charles S. Rhyne Lifetime Achievement award and was instrumental in creating IMLA's Institute for Local Government Lawyers (ILGL).

Offered each year at the IMLA Annual Conference, ILGL is a one-day boot camp providing an interactive and experiential program for attorneys new to local government law (or for those seeking a refresher). Mac, who has been a member of the ILGL faculty since its inception, exemplifies giving back to IMLA. It is in that spirit that the McCarley Scholarships were created.

IMLA will be publishing their articles in upcoming issues of *Municipal Lawyer*, and we look forward to meeting Dilini and Caroline in person as they join us for IMLA's upcoming Annual Conference in Salt lake City, Utah!

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MOVIE REVIEW

The Odyssey

A WORTHY VOYAGE

Is That Legal?

Contributed by

Darren Shulman

City Attorney

Upper Arlington, OH



The Odyssey is director Christopher Nolan's adaptation of Homer's epic poem about Odysseus' super long journey home after the Trojan War. I'm not the biggest fan of Nolan's sound mixing (*Tenet*), action choreography (*The Dark Knight* Batman movies), and overreliance on cute 'time' gimmicks (pretty much everything he does, but most annoying in *Dunkirk*). As a result, I was more curious than excited going into *The Odyssey*.

While I think the film would be improved by reordering some of the early scenes, in part because it takes too long for Odysseus (Matt Damon) to show up, I was pleasantly surprised by how much I liked *The Odyssey*. Nolan's playing with time yet again bothered me during the first third of the movie because it disrupted the flow of the story. If you know the story of *The Odyssey*, you may feel like going out of order is hiding the ball unnecessarily, and if you are unfamiliar with the story, you may find it confusing. However, it led to a big payoff at the end, so even I must admit using the technique was sound.

Nolan also takes an interesting approach in his adaptation, stripping out most of the gods' involvement while keeping the story's fantastic elements (Cyclops, Scylla and Charybdis, Circe). His gritty filmmaking style and use of practical effects makes things that should seem ridiculous seem plausible in the context of the story. Nolan also makes *The Odyssey* accessible by eschewing the British accents[1] and stilted dialogue typically associated with period pieces in favor of more modern dialogue. This largely works, though

I found Jon Bernthal's (*The Walking Dead*) accent took this a bit too far.[2]

I have a lot of minor quibbles about *The Odyssey*,[3] but Nolan has managed to make a fresh adaptation of an ancient story, providing a timely message while staying (mostly) true to the source material. Perhaps more importantly, *The Odyssey* is consistently entertaining.

One of the major plot points in *The Odyssey* revolves around a bunch of dudes (suitors) who are hanging out at Odysseus' place trying to marry his wife Penelope (Anne Hathaway) because he's been gone so long and is presumed dead. Penelope and her son Telemachus (Tom Holland) want to get rid of them, but they can't. What's the deal with these guys?

Are the suitors trespassing?

The Second Restatement of Torts defines "trespasser" as "a person who enters or remains upon land in the possession of another without privilege to do so created by the possessor's consent or otherwise."[4] Some states define trespass simply as entry onto the premises of another, without consent or authorization.[5] Other states explicitly reference implied consent, which courts have also recognized.[6]

It's not clear how the suitors started hanging out at Odysseus' place. From what we see, they've been there a long time, making it impossible to determine if they were given explicit consent to be there. However, everyone seems to act like they are allowed to be there based on something called "Zeus' Law."[7] Given that consent can be implied from conduct,[8] the fact that the suitors are served food every night is a strong indication of implied consent. As such, while the suitors are undeniably annoying,[9] they are not trespassing.

Can Penelope revoke consent?

Even if the suitors had consent to be at Odysseus' castle, given the suitors' annoying and increasingly aggressive behavior, it's clear that Penelope would like them to leave. However, Penelope must do more than express displeasure at their presence. Implied consent continues until it is revoked, meaning there is no trespass until the person is requested to leave.[10] Unfortunately for Penelope, while she did an excellent job stalling the suitors for years, she never explicitly revoked their consent to be there.

What is Penelope's recourse if they still don't leave?

If Penelope or her agent (perhaps Telemachus) were to explicitly revoke consent and the suitors refused to comply, the suitors could be prosecuted for trespass.[11] Someone who lawfully enters a place may be subject to conviction for trespass if he or she remains after being asked to leave by someone with authority.[12] Having the suitors arrested for trespassing would have been an easier way to get them out of the house, but it would have made for a less entertaining movie.

Score: A-
ML

Darren Shulman is the city attorney for Upper Arlington, Ohio. A graduate of Northwestern University and Harvard Law School, Darren previously served as the City Attorney for Delaware Ohio, Associate Legal Counsel for the Ohio Department of Administrative Services, and as an Assistant Prosecuting Attorney for the Montgomery County Prosecutor's Office. When Darren was the Delaware City Attorney, he co-hosted a movie review show called *Through the Lens* on local radio, which is now a podcast. Writing movie reviews through a legal lens allows Darren to combine his love of movies with his profession.

Notes:

1. British accents are often used in historical movies. This makes no sense in movies where the characters wouldn't even have been speaking English, and yet, it does feel right. See e.g. *Gladiator* (2000). Apparently, this trope is so prevalent that it has its own name – The Queen's Latin. See: www.en.wikipedia.org./wiki/Queens_Latin.
2. Bernthal is excellent as the Punisher in *Spider-Man: Brand New Day*.
3. In case you are wondering, they are: 1. I never felt like the movie established Odysseus as a character, which blunted the impact of his development; 2. For as much as Nolan likes playing with time, I felt he never really established how long things were taking. The movie basically jumps from trial to trial, which gives the impression that all of this stuff happened in rapid succession; 3. There seems to be a never-ending supply of expendable dudes even though there was a finite number of guys who could fit on the ships. A bunch meet their demise, but in the next scene there are plenty more.
4. Restatement (Second) of Torts 171, § 329, cited by Garrard v. McComas, 5 Ohio App.3d 179 (10th Dist. 1982)
5. Environmental Processing Systems, L.C. v. FPL Farming Ltd., 457 S.W.3d 414 (Texas 2015).
6. "[W]here a person enters a public or common area, there is no intrusion or trespass because the person is clothed with the implied consent of the owner or possessor of the property. St. Louis Cnty. v. Stone, 776 S.W.2d 885, 888–89 (Mo. Ct. App. 1989)(people entering public portion of a business open to the public); Davilla v Enable Midstream Partners, 913.F.3d 959 (10th Dist. 2019)(" The State of Oklahoma recognizes a right of action in trespass where one person "actual[ly] physical[ly] inva[des] ... the real estate of another without the permission of the person lawfully entitled to possession." Williamson v. Fowler Toyota, Inc., 956 P.2d 858, 862 (Okla. 1998). In other words, a trespass occurs when "one ... enters upon the property of another without any right, lawful authority, or express or implied invitation, permission, or license." *Id*.)
7. Zeus' Law apparently refers to the concept of Xenia, which is an ancient Greek custom that refers to courtesy of the host and guest in hospitality situations. This might be the first time "movieweb.com" has ever been quoted in this publication: www.movieweb.com/the-odyssey-zeus-law-explained.
8. Grossman v. St. John, 323 S.W.3d 831 (Mo. Ct. App. 2010)(implicit consent case involving installation of solar lights, plants, and concrete benches on disputed property.)
9. Robert Pattinson's (*Twilight* series) portrayal of jerkiness rivals Joffrey from *Game of Thrones* (2011-2019)
10. *Grossman*, at 834.
11. See e.g. O.R.C. 2911.21(A)(4)("refuse to leave upon being notified …by the owner or occupant, or the agent or servant of either.").
12. State v. Marcopolos, 154 N.C.App. 581 (N.C. Ct. App. 2002). *See also* State v. Armen, 537 A.2d 1143 (ME 1988) (Conviction of defendant who lawfully entered office of U.S. Rep Olympia Snowe but refused to leave unless she met with him upheld because staff member ordered him to leave).



PRACTICE TIPS

6 Tips for Working with Municipal Councillors

Lessons from 35 Years in Municipal Law—including Nine Years Leading the Legal Department of Canada's Largest City

Contributed by

Wendy E. Walberg,

City Solicitor, City of Toronto

I am sometimes asked for advice about working with municipal councillors. Here is what I say. In general, legal counsel can best establish a strong working relationship with members of council by remembering both roles and ethical obligations while being as helpful as circumstances permit. I offer six tips for establishing and maintaining productive, respectful relationships. Let's call the six topics empathy, communication, helpfulness, candour, governance and ethics.

But first, a few general thoughts. Councillors and legal counsel frequently have different perspectives on issues. I often favour the cleanest legal solution, while the member of council is looking for a solution that addresses the interests or concerns of their constituents. Council members must answer to their residents; I don't have to. Problem solving requires that municipal staff, legal counsel and members of council listen to each other. Early in my career I did not appreciate that a better solution is often reached when municipal staff and legal counsel give serious consideration to the councillor perspective even when the councillor suggests something that initially appears impractical. While I believe this now, I also believe that when an idea appears impractical, legal counsel and municipal staff should ensure that the councillor has the advice they require from the appropriate staff. My role is to provide advice about the pros and cons of a proposal from a legal perspective rather than on the underlying policy choice. To encourage members to seek policy advice, I recommend, and in some cases strongly encourage, the councillor to consult municipal policy staff prior to deciding on their preferred path. Conversations with members of council during and prior to council meetings at which decisions will be made can facilitate those decisions. On most issues, however, unless council has delegated authority to an individual member, council rather than the individual member is my client and must be the source of any authority or direction. Members of council, particularly those new to their role, sometimes must be reminded of this.

Empathy

A little empathy goes a long way. The role of a municipal councillor is a difficult one. Early in my career I did not appreciate this, but in my role as city solicitor I have developed a better understanding of that role and keep its complexities in mind when a member requests assistance, especially when I am unable to assist the member in the manner they had hoped.

While I don't provide councillors with anything resembling a legal opinion about constituent concerns, I do try to provide some useful information that is not confidential and can help them decide how they will respond to an issue in an informed manner.

For example, not long ago, a member of council asked me for advice about something that was happening in their ward. Their office had received numerous resident complaints about a structure that was under federal jurisdiction. While the municipality was unable to prevent the actions of the federal government, my staff and I had what I believe was a helpful conversation with the councillor. We explained both the history of the municipality's dealings with the federal government about the structure and the legal framework governing it. We understood that the councillor would continue to receive calls and e-mails from constituents, and we helped him understand the regulatory framework so that he could explain it. While we did not solve his problem, he expressed gratitude for the opportunity to talk the problem through. He also seemed to feel that he would be better equipped to respond to constituent concerns.

2 Communication

Sometimes I feel like a translator. As lawyers we have terms, acronyms and even Latin phrases that we use when communicating with each other. It is easy to slip into this manner of speaking with our clients. I am often reminded of something my mother said to me when I was a girl. She was a fan of Canadian scientist, David Suzuki, a frequent guest on the public broadcaster to which her radio was always tuned. She remarked more than once that she was impressed by his ability to explain complex, scientific concepts for the non-scientist. She said that this was because of his deep understanding and his intellect.

My goal, and I am no David Suzuki, is to communicate law to non-lawyers so that they can understand the legal framework in which they operate. This goal is in the back of my mind when responding to questions at a meeting of city council and in the conversations with clients that are part of my day-to-day work.

As a leader of a large team of lawyers, I often receive feedback about the work of my team. While most of it is overwhelmingly positive, this is one area where clients sometimes feel we could improve. I expect the same is true elsewhere. If we remember first principles and build upon them in our explanations, we can achieve clarity and understanding, and our clients will appreciate it.

Communication should be tailored to the audience. It should not be what the lawyer wants to say about a legal issue; it should be what the client needs to hear. It's easy to get carried away with an explanation, and I am not immune to this when I find a legal issue particularly interesting. I've been asked to "speak English". Considering what the audience requires, is an important step in preparing communication.

3 Difficult Advice/Candour

Honesty is the best policy. We are often called upon to give advice that is difficult to receive. Speaking truth to power is not easy, but it is imperative. As lawyers we must be consistent in this if we are to fulfill our responsibilities as legal counsel.

When explaining that the approach a member of council favours is not aligned with applicable laws, it is important to take the extra step of explaining why the goal cannot be achieved in the intended manner. Saying "no" is not enough. In my experience, when a lawyer provides an explanation of the legal framework and the potential consequences of various options, the explanation is accepted even if it is not embraced. The advice is often followed, and where it is not, at least trust is maintained. When a lawyer doesn't provide a thorough explanation, the councillor is understandably frustrated. This can lead both to a lack of trust that legal counsel genuinely wants to problem solve with councillors to a reluctance to engage legal counsel in the future.

When I am giving unwelcome advice, I am particularly careful about tone, especially when the advice is in writing. I ask myself whether the tone of the advice is such that the recipient will appreciate that the writer understands the recipient's goal and aims to both educate and assist rather than to criticize or scold. Sometimes we can be so concerned about communicating legal concepts clearly that we neglect tone.

The advice that is most difficult for municipal councils to receive is often given in closed session or in confidential reports, and for obvious reasons, I won't offer an example of that. I'll offer a slightly different example. I recently had a request from a member of council who had received many phone calls and e-mails from constituents complaining about a business that was ignoring obligations under a municipal by-law. The councillor wanted me to meet with the business owner to both explain the by-law and convince the business owner to comply. As city solicitor, I did not have a solicitor/client relationship with the business owner so could not comply with the request. At the same time, my staff and I appreciated that the situation was a problem for the municipality and should be addressed.

I explained to the councillor that I would not be meeting with the business owner. Rather than simply telling the councillor that such a meeting was outside the scope of my role, I explained the solicitor/client relationship, my role, law society rules, and insurance issues. This sounds like a lengthy explanation, but it took only a few sentences, and the explanation was accepted.

4 Helpfulness

This leads me to my next point which may seem an obvious one; however, it is the source of much of the constructive feedback that I have received about legal work in general over the years. When legal counsel can't do what a council member asks, we should still try to be helpful. I often say that when we cannot get those seeking our advice from "Point A" to "Point B" as directly as they'd like, we should find an indirect path to a place as close to "Point B" as possible. This is true when dealing with members of the public service, legislative bodies and agencies of the municipality as well.

In the example where the member of council had hoped that I would explain the law to a business owner, a member of my staff and I discussed an alternative with the member. My staff wrote a letter for the enforcement agency to send to the business owner. The letter set out some of the things the councillor had hoped I would communicate directly, and I believe it did help to resolve the problem. Creative problem-solving builds trust by reinforcing the perception that, while unwelcome advice is sometimes given, legal counsel is genuinely trying to be of assistance.

5 Governance

I never forget that I am a lawyer. As legal counsel, we must be mindful of the governance structure of the municipal government and the roles of those involved. This includes the lawyer's role, the role of the municipal council, the role of individual members, the head of council, various statutory and non-statutory officials and agencies. Sometimes members of council and municipal staff less familiar with these roles will assume their own role is larger than it is or will ask you to step out of yours. While it is sometimes difficult to hold my ground, I never step outside of my role, and I expect that if I did, it would be difficult in future to reinforce the boundaries of my role with others.

Throughout my career, whenever I have felt uncomfortable in a situation, I can say that without exception, and regardless of the subject matter, it has been because of pressure to take steps that are not aligned with the proper governance structure.

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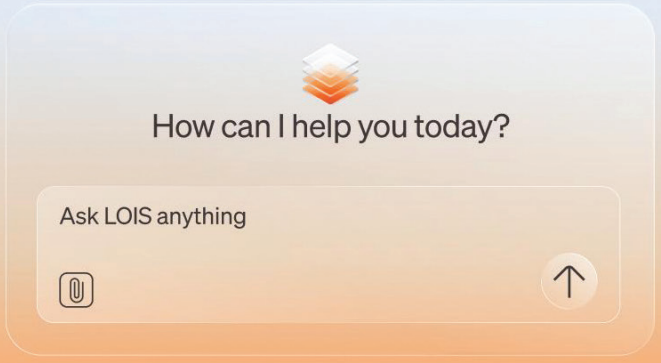

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Ethics

My employer has a "public service by-law" that sets out various rules, duties and processes pertaining to public service ethics. As a lawyer licensed in my jurisdiction, I am also required to comply with law society rules of professional conduct. I expect that most legal professionals have something similar that they can point to and by which they are guided.

We should remember the first principles which form the basis of these policies and rules, concepts like our duty to serve our clients well, to serve the public well, to act with integrity, to maintain confidentiality, to maintain political neutrality, and to use good judgement which. These are the common denominators.

We should remember that when ethical dilemmas arise, we are not alone. Law societies have practice advisories; some employers have ethics executives or other officials with whom we can consult. We can also consult the person to whom we report or a colleague whose opinion we respect. Talking an issue through with someone who has the appropriate background to understand and advise can assist us in making the right decision in a complex situation. It is important to disclose an ethical dilemma or potential conflict of interest. This is the first step to resolving the dilemma to which it gives rise.

In writing this I deliberately chose examples about situations in which I was unable to assist a member of council in the manner the member had hoped. I did so because, it is in those situations that we are most challenged to foster a positive and respectful relationship, stay in our own lane and, on occasion, stand firm on ethical principles.

I have not addressed the importance of legal counsel ensuring that they consistently remain familiar with recent developments in the law and do what is required to provide excellent legal advice. While this is imperative, it is not the focus of what I have written.

In closing...

I offer again the six points that have been immensely helpful to me throughout my career: having some empathy for those seeking my counsel, making clear communication a priority, being candid about why I sometimes must give advice that is difficult to receive, finding a way to be helpful when I do, being consistently mindful of the governance structure within which I operate and the ethical obligations that accompany it. These have served me well. **ML**



INSIDE CANADA

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

Contributed by

MCM Consulting and Legal Services

Edmonton, Alberta



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

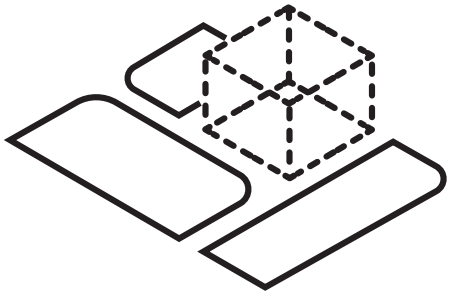
rents are required within a rent model or within a stratification within a rent model when an assessment is performed.

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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Michael Stag and Ashley Liuzza are licensed to practice law in Louisiana but practice across the country through partnerships with local lawyers and pro hac vice admission.

GLOBAL SCHOLAR



Dispatch One: Zambia

Contributed by Erin McSherry

Greetings from Lusaka, Zambia's capital city. Lusaka is a sister city to my hometown, Albuquerque, New Mexico. For the last two months, I interned with the Lusaka Local Authority's Legal Services Division. I also learned about Zambian governance through research, interviews, and observing the buildup to the country's national and local elections.



Geographic Context

Zambia is a landlocked country in southern Africa, bordered by eight other countries: Angola, Democratic Republic of the Congo, Tanzania, Malawi, Mozambique, Zimbabwe, Botswana, and Namibia.

The Zambezi River forms much of Zambia's southern border — including Victoria Falls, or Mosi-Ao-Tunya ("the Smoke that Thunders") —and is the source of the country's name. I visited the Zambia side of the falls, from Livingstone, Zambia, sister city to Santa Fe, New Mexico. The Livingstone Legal Services Director and I later visited the Zimbabwe side of the Falls together.

A relatively new democracy, Zambia gained its independence from Britain in 1964. Depending on what source you consult, its residents have 72 or more local languages and are members of 70 tribes. Although English is the official language, only about two percent of the residents speak English as their first language.

Zambia is about the same size as the U.S. State of Texas and the South American country Chile. The population is somewhere between the U.S. States of New York (20 million) and Florida (23 million).

As one of the most urbanized African countries, more than 44 percent of Zambia's residents live in urban centers. Approximately 2.4 million people live in capital city Lusaka, a population that more than doubled from around 1 million residents in 2000. As you can imagine, the municipality's growth has had a big impact on the local government, from public safety to land-use planning.

Government Structure

Zambia is composed of municipalities governed by "local authorities." Municipalities span all geographic space in the country, much like counties in the United States. Local authorities, however, are the only local government and administer services that, in the U.S., might be divided between counties and municipalities.

The "Legal Services Division" of a local authority is the analog to a city attorney's office.

> The day we met, an advocate (attorney) from the Lusaka Local Authority asked me,
>
> "What do you mean when you say, 'federal government'?"
>
> I smiled, amused to see the water in which I swim.

According to the Zambia's Constitution, the President's and national cabinet's rights, functions, and powers are "devolved" to the ten provinces and local authorities. In other words, Zambia is a unitary government rather than a federation of states or provinces. Therefore, it has no "federal" government. The fully integrated government allows Zambia to have one licensing authority for its attorneys, one bar exam, and one court system. And, therefore, unlike the United States, Canada, or Mexico, Zambia does not have elected governments serving between the elected national government and elected local authorities.

Rather, the Zambian President appoints "Provincial Ministers" and "Provincial Permanent Secretaries"

Opposite Page: In front of Lusaka City Centre (City Hall) with Lusaka Interim Legal Services Director, Audrey Mwanamakondo.
This Page: Victoria Falls Photo with Livingstone Attorney Shekinah Katundu



Selfie taken by Jonathan Chinene, member of Lusaka Legal Services Division and Section Lead for licensing. Jonathan's local government involvement began in high school when his peers elected him "Junior Mayor" of Lusaka, part of a collaboration on youth leadership between Lusaka and its sister city in Sweden, Lidköping.

to administer the country's ten provinces. Provincial Ministers are National Assembly members appointed to implement national policies in the Provinces, and they oversee the local authorities' adherence to the constitution and other laws. Permanent Secretaries manage the operations of the provincial administration, including finances and human resources.

The Zambian President also appoints National Assembly members as executive cabinet ministers. This is similar to the Prime Minister's appointment of cabinet ministers in the United Kingdom, but without a king's involvement. Both types of ministers in Zambia–Cabinet Ministers and Provincial Ministers–retain their voting rights in Parliament, resulting in some members of Parliament having both executive and legislative roles. With recent constitutional amendments, National Assembly members will also serve on their local authorities' councils, giving them both local and national legislative roles.

Furthering the unitary government, a national "Local Government Act," adopted by Parliament, requires the Ministry of Local Government and Rural Development to approve local authorities' "bylaws" (local ordinances) before they are effective. The Local Government Act also governs the minimum number of meetings each local council must hold and requires a "Provincial Local Government Officer" to give permission before a council can convene outside the meeting schedule prescribed in the Local Government Act.

Also furthering the unitary government, and with the goal of creating a more integrated country that is formed from regionized local ethnicities, a presidentially appointed "Local Government Civil Service Commission" acts on behalf of the President and hires and places most professional and specialized local authority employees. The Commission's authority to hire and reassign duties includes town clerks (the equivalent of city managers but also charged with local election administrative duties) and attorneys. The Commission may assign employees to new jobs and locations at any time. As a result, a town clerk or legal services director, without having expressed interest in a move, may be assigned to a new role in a new local authority, perhaps a 10-hour or more drive away. A Town Clerk described receiving notice that, "effective immediately," she had been promoted; she was appointed to serve as Town Clerk in a different, bigger city, several hours away.

Every five years, the Presidentially appointed Electoral Commission of Zambia, or "ECZ," oversees the elections for President and National Assembly members, along with the elections for local authorities' mayors and

councilors. No other elections are held for governing officials unless a vacancy requires a replacement. This system is a marked contrast–and likely simpler for voters– than my experience in a U.S. municipality: elections every year, either federal, state, county, and/or municipal offices, sometimes a combination of several categories, and sometimes also for school boards, water and utilities oversight bodies, etc.

To avoid office holders from using their positions to advantage their party or while campaigning individually, Parliament and local authorities' councils are "dissolved," and ministers must leave office ninety days before an election.

I arrived in Zambia during the 90-day dissolution period. While that means I did not observe the local authority's council meetings, the elections provided substantial material for observation and research.

Legal Education

Law is a four-year undergraduate degree, followed by one year of post-graduate study at the "Zambia Institute of Advanced Legal Education" or "ZIALE", to prepare for the Zambian bar exam. While it's permissible to study an undergraduate law program in other parts of Zambia or even certain other countries, ZIALE is only available in Lusaka. As a result, all candidates for licensure in Zambia live in the capital city for at least one year. ZIALE requires its students to have a legal internship. Several of the Lusaka Local Authority's senior legal assistants I've worked with are interns who are enrolled in ZIALE.

The first-time passage rate on the national bar exam is often in the single digits, resulting in much public debate. Is the training sufficient for preparation for the exam? Is the cost worth the burden of tuition and the investment of time? In 2019, five out of 355 first-time test takers passed the exam, a 1.4% pass rate. If a student passes four or more of the 11 units, the student does not have to retake those units. Three or fewer? The student must retake the entire exam. If, after three years, a student has not passed all 11 subjects, the student must wait three years to re-enroll in ZIALE and start the process over again.

Law Practice

The day-to-day activities involved in representing a local authority are quite similar to representing municipalities in the United States – meeting regularly with clients, writing advisory documents and court filings, researching statutes and case law, advising clients, and speaking on behalf of the local government in designated fora and with other legal agents.

After independence from Britain, Zambia maintained a common law legal system that relies on jurisprudence to interpret its constitution and other laws, much like the



In Front of Zambia Supreme Court and Constitutional Court with Local Authority witnesses (left) and Litigation Section Lead and Advocate, Mwenya Mwanakatwe (right)



Fast Track Court team, with Prosecution Section Lead, Charity Kabamba (far left), Prosecutor Assan Mwale (third from left), Erin, interpreters, and court staff.

legal system in the United States. Unlike the U.S., when faced with a novel constitutional question, Zambian lawyers, judges, and academics consult analyses from appellate courts in other Commonwealth countries for serious consideration and potential guidance.

In court, judges above a magistrate level wear white wigs. Attorneys may wear white wigs. Some do. Attorneys must wear full collars and black robes in court proceedings above the level of a magistrate.

Not only do "all rise" when a judge enters the courtroom. In addition, while standing and facing each other, the judge, attorneys, and public bow at the same time before taking their seats. I like the practice; it feels like an agreement: a solemn process is about to start, and we're all recognizing it, together. If you enter the room later, you bow as you enter.

For on-record matters in trial court, judges take handwritten notes, requiring witnesses to pace their testimony.

In civil litigation, cases begin with a writ of summons. Rather than conducting depositions with opposing parties' witnesses, advocates base their cross-examinations on witness affidavits. The result: cross-examinations that can surprise both witnesses and counsel.

A 2020 court rule requires a litigant to send a demand letter before initiating almost any type of civil litigation. The demand letter must set out, in detail, the claim and the circumstances surrounding it. The litigant must document the opposing party's receipt of the demand letter at least 14 days prior to the initial lawsuit's filing in court; the intent is to encourage pre-litigation resolution of disputes when possible.

For criminal cases, all prosecutors in the country work on behalf of the national "Director of Prosecutions", appointed by the President. Jury trials are not used. Because 98% of the population's first language is not English, but court is conducted in English, proceedings often begin by asking the defendant "language?" Then one or more interpreters translate for the defendant and witnesses in one or more languages. The predominant first languages in Lusaka are Nyanja and Bemba. In "fast track court" for low-level crimes and traffic violations, Nyanja and Bemba interpreters stationed at the front of the courtroom spend the day switching off interpreting duties; occasionally they have a break if a defendant prefers English.



From left to right: municipal employees from the finance department who served as arbitration witnesses, Contracts Section Lead and Senior Advocate Sydney Banda (third from left), legal assistants Thelma Mafumba and Ane Namwila, and Erin McSherry.

Internship & Independent Research Highlights

To kick off my internship, I met with each Legal Services "section" lead (deeds, litigation, contracts, estates, prosecution, and licensing). Each conversation left me with more questions and more reading to do! For example, from the deeds section, I learned about Zambian land reform post-independence. The reform sought to address absentee landowners, along with significant informal development (unregulated development or squatting). Land ownership is now limited to 99 years in regularized areas and 30 years in "improvement areas" where settlement took place without authority.

These initial conversations and experiences led to more informal conversations about our respective countries' governments and law practices. Consistent points of interest about the U.S. government and legal system included states' reserved rights, state and federal court jurisdiction, and the U.S. Juris Doctor degree. One of the attorneys and I met to discuss *Trump v. Barbara*, the U.S. Supreme Court case regarding birthright citizenship.

Over the course of the following weeks, I observed matters in various courts and attended an arbitration in the "Lusaka International Arbitration Centre." After the arbitration, Senior Counsel Sydney Banda assigned me to write the Local Authority's defense brief, in the next arbitration. I had a brief mental protest: I'm not licensed in Zambia, and I didn't know the local rules!

Ultimately, the drafting project was a highlight. Counsel Banda, two legal assistants, and I reviewed the case file together and brainstormed the local authority's legal position. The petitioner- lessee claimed that the municipality had, by implied consent, extended an expired lease for its agency advertising rights on a four-way pedestrian bridge. The right to sell advertising space at the intersection had become significantly more lucrative since the municipality signed the original lease, 14 years prior. We also discussed the politics of the case (the petition alleged attempted bribery by councilors) and appropriate city witnesses.

The drafting required me to research finer points in Zambia's constitution, statutes, and case law. Luckily, I had examples to work from, and Counsel Banda recommended some cases as a starting point.

Outside the internship, I read up on Zambian laws and legal issues and connected with other Zambians involved in law and governance. Notably, I met with attorney Linda Kasonde, who served as the first woman president of the Law Association of Zambia ten years earlier. In that role, she prevailed in enforcing the constitutional requirement that Ministers leave their posts 90 days before an election. Afterward, she founded "LCK Freedom Foundation", which is dedicated to "advance constitutionalism, human rights and the rule of law."

The LCK Freedom Foundation has a case pending in the Zambia Constitutional Court that, if successful, would render void recent constitutional amendments that, among other changes, created over 100 new parliamentary seats. Watching the five-hour appellate arguments before a nine-judge panel of the Constitutional Court was another highlight of my time in the country. The outcome could shape the country's future.

ML



Depicted Flight Routes Are Symbolic

About Erin McSherry and the Fulbright Award

Erin McSherry resigned her post as City Attorney for Santa Fe, New Mexico in December 2025. She had been contemplating taking an extended break, and then she received a Fulbright Award for a project that began in January, 2026.

Fulbright awards come in several types. Erin received the "Global Scholar" award. It funds up to six months, with up to two months in up to three countries. Proposals can be for research, teaching, or a "professional project". Her proposal was a professional project comparing local governance and legal representation in New Mexico sister cities in Mexico, Zambia, and Spain. Her day-to-day activities include observing city council meetings, court hearings, and legal education; interviewing and collaborating with lawyers and government officials; and conducting independent research.

She focused on municipalities that are New Mexico sister cities to build upon existing relationships and the sister city mission: "to promote peace through mutual respect, understanding, cooperation – one individual, one community at a time."

You can also read more about her project, the places she is visiting, and related topics on her Substack: https://substack.com/@erinmcsherry, including entries such as "What is a Sister City, Anyway?": https://erinmcsherry.substack.com/p/what-is-a-sister-city-anyway?r=3ji96g

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Looking Ahead: Forfeiture, Finality, and Firearms.

Contributed By Erich Eiselt
IMLA Deputy General Counsel and Director of Legal Advocacy



The Supreme Court's 2025 Term yielded blockbuster national decisions including *Slaughter* and *Cook*, defining expansive executive power, and *Barbara*, confirming birthright citizenship. But the Court also delivered critical guidance to local governments, rebuffing fair market value as just compensation in local real property tax sales (*Pung*), authorizing warrantless entry based on objectively reasonable grounds (*Case*), and protecting the expectation of privacy by users of app-based location services (*Chatrie*).

Looking ahead, local prerogative will continue to generate ample Supreme Court discussion in the upcoming Term, judging from numerous petitions already granted cert. Three such cases in which IMLA will file amicus briefs provide interesting issues: One debates the appropriate penalty for violating a locality's choice to remain alcohol-free, one stems from a city's prohibition against places of worship in residential areas, and the third begins with a local ban on assault weapons.



FORFEITURE

Jouppi v. State of Alaska: Should courts consider the gravity of a specific defendant's conduct when evaluating the proportionality of a fine?

Jouppi involves a much-publicized attempt by Alaska to seize a $95,000 Cessna airplane from a pilot who was prepared to transport a passenger to a native "dry village" despite her loading a visible six-pack of beer. The optics make for great tabloid fodder, but as in many cases, there are nuances behind the headlines.

The History: Alaska's Dry Villages.

In 1937 the State of Alaska authorized its incorporated municipalities to determine whether they would prohibit alcohol within their boundaries, a choice extended to unincorporated communities and villages in 1981. The local option reflected legislative findings that Alaska's mortality rate due to alcoholism was more than four times the national average[1] and that the alcohol-based economic drain on the State was debilitating, costing an estimated $2 billion per year in today's dollars.[2] Most significantly, that scourge disproportionately burdened Alaska's rural communities which had few law enforcement or public health resources, and where more than 80% of violent crime was alcohol-related.[3]

Many Alaska jurisdictions voted to remain "wet" communities, allowing sale and possession of alcohol. Others chose to regulate alcohol, limiting sales to restaurants, package stores, and the like.[4] Some--so-called "damp" localities--prohibited commercial sale of alcohol but not personal possession.[5] And more than two dozen opted to become "dry" communities, banning the sale, importation, and possession of alcohol altogether.[6]

The Alaska criminal code protects these local options, making it a state-level crime to "knowingly send, transport, or bring an alcoholic beverage" into a dry village.[7] The penalties depend primarily on the quantity of alcohol and whether the defendant is a repeat offender. Transporting under 10.5 liters of distilled spirits (roughly 14 bottles), 24 liters of wine (about 32 bottles) or 12 gallons of beer (21-plus six-packs) is a Class A misdemeanor, which carries a maximum penalty of up to a year in prison and a fine up to $10,000.[8] Bringing those amounts or more is a Class C felony, which triggers fines of up to $25,000 and up to five years' in prison for a third-time offense.[9] The

means of illegal transport-"vehicles" (including cars, trucks, all-terrain vehicles, and snowmobiles), boats, and airplanes-are all subject to criminal forfeiture,[10] but the Alaska legislature has allowed leniency for vehicles and boats, which are only subject to taking if additional factors are at play, such as other felony convictions by the operator, transport of more than twice the Class A misdemeanor alcohol quantities, or if the conveyance is the sole means of transport for a family in the village.[11]

Airplanes enjoy no such moderation under the law. Recognizing that aircraft are the only means by which bootleggers can reach many remote dry villages, in 2004 the Alaska legislature amended the forfeiture hierarchy to provide that airplanes are subject to mandatory forfeiture—without any leniency for first-time offenders and irrespective of the quantity of alcohol involved.[12]

The Crime.

Meet Kenneth Jouppi. In April 2012, air taxi pilot Ken Jouppi was readying his plane for the 110-mile flight due north from Fairbanks to Beaver, a hamlet of about 80 residents that voted in 2004 to become a fully dry village. His passenger was headed to join her husband, the village postmaster, bringing groceries and three cases of Budweiser. All were loaded onto Jouppi's 1969 Cessna 206 Stationair, although only a single six pack was visible in a separate bag. Before the plane could take flight, Alaska State troopers, brandishing a warrant based on suspicions of Jouppi's prior bootlegging activity, searched the Cessna. Discovering the alcohol, they arrested both the pilot and passenger for violation of Alaska's dry village laws.

The trial court sentenced Jouppi to the minimum possible penalty--180 days' imprisonment with 177 days suspended and a $3,000 fine with $1,500 suspended. The State also sought to seize Jouppi's Cessna under the mandatory forfeiture law, but the trial court declined to allow the seizure. It held that taking the plane would be an excessive fine prohibited by the Eighth Amendment, because a $95,000 seizure for a minor first-time misdemeanor failed constitutional proportionality principles: Jouppi's "culpability relative to other potential violators of the [law]"[13] was low. The Alaska alcohol statute, the trial court noted, "recognize[s] a hierarchy of seriousness among . . . offenses" based on the amount of alcohol involved and the recidivism of the offender, yet the airplane-forfeiture provision applies "with equal force to all." And "[t]he gravity of the harm" was "low relative to other [alcohol code] offenses."[14]

After a lengthy remand journey from the Alaska Court of Appeals to the trial court and back again, the case reached the Alaska Supreme Court, which unanimously held in 2025 that the forfeiture of Jouppi's Cessna was constitutional "as a matter of law." Despite the fact that many gallons of Budweiser had been loaded into the plane and a trooper's testimony at trial that he saw Jouppi opening the boxes of alcohol, the court based its analysis of Jouppi's infraction only as to one six-pack of beer, because whether Jouppi was aware of the larger quantity required further fact finding. And although the original warrant which allowed troopers to search Jouppi's plane was based on suspicions of repeated prior bootlegging, the court stated that "Jouppi was convicted of only one instance of alcohol importation unconnected to other criminal activity."[15] Furthermore, it was "not particularly relevant whether Jouppi's offense was part of a larger pattern of criminal activity" because, whatever the degree of his wrongdoing, "a pilot knowingly transporting a passenger's alcohol to a dry village is precisely the kind of person and conduct that the legislature was concerned about."[16]

In comparing the value of the seizure to the gravity of the crime, the Alaska Supreme Court noted that the maximum fine for Class A offenders under the dry-village statute was $10,000, meaning the plane's value was "only" nine and a half times that maximum, which "suggests that the forfeiture is not grossly disproportional." The court found further support for its holding in the legislative history behind the dry-village statute: "It is clear to us that the legislature determined that the harm from even a six-pack of beer knowingly imported into a dry village is severe enough to warrant forfeiture of an aircraft."[17] On that basis, the court held that "the forfeiture of Jouppi's airplane is not grossly disproportional to the gravity of the offense for which he has been convicted and, therefore, the forfeiture does not violate the Excessive Fines Clause of the Eighth Amendment."[18]

The Eighth Amendment and Proportionality.

In their protracted review of the Jouppi forfeiture, Alaska's courts have grappled with the Constitution's succinct bar against abuse of criminal defendants: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."19 Implicit in that phrasing is the concept of proportionality—the pain inflicted on the wrongdoer must bear a relationship to the wrong committed. Nearly 30 years ago, the Court found for the first time that a fine failed the Eighth Amendment's proportionality requirements. In *United States v. Bajakajian*, 524 U.S. 321 (1998), the US attempted to seize $357,000 in cash from a departing Syrian immigrant who failed to report the currency as required by the federal Bank Secrecy Act. Writing for a 5-4 majority, Justice Thomas held that the forfeiture was

subject to the Eighth Amendment's excessive fines limitation and flunked its proportionality mandate:

> Comparing the gravity of respondent's crime with the $357,144 forfeiture the Government seeks, we conclude that such a forfeiture would be grossly disproportional to the gravity of his offense. It is larger than the $5,000 fine imposed by the District Court by many orders of magnitude, and it bears no articulable correlation to any injury suffered by the Government.[20]

Important in the Court's consideration was the fact that Bajakajian's currency did not derive from any criminal activity.

More recently, in *Timbs v. Indiana*, 586 U.S. 46 (2019), the Hoosier State attempted to seize a $42,000 Land Rover in a civil *in rem* forfeiture after the owner sold four grams of heroin to undercover agents. Justice Ginsburg authored a unanimous *Timbs* opinion holding that the Eighth Amendment's excessive fines clause also applies to state and local governments via the Fourteenth Amendment. That holding required the Indiana Supreme Court to reverse its stance that excessive fines were a federal concern only, ultimately resulting in the return of Mr. Timbs' vehicle. But beyond those guideposts, the Court has provided little guidance about Eighth Amendment excessive fines, leading to varying analyses among the Circuits.

Proportionality Reexamined: Mr. Jouppi Goes to Washington.

Last fall, Ken Jouppi resurfaced his forfeiture argument, this time in an appeal for United States Supreme Court review. After multiple relistings the Court granted cert in July 2026. Its Question Presented seeks to clarify the appropriate inquiry for gauging proportionality of fines under criminal statutes like the Alaska airplane forfeiture rule:

> Whether, in determining if a fine contravenes the excessive fines clause – which holds the amount of the fine "must bear some relationship to the gravity of the offense that it is designed to punish" – courts may consider the gravity of the underlying offense purely in the abstract or must consider the gravity of the specific defendant's wrongdoing.[21]

Jouppi's petition, authored by frequent Supreme Court participant Institute for Justice, argues that the Eighth Amendment's proportionality mandate requires an inquiry into the specifics of an individual defendant's conduct. And here, because of the Alaska Supreme Court's explicit focus on only a single six-pack of beer, Jouppi avers that the disproportionality in taking a $95,000 aircraft is manifest—a claim spawning numerous headlines decrying governmental overreach. While the actual Question Presented is nuanced, asking about judicial discretion when evaluating a defendant's offense, the case is now viewed as a referendum on proportionality itself: as one *New York Times* opinion piece puts it, "[T]he Supreme Court agreed to take up his case to answer an important and neglected question: When is a fine so excessive that it becomes unconstitutional?"[22]

To File or Not to File as Amicus.

Amicus participation in *Jouppi* raises interesting questions. On one level, there is curiosity about why the Court granted cert, given what appears to be symmetry between the parties on the question of gravity. The petition argues against a rigid ("abstract") application of a criminal statute, counseling a broader review of the gravity of the specific defendant's wrongdoing. In response, the State asserts that the Alaska Supreme Court did in fact analyze the specifics of Jouppi's misdeed (a single six pack of beer and a first-time offense) and nevertheless found that the gravity of the crime still met the proportionality criteria in *Bajakajian,* given the serious harm caused by alcohol. And if that court were truly to evaluate the full gravity of Jouppi's behavior, such inquiry might bring into focus the far larger amount of on-boarded beer and his prior suspected bootlegging.

Aside from reasons which might counsel voiding the cert grant, there are good grounds for local government supporting the narrow application of a criminal statute as written. True, this is not a case of civil *in rem* forfeiture--a far more prevalent version at the local level than the mostly state-based *in personam* criminal seizure – it has been held that civil forfeiture can also involve punitive purposes, bringing proportionality to the fore. An extended inquiry into considerations countering the gravity of an offense could undermine the force of those sanctions. More importantly, a court's search for factors which might debilitate an otherwise absolute statute arguably violates separation of powers, second-guessing a clear legislative mandate based on ample evidence that remedial action was needed. And most significantly, an expanded foray into individual criminal gravity strays from the basic principle motivating the airplane forfeiture law to begin with: the prerogative of Alaska's local populations to defend themselves from an externally-imported element that has inflicted grievous harm. As always, while the issue is framed narrowly, there is the possibility that the Court's holding may have a broader reach, making it important to confine the ultimate decision to the Question Presented.

With those caveats, IMLA will be filing in support of the State in *Jouppi*, promoting the importance of protecting the right of local constituents to determine their own alcohol laws. Oral argument will likely occur before the end of 2026.



FINALITY

Grand v. City of University City: Do claims of chilling religious expression preempt local zoning review processes?

Grand presents another of the often-challenging battles waged against local governments whenever they take actions which can be characterized as impinging on religious exercise.

A House of Worship?

In 2021, Daniel Grand, an Orthodox Jew residing in University Heights, Ohio, decided to hold minyans (prayer sessions of ten or more men) at his home. He invited a dozen friends, encouraging them to bring others, referring to his residence as the "shul." Neighbors complained to the City that Grand was violating local zoning laws which prohibit places of worship in U-1 residential zones. At the Mayor's behest, the City's Law Director drafted a letter demanding that Grand immediately cease and desist using his home as "a place of religious assembly, shul or synagogue," adding that Grand could be cited for building code violations. In response, Grand applied to the City's Planning Commission for a Special Use Permit which would allow him to operate a "house of worship" in the U-1 residential zone, diagramming 21 chairs and 11 tables in his rec room.

No Meeting of the Minds.

The Commission convened a public hearing where Grand's counsel explained that the small group of men would meet for prayer only once a week and on high holidays, that Grand's home was not a "formal synagogue," and that auto traffic would not be an issue because attendees would be walking. Several neighbors attended the hearing and argued that Grand was underselling the size of the proposed gatherings and that his plan would create congestion and other issues. The Commission then tabled the discussion, requesting more information from Grand and scheduling another hearing a few days later. But Grand withdrew his application shortly before the second meeting. The hearing proceeded nonetheless, with the Mayor reiterating that Grand could not "operate a house of worship" without a permit and stating on the record, "[l]et there be no confusion, congregating [at the address] or any other address located in a residence zoned U-1 without a special permit is a violation of the law." The Commission never acted on Grand's withdrawn application, and the City's Board of Zoning Approvals was never called upon to construe whether his proposed gatherings would constitute a "house of worship." Subsequent discussion and comment by various City officials strongly suggest that Grand would have been granted the Special Use Permit.

Silence is Not Acquiescence: The Litigation.

More than 18 months later, Grand commenced a Section 1983 action against the City, the Mayor, Law Director and others, alleging violations of RLUIPA and various federal and state laws--and asserting that the governmental behavior had chilled his First Amendment rights of religious expression. He cited the cease-and-desist letter, the Mayor's statements including the suggestion that neighbors report any violations, law enforcement's drive-by scrutiny of Grand's home, and a housing inspector's visit.

Affirming the district court, the Sixth Circuit declined to consider Grand's First Amendment claims, holding that they were not ripe for review because local authorities had not issued a concrete final decision regarding his permit request:

> [Grand] contends that the cease-and-desist letter counts as a final decision. The problem with the argument is that it misapprehends the finality requirement. To ripen his claims, Grand needed a final decision from the agency with authority over the challenged regulations. That final decision would come from the Board of Zoning Appeals. McConville, the University Heights Law Director who sent the zoning-violation letter, has no role in the relevant agencies. And Mayor Brennan neither

> controls the Planning Commission nor sits on the Board of Zoning Appeals. Grand's case, at bottom, turns on whether his proposed gatherings would render his home a "house[] of worship" under the ordinance. UHCO § 1274.01(b)(1). Only the zoning board, not Brennan or McConville, can answer that question. Due to Grand's decision to withdraw his special use application, the zoning board had no application to act on, leaving us with "no idea" how the ordinance works in this setting.[23]

The court also questioned whether there had been an actual impairment of Grand's religious expression, given that he had held a minyan at least once after withdrawing his application, which to the court did not "sound like chill." Because Grand chose not to obtain a final decision "he [was] the author of any chilling effect on his First Amendment interests, not the City."[24]

Grand petitioned the Supreme Court in February 2026. Cert was granted on June 30, the last day of the October 2025 Term. The Question Presented is:

> Whether the First Amendment's established chilling-effect doctrine, under which a credible government threat that deters the exercise of fundamental rights constitutes a complete and independently actionable constitutional injury, is displaced by Williamson Cty. Planning v. Hamilton Bank's land-use finality requirement when a plaintiff alleges that government threats both before and after a Planning Commission meeting chilled religious exercise, worship, and assembly.[25]

The Finality Precedents.

Williamson County[26] was a Fifth Amendment takings action brought by a developer due to a zoning-based reduction in permitted density. While the Sixth Circuit had upheld the trial court's award of $350,000 in compensation for a regulatory taking of the developer's property, the *Williamson* Supreme Court reversed, holding that the claim was not ripe because the owner had not exhausted his opportunity for relief by seeking a possible variance-- meaning that the government had not reached a "final decision" applying the regulation to the subject property. One unanticipated detriment resulting from *Williamson* was that when property owners complied with the finality rule and sued first in state court, the state court decision would give rise to findings of *res judicata* or issue preclusion at subsequent federal proceedings, so the owner's federal takings claim might never be heard in federal court.

Three decades after *Williamson County*, the Court again considered finality in *Knick v. Township of Scott*.[27] There, plaintiff Rosemary Knick was faced with a Township ordinance requiring public access to cemeteries, including access to the small graveyard located within her 90-acre farm. Bypassing state inverse condemnation proceedings, Knick brought a Fifth Amendment regulatory takings claim directly in federal court, where the action was dismissed on *Williamson County* grounds. The Third Circuit affirmed dismissal, but the Supreme Court did not, reversing *Williamson* insofar as it required exhaustion of state court takings proceedings: "We now conclude that the state-litigation requirement imposes an unjustifiable burden on takings plaintiffs, conflicts with the rest of our takings jurisprudence, and must be overruled."[28] Importantly, the Court left in place the requirement that the state have made a final decision about how its regulation applies to the property in question.

A Recent Weathervane?

Knick would seem to require finality in other contexts such as the First Amendment religious chill issue raised by petitioner Daniel Grand. But one indication that winds may blow in Grand's favor came last Term, in *First Choice Women's Resource Centers v. Davenport*.[29] *First Choice* involved an administrative subpoena served by New Jersey's Attorney General on a pro-life group suspected of misleading donors. Although New Jersey law affords recipients of such subpoenas ample opportunity to quash in state court before complying, First Choice preemptively brought a First Amendment action in federal court, arguing that the mere inquiry into its donor base impaired membership and violated the organization's constitutional right of association.

The district court denied First Choice's motion for a preliminary injunction and dismissed, holding that the group failed to state a justiciable claim as a matter of law because, absent any state court order compelling production, First Choice had yet to suffer an injury from the subpoena and lacked Article III standing. The Third Circuit affirmed, but a 9-0 unanimous Supreme Court, in an opinion by Justice Gorsuch, reversed and remanded. While the Question Presented was whether First Choice had Article III standing to bring suit, the underlying analysis may encourage the argument that finality of state proceedings, whether in a courtroom or in an administrative setting, will be subordinate to federal actions claiming impairment of First Amendment religious freedoms.

The Amicus Question.

On one hand, the current Supreme Court composition and above-described analysis make success challenging, a task made more difficult by facts selectively argued in Grand's filings which portray the City in an unflattering light. On the other hand, it remains an important mission to protect local government regulatory authority in land use matters, resisting the short-circuiting of finality when confronted by a federal constitutional claim. IMLA will be advocating for local autonomy while bypassing Grand's assertions about specific conduct.



FIREARMS

Viramontes v. Cook County: May a local government ban assault weapons?

Viramontes brings front and center a question that the Supreme Court has long declined to tackle: what exactly are the "dangerous and unusual" weapons that can be limited without violating the Second Amendment.

The Cook County Ordinance.

On the morning of January 17, 1989, 24-year-old Patrick Purdy entered the grounds of Cleveland Park Elementary School in Stockton, California carrying an AK-47 assault rifle. More than 300 children were in attendance. Within seconds, he had fired a total of 135 rounds in the school playground, killing five children and injuring 30 others including a teacher, before turning the weapon on himself. In the wake of that massacre, Cook County passed an ordinance banning assault weapons.[30] In 2006, following the expiration of the federal ban on automatic weapons, the County reissued its ordinance, making it illegal to "manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire, carry or possess" assault weapons and large-capacity magazines in the County.[31] An "assault weapon" is defined as a semiautomatic firearm that can accept a detachable magazine and has one or more military style features, such as a folding or telescoping stock, a pistol grip without a stock, a barrel shroud, or a muzzle brake.[32]

A Wider Lens: The Assault Weapons Saga.

In 1994, in the wake of the Cleveland Park School massacre that first instigated Cook County's ordinance, Congress passed the Public Safety and Recreational Use Firearms Protection Act,[33] popularly known as the Assault Weapons Ban. Signed into law by President Clinton, the Act prohibited "the manufacture of military-style assault weapons, assault weapons with specific combat features, 'copy-cat' models, and certain high-capacity ammunition magazines of more than ten rounds."[34] The prohibited weapons were identified by make and model such as AR-15s and AK-47s and by other characteristics such as pistol grips, folding stocks, and threaded barrels, in each case with exceptions for sale to government, law enforcement or military.[35]

The Act Sunsets: The "Common Use" Rabbit Hole Emerges.

In 2004, under the George Bush presidency and a GOP-controlled Congress, it was not renewed. The firearms industry, which had already found ways to exploit loopholes in the Act, then dramatically expanded its marketing and manufacturing activities. Sales of AR-15 type weapons—repositioned by the industry as "Modern Sporting Rifles"—rapidly supplanted flagging legacy sales, growing to nearly 25 percent of today's firearm production.[36] Net domestic manufacture soared from 107,000 units in 2004 to more than 3.1 million in 2021.[37]

Sales of AR-15 type weapons ...[grew] to nearly 25 percent of today's firearm production. Net domestic manufacture soared from 107,000 units in 2004 to more than 3.1 million in 2021.

The Reasons Behind Such Dramatic Growth are Complex.

Some purchasers cite sporting use, or hunting, or self-defense. One factor spurring the increase is hugely ironic--the very atrocities committed via those weapons drive usage even higher as enthusiasts fear regulatory crackdown. And to some, AR-15s have become an essential symbol of Second Amendment freedom. Regardless, Americans now own more than 32 million AR-15 type semiautomatic firearms.[38]

Parallel Litigations.

Cutberto Viramontes is among the MSR owners in that massive number. He and several others challenged the Cook County ordinance in 2021 as facially invalid under the Second Amendment. In so doing, they entered a debate central to the assault weapons discussion: what features make a firearm sufficiently unusual and dangerous, or analogous to instrumentalities prohibited at the nation's that they can be banned today? At trial, the County developed an extensive factual record demonstrating the lethality and dangerousness of assault weapons, while the plaintiffs provided little evidence to the contrary. In 2022, as that suit was ongoing, the Supreme Court issued its directive in *Bruen*[39] that, in order to survive Second Amendment scrutiny, any impairment in the right to bear arms must be comparable to a restriction which existed at the nation's founding. But *Bruen* continued the Court's balancing in *Heller*,[40] protecting arms "in common use . . . for lawful purposes," but allowing bans against "dangerous and unusual" weapons.

Bruen informed the Seventh Circuit's 2023 holding in *Bevis v. City of Naperville*,[41] where it denied a preliminary injunction against Illinois' assault weapon ban because plaintiffs failed to show that firearms covered by the ban were materially different from machine guns and military grade weaponry that can still be barred without violating the Second Amendment. Two years later, the Seventh Circuit similarly concluded that the *Viramontes* plaintiffs had not developed the arguments or record needed to distinguish assault weapons from those already prohibited.[42] But in a landmark ruling on July 17, 2026, that line of analysis was contradicted by the Third Circuit in *Association of New Jersey Pistol & Rifle Clubs v. Platkin*.[43] There, Circuit Judge Arianna Freeman wrote for a 10-5 en banc majority in the first federal case to strike a statewide assault weapon ban:

> Together, *Heller* and *Bruen* teach that bans or broad prohibitions on possessing or carrying of a class of weapons in common use for lawful purposes fail to find support in our Nation's tradition of firearm regulation. . . That is so even when the regulations are passed with the intention of reducing gun violence.[44]

Two weeks prior to *Platkin*, the Supreme Court had granted cert to Cutberto Viramontes and his fellow plaintiffs, consolidated with an appeal from the Second Circuit's decision in *Grant v. Higgins*,[45] which upheld a Connecticut assault weapons ban enacted in the wake of the Sandy Hook massacre. *Viramontes* will finally answer a question which has long been on the horizon: whether semiautomatic weapons are protected by the Second Amendment or can be restricted post-*Bruen*, as the Second, Fourth, Seventh, and Ninth Circuits have held. The Question Presented is direct:

> Whether the Second and 14th Amendments guarantee the right to possess AR-15 platform and similar semiautomatic rifles.[46]

The Regulatory Response: Daunting, but not without Substance.

The odds of preserving semiautomatic firearm bans, now on the books in eleven states and the District of Columbia, seem formidable given the weapons' prevalence, with an estimated one in twenty American adults possessing an MSR. *Heller* and *Bruen* create a difficult gauntlet; if "common use" was measured in 1994 when the Cook County ordinance first emerged and semiautomatic weapons were still a rarity, a stronger argument could be made. But a measurement circa 2026, with Americans owning 32 million-plus MSRs, enables Judge Freeman's Third Circuit "common usage" analysis. However, a broader reading of Justice Scalia's pronouncement in *Heller,* that the nation's history and tradition allow prohibiting "dangerous and unusual weapons,"undeniably opens the discussion. While the "unusual" element may depend upon the year of measurement, the "dangerous" characteristic is far more complex: if fully automatic machine guns have been restricted since 1934 virtually without debate, why are semiautomatic weapons different enough to escape regulation?

The Data: "Dangerous" in Plain Sight.

Some technical information is useful in that colloquy. The federal definition of "machine gun" has no direct linkage to rate of fire—it is simply "any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger," as well as "any part . . . or combination of parts, designed and intended, for use in converting a weapon into a machinegun."[47] One such machine gun, the M249 SAW ("Squad Automatic Weapon") currently used by the US Army can fire upwards of 775 rounds per minute without additional trigger action by the user,[48] clearly making it a lethal, military-grade armament which does not fit within a "history and tradition" safe harbor. In contrast, an AR-15 is not "automatic"—its rate of fire is limited by how quickly the shooter can depress the trigger. But the most popular semiautomatic mechanisms facilitate lightning-fast response to a light touch: according to one gun enthusiast source, an AR-15 or AK-47 in the hands of an experienced professional can fire more than 300 rounds a minute.[49] And while a handful of states limit magazine size to ten rounds, others have no limits, making possible the purchase and deployment of 100-round magazines, readily available from various manufacturers.[50]

That danger can be further amplified. A variety of devices, including a "Forced Reset Trigger," can be added to AR-15s to override the manual triggering feature, making the weapon fire automatically, achieving machine gun rates. The government took notice as those devices were increasingly being used by criminals, the Bureau of Alcohol, Tobacco, Firearms, and Explosives moved to characterize them as "machine guns" under federal law, setting off aggressive crackdown efforts. But in May 2025, after the Supreme Court had ruled the prior year that the ATF exceeded its authority in defining bump stocks as "machine guns,"[51] and in concert with the President's Executive Order "Protecting Second Amendment Rights,"[52] the Department of Justice signed a settlement agreement with FRT maker Rare Breed Triggers. The DOJ not only agreed to stop enforcement, but to return more than 12,000 FRTs that had been confiscated, in exchange for Rare Breed agreeing not to produce FRTs for pistols.[53] As Attorney General Pam Bondi phrased it, "The Department of Justice believes that the Second Amendment is not a second-class right. . . And we are glad to end a needless cycle of litigation with a settlement that will enhance public safety."[54] The settlement did nothing to stop the spread of FRTs for use in semiautomatic rifles.

Amicus: Exercise in Finesse.

Cook County and the states in other assault weapon cases argue that the AR-15's rate of fire creates a devastatingly effective firearm—not for target practice, not for hunting, and not even for self-defense, but for taking lives. The addition of FRTs and similar automation makes those rates even more problematic. Added to that blinding pace is the fact that the bullets fired by AR-15s can pierce police body armor, creating obvious threats to law enforcement when responding to mass shootings. Regardless, the battle over rapid-fire weaponry shows no signs of slowing: on August 14, a group including the Second Amendment Foundation filed suit in the Western District of New York seeking to overturn the State's ban on Glock-type pistols which can readily be converted to automatic firing, arguing that, even if easily modifiable to become automatic weapons, the guns cannot be prohibited.[55]

The mission of an amicus brief in *Viramontes* will not be to litigate the now-certain right to own firearms, but to support the power of states and localities to enact responsible measures aimed at protecting their residents. A victory for Cook County and other governments will not force change on other jurisdictions that choose otherwise, but the opposite result will foreclose any such protections, nationwide. In its responsive pleadings, the County lists many of the massacres facilitated by semiautomatic weapons, with the argument that it be allowed to take some action in response. That proposition will be ably challenged by the *Viramontes* plaintiffs and many others who see a violation of their Second Amendment rights, regardless of the laudable intentions behind proposals for reform.

In sum.

Each of these cases presents significant hurdles for the governmental parties. Each was discussed among IMLA's diverse Legal Advocacy Committee, and in each, the majority view was that amicus participation was warranted. As always, the challenge, and the opportunity, is to promote local government authority on behalf of constituents without transgressing the constitutional or statutory rights of others.

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Notes:

1. Harrison v. State, 687 P.2d 332, 335 (Alaska Ct. App. 1984) (citing *Analysis of Alcohol Problems Project, Working Papers: Descriptive Analysis of the Impact of Alcoholism and Alcohol Abuse in Alaska*, 1975, vol. V at 14 (1977)).
2. McDowell Group, *The Economic Costs of Alcohol Misuse in Alaska: 2019 Update* (prepared for Alaska Mental Health Trust Authority, Jan. 2020).
3. *Harrison*, 687 P.2d at 335 (citing *Alaska Judicial Council, Alaska Felony Sentences: 1976-1979* at 45-48, 65-67 (1980)).
4. Alaska Stat. § 04.11.491(a)(2)-(3).
5. *Id.* § 04.11.491(a)(1).
6. *Id.* § 04.11.491(a)(5).

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7. Alaska Stat. § 04.11.499(a).
8. Alaska Stat. § 04.16.200(e)(1)-(3).
9. *Id*. § 04.16.200(g)(1)(A); Alaska Stat. § 12.55.035.
10. Alaska Stat. § 4.16.220(a)(3).
11. Alaska Stat. § 4.11.040(j).
12. Alaska Stat. § 4.16.220(i).
13. State v. Kenneth John Jouppi, No. 4FA-12-3228CR (Alaska Dist. Ct. 2013).
14. *Id*.
15. Jouppi v. State, 566 P.3d 943 (Alaska 2025)..
16. *Id*.
17. *Id*.
18. *Id*.
19. U.S. Const. Amend. VIII
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