INSIDE CANADA

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Contested Thoroughfares, Off-Premises Signs, Hidden Sprinklers and More

Eliminating Off-Premises Portable Third-Party Advertising Signs is Upheld

Belleville Sign Rentals Inc. et al. v. The Corporation of the City of Belleville, 2019 ONSC 6579 (CanLII) http://canlii.ca/t/j3cbd

The Applicants operate a business which leases third party advertising signs in the City of Belleville (the "City"). The City has a Sign Bylaw (the "bylaw") that regulates on-premises signs which advertise site-specific information for what is at that location and off-premises signs which are portable or third party advertising. After numerous resident complaints, the City determined that off-premises portable signs were causing visual clutter throughout the City and required significant staffing resources dedicated to removal. Following an external and internal consultation, an amendment to the bylaw was put forward and accepted by City Council to eliminate off-premises portable signs. After the amendment was passed, no renewal permits were issued for off-premises portable signs. The Applicants filed an application to seek declaratory relief.

HELD: Application dismissed.

DISCUSSION: The Court confirmed the City's authority under s. 10(2) of the *Municipal Act, 2001* S.O. 2001, c. 25 (the "*Act*") to pass bylaws regulating signs. The Applicants argued that the amendment was a violation of its right to free speech under s. 2(b) of the *Charter of Rights* and is not saved under s.1. The City agreed that the amendment infringed on s.2(b) but argued it was reasonably limited under s.1. Once an infringement was established, the onus was on the City to satisfy the four-prong criteria summarized in *Langenfeld v. Toronto Police Services Board,* 2019 ONCA 716:

1. The objective of the law must be sufficiently important to justify limiting a *Charter* right;
2. The law must be rationally connected to the objective of the law;
3. The law must impair the constitutional right no more than is necessary to accomplish the objective; and
4. The law must not have a disproportionately severe effect on the constitutional rights of the persons affected by it.

The Court determined that the amendments to eliminate off-premises portable signs were intended to address two main concerns; visual clutter, as the signs were often abandoned, and portable signs increased workload for City staff. The rationale for passing the amendments was clear and would assist the City to achieve outcomes for the two main concerns. The Court agreed with the City that the amendment would have minimal impact, as the bylaw still permitted many other types of signs throughout the City and furthermore the amendment was limited to the sign's structure and location, not the content on the sign. The amendment might limit freedom of speech but only to the most modest degree. The Court held that the City satisfied the four-prong test, and the amendment was a reasonable limit that was demonstrably justified under s. 1.

The Applicant unsuccessfully attempted to argue procedural fairness, specifically that the City had a duty to consult prior to enacting the amendments to the Bylaw. Despite there being no legal duty that required the City to consult with the Applicant prior to the amendments, the City did engage both internal and external stakeholders. The Court went further to point out that the City was within its authority to pass the amendments, and a bylaw can only be quashed if it was passed in bad faith or was deemed illegal. The onus is on the party bringing forth the argument to provide evidence of bad faith. The only evidence before the Court was that the City had the public interest in mind when it passed the amendments to the bylaw.

Laneway is "Street" due to Municipality's Continuous Use for Water Supply

St. Mary's (Municipality) v. Cook, 2019 NSSC 374 http://canlii.ca/t/j3xsd

A laneway within the jurisdiction of Village of Sherbrooke, Municipality of the District of St. Mary's (the "Municipality") connects the Municipality to the local lake to maintain water supply, however it is also used by residents who own property alongside the laneway, including the Respondents. A resident who owned land near the laneway conveyed title to the Respondents by way of a warranty deed--and via a Quit Claim deed, conveyed to Respondents whatever interest he may have had in the laneway. Under the Nova Scotia *Expropriation Act,* R.S.N.S. 1989, c. 156 the Municipality expropriated the laneway and filed an application under s. 17 of the *Expropriation Act* to have the Court determine who has the right and interest in the laneway.

HELD: Laneway vested with the Municipality

DISCUSSION: The Municipality's position is that the laneway is for the public and is free of private interests. The Respondents do not claim to own the laneway but are pursuing a claim for injurious affection following the expropriation as landowners who have acquired a private right of way over the laneway. To determine if the laneway was public, the Court began by reviewing the legislation governing municipal routes, *Municipal Government Act,* SNS 1998, c. 18 (the "*MGA*"). The *MGA* references "streets" which refers to "public street, highway, road, lane […]". All "streets" in the boundaries of a municipality are vested absolutely in the municipality, however there is a caveat for a "road" under s. 308(3) to become a "street". No "road" becomes a "street" until approved by council or it is vested in a municipality according to law. Both parties agreed that council did not approve the laneway.

A "road" may qualify as a "street" under s. 307 of the *MGA* if it is a transportation route with a public purpose operated by a municipality. The evidence put forth by the Municipality made it clear that the laneway had been used for years by the Municipality to access water supply infrastructure. Therefore, the Court found that despite having no identified owners on title, the laneway had been operating as a "street" as defined in the *MGA* since 1998, and under the *MGA* the laneway would have vested absolutely with the Municipality. As with any street, the Respondents are permitted to use the laneway as members of the public but have no private control over the laneway.

Watch Your Step: Individual Risks and the City's Duty of Care

Ellis v Lethbridge (City), 2019 ABPC 276 http://canlii.ca/t/j36l5

The Plaintiff stepped in a sprinkler hole covered with grass at a park owned and operated by the City of Lethbridge (the "City") and suffered a broken ankle. The City has dedicated staff to monitor irrigation in the park, which includes being on the lookout for hazards resulting from the over 2000 sprinkler heads. The City repairs a sprinkler head when staff come across an issue, but due to the large number, each is not checked individually. The City acknowledged that the sprinkler head the Plaintiff fell on could have been missed by City staff. The Plaintiff filed a claim for damages.

HELD: Claim dismissed.

DISCUSSION: Relying on s.7 of the *Occupiers' Liability Act*, RSA 2000, c. O-4 (the "OLA") the City argued that the Plaintiff willingly accepted the risk of injury by entering the park and the City was under no duty of care to a visitor. The Court disagreed, finding that with the evidence before it there was no way the Plaintiff was aware of, let alone accepted, the risk associated with entering the park. In the alternative, the City argued that it was exempt from liability under the OLA because the maintenance of the irrigation system at the park was based on a policy decision of the City, *Just v. British Columbia*, [1989] 2 SCR 1228. The City detailed that its policy decision to reduce the number of sprinkler inspections was reasonable and justified based on the limited availability of public funds. The Court disagreed and held that the policy exemption only applies to common law tort duty, and not statutory duty under the OLA. The Court made mention that there is not a consensus in the law on this point, but nonetheless determined that the common law policy exemption does not apply to the City.

However, s. 530 of the Municipal *Government Act*, RSA 2000, c. M-26 (the "Act") provides a very narrow statutory exemption against any tortious liability arising in the context of the section, which exempts governmental agencies like the City from any liability for damages with respect to inspection frequency, infrequency or even absence. Section 530 does not require a policy analysis and is *prima facie*. As such the Court concluded that s. 530 exempted the City from liability under the OLA for any breach of a duty of care that arose in conjunction with the City's inspection or maintenance of sprinkler heads. The Plaintiff's claim was dismissed. ML