INSIDE CANADA

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Dangerous Dog, Missing Signs, and More.

DOLA Does Not Permit Destruction Based Merely on Breach of Earlier Order

Brampton (City) v. Khela, 2019 ONCJ 526 http://canlii.ca/t/j1j61

Following an unprovoked attack of a person and domestic animal by the Appellant's dog, an animal services officer at the City of Brampton (the "City") issued a dangerous dog designation order under the City's bylaw. The City also proceeded with a *Dog Owners' Liability Act*, R.S.O. 1990, c. D. 16 *("DOLA")* destruction order. The Justice of the Peace issued a control order rather than a destruction order, which required the Appellant to follow several conditions, including having the dog leashed and muzzled. A year later in 2018, the Appellant's dog was found roaming the neighborhood without a leash or muzzle contrary to the control order. The City sought a destruction order as a result of the breach of the control order. At issue was whether the destruction order could result from breach of a prior order under *DOLA*

HELD: Destruction order is not permitted as a result of a control order breach.

DISCUSSION: The City argued that the Appellant breached the control order when the dog was found in the neighborhood without a leash or muzzle. The City submitted evidence that the breach raised public safety concerns because of the dog's previous unprovoked behavior. The Appellant conceded that the control order was breached but challenged the City's interpretation of *DOLA*, arguing that the law does not permit the City to seek destruction based on a breach of an earlier order. In reviewing the destruction order authority in s. 4(3) of *DOLA*, the Court noted that if it was satisfied that a dog had bitten or attacked a person or domestic animal, it had authority to (a) destroy the dog, or (b) outline conditions the dog owner is to follow to ensure public safety. The City failed to produce any precedent to support its proposed interpretation of *DOLA*, meaning that it had to satisfy satisfy s. 4(1) of *DOLA*, particularly that on the date of the alleged offence in 2018 the dog bit or attacked a person or domestic animal, or that the dog acted in a way that poses a menace to the safety or persons or domestic animals. Given that the dog was merely roaming the neighborhood, the City could not provide evidence to support a destruction order, and the dog was released.

No Good Faith Explanation for Delay in Filing

Datta v. Ottawa (City), 2019 HRTO 1333 http://canlii.ca/t/j2sgp

Two neighbors (collectively the *"Applicants"*), filed an application pursuant to s. 34 of the *Human Rights Code*, R.S.O. 1990, c. H. 19 (the "*Code*") against the City of Ottawa (the "City") and another neighbour. The Applicants alleged that the City received numerous racially-motivated complaints from the neighbour, alleging that the Applicants' actions violated City bylaws. The City investigated one complaint pertaining to a fence between the Applicants' properties. It concluded that the fence did in fact violate its bylaw, and had the fence removed. As a result, the Applicants filed an application alleging that the City should not have investigated the complaints as they were all frivolous and racially motivated under a prohibited ground of the *Code*. The application went before the Tribunal by way of a preliminary hearing and was dismissed for no reasonable prospect of success, and other allegations were dismissed for being untimely. The Applicants filed a request for reconsideration of the decision, pursuant to s. 45.7 of the *Code*.

HELD: Application dismissed.

DISCUSSION: Section 34 of the *Code* outlines the limitation period to file an application after an incident in which the applicant believes his or her rights were infringed. The applicant has one year after the incident--or if there are a series of incidents, within one year after the last incident. In the matter before the Tribunal, it had already been decided in a previous decision that challenging the fence removal and ticket issuance by the City in 2013 had no reasonable prospect of success, so these could not form part of the relevant series of events. *Groh v. Waterloo (Regional Municipality)*, 2014 HRTO 1774.

The onus fell to the Applicants to provide a good faith argument as to why there was a delay in filing an application in a timely manner. At the first preliminary hearing, the Applicants alleged that it was not until 2013 that they felt targeted based on the colour of their skin, and it was not until the City removed the fence that they had a reason to file the application. How-

ever, the Applicants now suggested that the delay was because it took a long time to receive the complaints from the City. The Tribunal noted this contradiction, finding that the Applicants knew there may have been a *Code* violation as early as 2013 but waited for more than a year to file such an application. The application was dismissed.

No Injunctive Relief for Candidate where City Removes Election Signs

Vezina v. City of Mississauga, 2019 ONSC 5925 http://canlii.ca/t/j2vkq

The Applicant, a federal candidate in the election in a riding within the City of Mississauga (the "City") submitted concerns with regards to the City's treatment of his candidacy. The Applicant particularly challenged the City's enforcement of its Sign Bylaw (the "Bylaw") and its potential organization of an all-candidates debate, from which the Applicant would be excluded. He filed an application seeking injunctive relief from the City, specifically requesting that the City not be permitted to enforce its Bylaw against him until after the election, and not be permitted to host a candidates' debate until after the election unless he was invited to participate.

HELD: Application is dismissed.

DISCUSSION: The Bylaw regulates the size and placement signs, including election signs, outlining when, where and how they may be erected in the City to ensure public safety and prevent public nuisance. The Applicant did not challenge the constitutionality of the Bylaw, but rather its enforcement, arguing that he had installed election signs in compliance with the Bylaw and City staff had removed them without any justification. The Court noted the fundamental nature of this claim, in that the removal of any political candidate's signs erected in compliance with the Bylaw by City staff would be a violation of the freedom of expression and a citizens' right to participate in the election process, both of which are guaranteed under the *Canadian Charter of Rights and Freedoms* (the "*Charter*") (*Vancouver (City) v. Ward*, 2010 SCC 27). But despite acknowledging the significance of such a claim, the Court held that issuing an injunction against the City would be ineffective: it would merely require the City workers to comply with existing law. A broader injunction requiring the City to refrain from removing any of Applicants' signs would potentially give the Applicant an advantage over other candidates, potentially impacting their *Charter* rights. The Court dismissed the first request for injunctive relief.

The Court swiftly addressed the Applicant's second request for relief, because the City submitted that it had no intention to host a candidates' debate. The Court admonished that hosting a debate with some but not all candidates could potentially be a violation of the *Charter*; given the City's submission, the Court could not speculate about a potential *Charter* violation in the future—and such a possibility did not form the basis for the Court to issue an injunction currently. (*Operation Dismantle Inc v. Canada,* [1985] 1 S.C.R. 441). The Court dismissed the second request for injunctive relief, and the application.

Self-Represented Party Substantially Complied with Rules and Can File Amended Claim

Waterman v City of Victoria, 2019 BCSC 1448 http://canlii.ca/t/j24l0

As a result of allegations of inappropriate sexual conduct, the Plaintiff was arrested without a warrant by the Victoria Police Department (the "Police"). The Plaintiff was interviewed and subsequently released with no charges laid. Two years later the Plaintiff filed a notice of civil claim against the City of Victoria and the Police (collectively the "Defendants"), claiming false arrest and imprisonment, abuse of process, assault, battery and defamation. The Defendants filed a timely response to the claim, to which there was no response from the Plaintiff. After three years, the Defendants brought forward an application to dismiss. When the application was before the Court, the Court held that an order be issued to set the matter for trial. The Court dismissed the Plaintiff's civil claim noting that it was poorly drafted and provided the Plaintiff an opportunity to file an amended notice to address deficiencies. The Defendant filed an application to strike out the amended notice of civil claim.

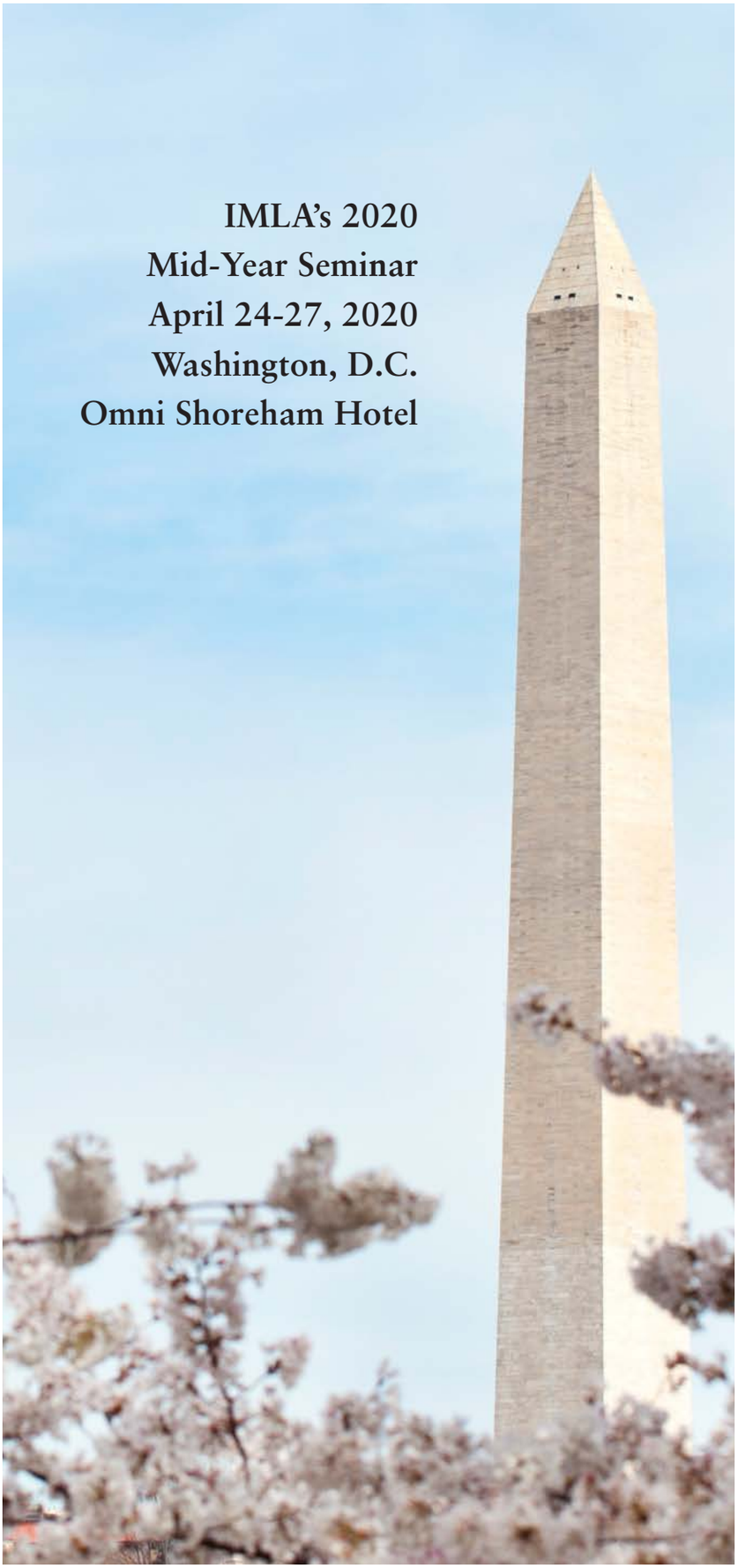
HELD: Application granted, and leave granted to Plaintiff to file further amended notice.

DISCUSSION: Rule 9-5(1) of the Supreme Court Civil Rules BC Reg 168/2009 references the striking of pleadings and has been summarised by Justice Voith in *Sahyoun v. Ho*, 2015 BCSC 392:

> [57] The test on an application to strike an action under R. 9-5(1)(a), on the basis the pleadings do not disclose a cause of action, is whether it is plain and obvious the claim cannot succeed. It requires a conclusion that, assuming that the facts are true, those facts disclose no cause of action and the pleadings disclose no arguable issue. If there is a chance that the action may succeed, then the action should be allowed to proceed.

The Court also reviewed the law as it relates to a self-represented party, as the Plaintiff is self-represented. *Wong v. Wilson*, 2013 BCSC 1465 requires that a Court be mindful of whether or not a defective pleading before the Court could be cured by an amendment. However, simply because a party is self-represented, it does not relieve them of any obligation to comply with the Rules. The Court found that the Plaintiff had been consistently provided a level of lenience from the Court, and that the Plaintiff was complying with the Rules as could be reasonably expected of a self-represented party. In reviewing the Plaintiff's amended notice of civil claim in conjunction with Rule 9-5(1), the Court held that the latest draft was 'manageable', and revealed a cause of action that may succeed. The Court was pleasantly pleased that such a draft may allow both parties to proceed to finality. The Court accepted the minor deficiencies raised by the Defendant, and permitted the Plaintiff leave to file the further amended notice of civil claim to correct such concerns.

Continued on page 39



Inside Canada cont'd from page 33

Speeding Conviction Withstands Challenge to Device, Training and Traffic
Toronto (City) v. Biffis, 2019 ONCJ 674 http://canlii.ca/t/j2m7r

The Defendant was charged with speeding in the City of Toronto (the "City") contrary to section 128 of the *Highway Traffic Act*, R.S.O. 1990 c. H.8 (the "*HTA*"). The City prosecutor proved the charge beyond a reasonable doubt and the Defendant was convicted. The Defendant appealed the decision, arguing that essential elements of the charge to convict were not met.

HELD: Defendant found guilty.

DISCUSSION: The Defendant's appeal stemmed from the evidence, or lack thereof, provided by the officer who issued the charge. The Defendant claimed that the officer's testimony about testing the speeding device (the "device") at the beginning and end of his shift was not satisfactory; specific testing times would be required to satisfy the Court that the device was accurately operating at the time of the charge. Furthermore, the Court would have to be satisfied beyond a reasonable doubt that not only was the device accurately operating at the time of the offence, but that the officer was qualified to use it. *D'Astous v. Baie-Comeau (Ville) (1992), 74 C.C.C. (3d) 73*. The Court upheld the earlier decision, finding that the officer had received proper training to operate the device and that testing at the beginning and end of his shift satisfied the manufacturer's instructions. The Defendant also suggested that the officer's testimony failed to highlight the specifications of the speed limit sign under which the Defendant was charged. Without evidence to the contrary, the Defendant argued that the sign may not have been erected as per the *HTA*. The Court relied on *Ontario v. Druce, [2006] O.J. No. 2028 (OCJ),* which states; that in the absence of evidence to the contrary that the signs were not 'regular' the Court can rely on the presumption of regularity. Having received no evidence from the Defendant to the contrary, the Court found the speed sign to be properly posted. The Court held that the prosecution met all essential elements of the charge beyond a reasonable doubt, and upheld the earlier decision finding the Defendant guilty. ML