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CONTROVERSIAL ADVERTISING ON CITY BUSES - ARE MUNICIPALITIES READY FOR WHAT'S TO COME?

by Ola Malik and Sarah Burton

Introduction

In 2013, an organization called the American Freedom Defence Initiative ("AFDI")[1] approached the Edmonton Transit Service ("ETS") to purchase advertising on ETS buses. According to AFDI, the advertisements sought to raise awareness about honour killings and provide support to young girls whose lives are in danger. The advertisement, which was finally agreed upon, reads as follows:

> Muslim Girls' Honor Killed By Their Families. Is Your Family Threatening You? Is there a Fatwa On your Head? We Can Help: Go to FightforFreedom.us

The advertisement has the initials "SIOA", or "Stop the Islamization of America" added at the bottom.

At the time, The City of Edmonton (the "City") had a contract in place with a private contractor to manage advertising with ETS. The contract stipulated that:

- advertisements placed on ETS property "shall be of a moral and reputable character" or it would be removed at the direction of the City.
- advertising material comply with the Advertising Standards Council of the Canadian Advertising Advisory Board.

Further, anyone advertising on ETS property had to enter into an agreement with the private contractor which allowed the contractor not to display any advertising which:

- violated the Canadian Code of Advertising Standards; or which
- was deemed to be "offensive to the moral standards of the community or which negatively reflects on the character, integrity, or standing of any organization or individual".

After this advertisement was approved and placed on buses, the City received numerous public complaints. Following an internal review, ETS removed the advertisements due to their offensive nature. AFDI is now seeking a declaration that ETS violated its rights to freedom of expression under section 2(b) of the *Canadian Charter of Rights and Freedoms* (the *"Charter"*) and that in the result, ETS must run the advertisement as it originally contracted to do.

Is AFDI's advertisement, or indeed any advertisement with the logo "Stop the Islamization of America" ultimately concerned with seeking and attaining truth, encouraging Muslims to participate in social and political decision-making, or

[1]For more on the AFDI, its successes in the U.S., and what could be construed as its anti-Muslim advocacy position, see our companion piece to this article, posted on www.ablawg.ca: Ola Malik and Sarah Burton. "Honour Killings and City Buses - The Limits on Advertising Controversial Messages on Public Transit and the Soon-To-Be-Decided Case of *AFDI v The City of Edmonton*", (26 February, 2015), Ablawg (blog) online: <http://ablawg.ca/2015/02/26/honour-killings-and-city-buses-the-limits-on-advertising-controversial-messages-on-public-transit-and-the-soon-to-be-decided-case-of-afdi-v-the-city-of-edmonton/>.

fostering an environment for tolerant and respectful speech? Or is the real purpose of the advertisement to pick on the Muslim community as merely one of the many cultural communities in which honour killings of young girls occurs, thereby exposing the Muslim community to vilification and harmful stereotyping by those who don't know better? Is the logo "Stop the Islamization of America" a laudable aim worthy of protection, or is it simply hateful?

Canadian case law is clear that restricting expressive activity on government-owned spaces likened to public parks or sidewalks infringes section 2(b) of the *Charter* and must be justified under section 1.[2] It is equally clear that there are messages falling short of hate speech which, through inadvertence or design, will nevertheless be deeply offensive to certain groups within our communities. Don't these types of messages also run contrary to the purpose for promoting freedom of expression?

Even if you disagree, do messages like AFDI's advertisements raise special considerations for a municipality which is required by law to place these messages on the side of its buses or other municipally-owned advertising space? Should the balancing exercise in section 1 of the *Charter* attract special considerations here? We believe that these types of messages pose special challenges for municipalities and warrant special consideration for some of the following reasons:

- Messages placed in public spaces such as existing advertising signs or billboards located on municipal infrastructure, buildings, buses, will be viewed by a larger number of people given their location and exposure.
- People reading these messages may believe that these advertisements are condoned by their municipality or city council, or reflect their municipality's views.
- These messages, if targeted towards a particular group which finds them deeply offensive, may promote mistrust and tension between this group and others, civil unrest, larger protests, and, at worst, violence.
- These messages and their resulting impact may undermine efforts by officials who are seeking to promote community harmony and dialogue.

This article discusses the issues a Queen's Bench Justice will face in early 2016 when the case in *American Freedom Defence Initiative v. The City of Edmonton* is finally heard. Our purpose is not to pre-judge the final outcome but to outline the challenges a municipality faces when trying to decide what messages/advertising it can restrict. This article is a companion piece to a blog which was posted on ABlawg.ca[3] where we discuss some of the issues respecting freedom of expression that arise in this case.

The Right to Advertise on Canadian City Buses

If the facts in the AFDI case sound familiar to you, they should. In *Canadian Federation of Students v. Greater Vancouver Transportation Authority* [*GVTA*],[4] the Canadian Federation of Students ("CFS") sought to place advertising on the sides of buses operated by the Greater Vancouver Transportation Authority and British Columbia Transit. The purpose of the advertisements was to encourage young people to vote in the upcoming provincial election. The transit authorities refused to place the advertisements on the basis that they did not comply with their advertising policies. The CFS argued that the policies, which only allowed commercial but no political advertising, violated its freedom of expression.

The specific policies which were the subject of the challenge:

- only allowed commercial advertisements, or those having to do with public service announcements and public events;
- did not allow any advertisements likely, "in the light of prevailing community standards, to cause offence to any person or group of persons or create controversy"; and
- did not allow any advertisement which "advocates or opposes any ideology or political philosophy, point of view, policy or action, or which conveys information about a political meeting, gather or event, a political party or the candidacy of any person for a political position or public office".

Writing for the majority, Justice Deschamps applied the three-part test established in the earlier decision, *Montreal (Ville) v. 2952-1366 Québec inc.*,[5] to determine that the policies infringed the CFS' rights under section 2(b) of the *Charter*. She confirmed that the advertisements contained expressive content which triggered section 2(b),[6] and that the buses were government-owned property on which expressive activity was protected, not unlike sidewalks and parks, which have historically supported such a use.[7] She concluded that advertising space on buses was a type of public space which attracted the protection of section 2(b) of the *Charter* and that the policies infringed upon the CFS's freedom of expres-

[2] *Montreal (Ville) v. 2952-1366 Québec inc.*, 2005 CarswellQue 9633, 15 M.P.L.R. (4th) 1 (S.C.C.); *Comité pour la République du Canada - Committee for the Commonwealth of Canada v. Canada*, 1991 CarswellNat 1094 (S.C.C.).

[3] *Supra* note 1.

[4] *Canadian Federation of Students v. Greater Vancouver Transportation Authority*, 2009 CarswellBC 1767 (S.C.C.).

[5] *Supra* note 2.

[6] *Supra* note 4 at para. 38.

[7] *Ibid* at para. 42.

sion. The question turned to a justification of that infringement under section 1 of the *Charter*.

Justice Deschamps agreed that there was a substantial pressing purpose for the policies, namely to provide for "a safe, welcoming public transit system."[8] However, she did not see how mere political speech would, in itself, jeopardize public safety. Therefore, the policies were not rationally connected with their purpose.[9] Justice Deschamps also held that the means chosen to carry out the purpose were not reasonable or proportionate. She objected to the policies because they effectively prohibited all forms of political messages (while allowing commercial advertising) and because excluding advertisements which "create controversy" was overbroad.[10] Her Ladyship concluded that the policies constituted an unjustifiable infringement that was not saved by section 1,[11] and she consequently declared them to be of no force and effect pursuant to section 52 of the *Constitution Act*.[12]

GVTA makes it difficult for municipalities to restrict a group's right to advertise its political views or social advocacy messages on existing advertising space located on municipally owned lands or infrastructure. This is because advertising space made available for public use serves the same function as venues such as public streets, parks, or other public spaces where freedom of expression has historically been fostered.

How Are Municipalities Regulating Advertising Content?

How can a municipality limit or restrict the advertising content placed on its property? Short of establishing that the content constitutes hateful speech, municipalities seem to be regulating advertising content by relying on:

i. The Canadian Code of Advertising Standards;

ii. Provincial human rights codes; and

iii. Advertising rules enforced by municipalities and private contractors.

i. The Canadian Code of Advertising Standards

The Canadian Code of Advertising Standards (the *"CCAS"*)[13] sets out the criteria for advertising standards. It was created, and is administered by Advertising Standards Canada ("ASC"), a self-regulating group of private advertisers and other various media agencies. The *CCAS* applies to all forms of advertising[14] other than to "political expression" or the "free expression of public opinion or ideas".[15]

Provision 14 of the *CCAS* addresses "Unacceptable Depictions and Portrayals" and is worth reproducing here in full:

> Clause 14: It is recognized that advertisements may be distasteful without necessarily conflicting with the provisions of this Clause 14; and the fact that a particular product or service may be offensive to some people is not sufficient grounds for objecting to an advertisement for that product or service.
>
> Advertisements shall not:
>
> (a) Condone any form of personal discrimination, including that based upon race, national origin, religion, sex or age;
>
> (b) Appear in a realistic manner to exploit, condone or incite violence; nor appear to condone, or directly encourage, bullying; nor directly encourage, or exhibit obvious indifference to, unlawful behaviour;
>
> (c) Demean, denigrate or disparage one or more identifiable persons, group of persons, firms, organizations, industrial or commercial activities, professions, entities, products or services, or attempt to bring it or them into public contempt or ridicule;
>
> (d) Undermine human dignity; or display obvious indifference to, or encourage, gratuitously and without merit, conduct or attitudes that offend the standards of public decency prevailing among a significant segment of the population.

In *GVTA*, Justice Deschamps acknowledged the value of the *CCAS* in defining constitutional limits. She recognized that "*The Canadian Code of Advertising Standards* . . . could be used as a guide to establish reasonable limits, including limits on discriminatory content or on advertisements which incite or condone violence or other unlawful behaviour."[16]

The *CCAS* is clearly relevant when considering reasonable limits on potentially offensive or troubling advertising. Indeed, we understand that Edmonton, Regina, Saskatoon, Halifax, Toronto, and Vancouver or their private advertising contractors follow the *CCAS* for determining acceptable ad-

[8] *Ibid* at para. 76.

[9] *Ibid* at para. 76.

[10] *Ibid* at para. 77.

[11] *Ibid* at para. 80.

[12] *Ibid* at para. 90.

[13] Advertising Standards Canada, *The Canadian Code of Advertising Standards*, online: <www.adstandards.com/en/standards/thecode.aspx>.

[14] It is important to note that the ASC is not "government" or an agency to which advertising standards has been delegated by legislative or governmental authority. The *Code* therefore, is not strictly "law", to which the *Charter* applies, although it would likely be considered "law" if it is adopted by municipalities and their contractors when determining limitations should be imposed on advertising content.

[15] *Supra* note 13 at Exclusions.

[16] *Supra* note 4 at para. 79.

vertising content. But to what extent can the *CCAS* restrict social advocacy and political messaging on government property to which the *Charter* applies? Are the limits it imposes defensible in this context?

We are of the view that the *CCAS* is a useful tool for regulating advertising content generally, but it is inherently problematic when governments rely on it to restrict political messaging or social advocacy. The *CCAS'* purpose is to "help set and maintain standards of honesty, truth, accuracy, fairness and propriety in advertising".[17] This would appear to focus on protecting the public or consumer from misleading advertisements from private or commercial entities, rather than with regulating political messaging or social advocacy on public issues. Indeed, the *CCAS* expressly does not regulate political advertising which it defines as advertising ". . . regarding a political figure, a political party, a government or political policy or issue publicly recognized to exist in Canada or elsewhere."[18] Moreover, the *CCAS* is explicit that it is not intended to "govern or restrict expression of public opinion or ideas through 'political advertising' or 'election advertising' which are excluded from [its] application."[19] This begs the question: what isn't considered to be political advertising? Certainly the subject of honour killings could easily be considered an *issue publicly recognized to exist in Canada or elsewhere*. If the *CCAS* doesn't apply to this kind of advertising content, then neither does Clause 14.

As outlined below, there is a strong argument that (whatever issues you might have with the application of the *CCAS*), Clauses 14 (a) and (b) would largely survive constitutional scrutiny. These provisions focus on hateful and discriminatory advertisements or expression inciting violence. But Clauses 14(c) and 14(d) may be a different story. These provisions prohibit speech at a much lower threshold than Courts have thus far permitted. We question whether the prohibitions in Clause 14(c) and (d) can pass constitutional muster when dealing with advertisements on public transit.

Whatever the answer to this question is, it will likely be drawn through reference to Canada's jurisprudence on hate speech. *Whatcott v. Saskatchewan Human Rights Tribunal*[20] is the leading decision on hate speech in Canada. In that case, Whatcott contravened the *Saskatchewan Human Rights Code* (the "*Code*") by distributing homophobic flyers that exposed LGBTQ persons to hatred and ridicule. *Whatcott* argued that the *Code*'s hate speech provisions infringed his freedom of expression. The unanimous Supreme Court of Canada upheld the *Code*'s ban on hateful expression, but significantly narrowed the scope of the provision. According to the Court, only the most extreme expression that objectively exposed persons to hatred or contempt fell within the ambit of the *Code*.[21] Language that was merely offensive, or which "ridicules, belittles or otherwise affronts the dignity" of a person fell outside the type of harm the Code seeks to eliminate.[22]

In reaching this conclusion, the Supreme Court of Canada set out a stringent and high threshold for what constitutes hate speech:

- The speech must *objectively* expose a protected group to hatred. Subjective individual feelings are not the focus.[23]
- The words "hatred" and "contempt" must be restricted to those most extreme forms of emotion described as "detestation" and "vilification". Prohibiting language that was merely offensive, humiliating, impugned individual dignity or caused hurt feelings was impermissibly overbroad and fell outside the objectives of human rights legislation.[24]
- The focus of a hate speech inquiry must target the likely effect of the speech. To qualify as hate speech, it must be likely to actually expose a person or groups to hatred by others.[25]

The Court agreed with *Whatcott* that section 2(b) of the *Charter* applied to the flyers and that the *Code* infringed his freedom of expression. A narrowed version of the provision was upheld, however, under section 1. In reaching this determination, the Court held that the provision's objective, "reducing the harmful effects and social costs of discrimination" was pressing and substantial.[26] Given that the objective focused on group discrimination and broad societal harm, however, only restrictions that shared this societal focus survived the rational connection stage of the test. Therefore, the prohibitions focused on hurt individual feelings or impugned individual dignity failed at this stage.[27] Hateful or offensive expression must rise beyond the level of individual harm and ". . . marginalize the group by affecting its social status and

[17] *Supra* note 13 at Preamble.

[18] *Ibid* at Definitions.

[19] *Ibid* at Exclusions.

[20] *Whatcott v. Saskatchewan Human Rights Tribunal*, 2013 CarswellSask 73 (S.C.C.) [*Whatcott*].

[21] *Ibid* at para. 109.

[22] *Ibid* at para. 39.

[23] *Ibid* at para. 56.

[24] *Ibid* at paras. 47, 57.

[25] *Ibid* at paras. 52-54, 58.

[26] *Ibid* at paras. 71, 77.

[27] *Ibid* at paras. 80, 82.

acceptance in the eyes of the majority", to pass constitutional muster.[28] For similar reasons, only the most extreme language of hatred that targeted marginalized groups was minimally impairing. Prohibiting language that is merely offensive, causes hurt feelings, or which might expose a person to ridicule was impermissibly overbroad. In the result, the Court found that the portions of the *Code* banning speech that "ridicules, belittles or otherwise affronts the dignity [of a person or persons]" could not be upheld.[29]

Given the conclusion in *Whatcott*, we are fairly confident that Clauses 14(a) and 14(b) would be able to survive constitutional scrutiny. Clause 14(a) is aimed at adhering with human rights obligations, and is focused on reducing group harms and societal costs in a manner similar to the *Code* in *Whatcott*. Clause 14(b) appears, at least in part, to target threats of violence, which fall outside the scope of protected free speech altogether.[30] It is significantly less clear, however, whether Clauses 14 (c) and (d) create a constitutional limit on offensive advertising. These provisions clearly fall short of the high test in *Whatcott* for establishing hateful expression. Indeed, they utilize some of the same wording (ridicule and human dignity) that the Supreme Court struck from the *Code*. Other language in Clause 14(c) refers to expression that "demeans, denigrates or disparages", which is simply another way of referring to expression which "offends".

It is not, however, a foregone conclusion that these suspect provisions would fail a section 1 inquiry. As is always the case in *Charter* litigation, context matters. Special considerations come into play when dealing with offensive material on government property. *GVTA* created a high threshold for government restrictions on advertising content, but neither it, nor *Whatcott*, asked if a municipality was obligated to have demeaning content that affronts human dignity on its infrastructure. These considerations, and their relevance, remain untested. At this stage, they merely highlight the considerable ambiguity around the *CCAS*'s constitutionality, and the need for a more concrete standard.

The foundation of a way forward may be embedded within Clause 14(d). Does "conduct or attitudes that offend the standards of public decency prevailing among a significant segment of the population" constitute a permissible limit on free expression? While Clause 14(d)'s current wording may be problematic, *GVTA* suggested that a narrowly confined community standard test may be used to demarcate the reasonable limits on offensive advertisements. Or, in Justice Deschamps own words, ". . . a community standard of tolerance may constitute a reasonable limit on offensive advertisements . . .".[31]

Allowing municipalities to identify and prohibit those messages which are offensive to their communities' standard of tolerance would certainly provide an effective way to combat the proliferation of problematic messaging. Indeed, municipalities are well-versed in *Charter* litigation and with arguing that their legislation was enacted to address some pressing and substantial problems found in their communities. But allowing for community standards of tolerance also creates the spectre of patchwork consistency where minority interests are over-represented through political correctness or under-represented because they lack a political voice rather than the uniform application of *Charter* principles. For this reason, the community standard of tolerance approach may be a step towards a solution, but is itself fraught with difficulties and uncertainty.

While the *CCAS* may provide useful guidelines for limiting misleading advertising, we have concerns as to whether it could or even should apply to political messaging and social advocacy advertising. Given the uncertainties outlined above, we would further caution municipalities or other government bodies from relying solely on the *CCAS* to regulate its advertising space.

ii. Using Human Rights Legislation as Guidelines for Restricting Advertising Content

Apart from the advertising rules set out in the *Code*, municipalities might be well served by relying on human rights legislation for imposing reasonable limits on advertising content. For example, most provincial human rights legislation imposes limits and restrictions on expression which are discriminatory in nature against a group of persons based on enumerated grounds like race, gender, disability, sexual orientation, religious belief, etc. Human rights legislation in Alberta, B.C., and Saskatchewan further prohibit expression which is likely to expose a group to contempt or hatred because of those same enumerated grounds. As discussed above, the words "hatred" and "contempt" are restricted to those extreme manifestations of the emotion described by the words "detestation" and "vilification". This appears to be consistent with *Whatcott* and would therefore likely survive a section 1 analysis. Further, it makes sense for municipalities to ensure that rules regarding advertising content are consistent with their provincial human rights legislation which would likely be easier to justify on a section 1 analysis rather than the *CCAS*.

[28] *Ibid* at para. 80.

[29] *Ibid* at paras. 92, 108.

[30] *R. v. Khawaja*, 2012 SCC 69 at para. 70.

[31] *Supra* note 4 at para. 77.

iii. Advertising Rules Enforced by Municipalities and Private Contractors

The danger of having municipalities develop their own internal policies regarding acceptable advertising content is that those policies are driven by political imperatives and are not always developed with the *Charter* in mind. From our review, some of these rules which municipalities are currently using are likely vague or overbroad.

In the AFDI case, for example, the City required advertising content be of "moral and reputable character" and that it could limit content deemed to be "offensive to the moral standards of the community or which negatively reflects on the character, integrity, or standing of any organization or individual". Some Canadian municipalities prohibit advertising content which is in "bad taste"; one municipality may disallow content which is "of questionable taste or in any way offensive in the style, content or method of presentation" or not of "moral or reputable character"; and advertising rules for one municipality prohibit advertising on transit shelters of "advocacy or religious messages which seek to present information or a particular point of view" and "politically-related messages". Given the *GVTA* and *Whatcott* decisions, will these rules be considered permissible limits on free expression? If, like *GVTA*, these transit facilities trigger fulsome protection of section 2(b), we have serious doubts as to whether these types of restrictions could succeed at the section 1 stage.

Rules which allow for subjective decision making on advertising content will more likely lead to restrictions which are based on subjective individual value judgements rather than on a truly objective assessment of what content should be allowed. This is where a *Charter* challenge will most likely be successful. Any municipality which takes the view that advertising content is offensive "because we say it is" without adherence to formal well thought-out, articulable guidelines is going to have a difficult time justifying its restrictions under the *Charter*.

Conclusions

We've seen a new muscularity amongst advocacy and special interest groups as of late. They are sophisticated, understand that they have fairly expansive rights to freedom of expression, and are not shy about going to court. These groups thrive on the attention which their often-controversial messages attract, and they are not adverse to expressing highly polarizing and contentious public policy views.

The right to freedom of expression is one of the most jealously guarded *Charter* rights we enjoy, but it is not limitless. We would argue that the protection afforded by section 2(b) is not merely concerned with a person's right to express their views, but with fostering a society which promotes a vibrant and respectful market place of ideas so that everyone, not merely those with the loudest or most raucous voice, can be heard.

Short of expressing messages which consist of hate speech, do we have a responsibility to treat each other with respect? To communicate in a way that recognizes our differences and which promotes a truly free exchange of ideas in which everyone is entitled to participate as equal? To make people feel like valued members of our civic culture rather than making them feel marginalized, vulnerable and devalued?

Defining the limits of appropriate speech isn't just an exercise in legal abstractions, nor does it just involve lawyers. Rather, it goes to the heart of how we can live together in peaceful community with our neighbour and what we, as a community aspire to be. Whatever the court's decision in AFDI, it will be one to watch closely.

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CIVIL PRACTICE AND PROCEDURE

154. Limitation of actions — Actions involving municipal corporations — General principles —— City put levy in place on applicants for subdivision — Plaintiff developers paid levy by providing cash or letters of credit to city totaling approximately $458,000 — City did not use money, and road construction set out in agreements were built with other money or not at all — Developers brought action against city for return of amount provided — Developer's brought motion for summary judgment — Motion dismissed, action dismissed — Claim for unjust enrichment was out of time and statute-barred — Upon payment of monies, developers knew of city's enrichment and corresponding deprivation to them — Developers provided monies to city at or about time each development agreement was executed — Developers knew that city would not expending monies for some time, and certainly not within any specific timeframe.

Riverside Realty & Construction Ltd. v. Winnipeg (City) (2015), 32 M.P.L.R. (5th) 200, 2015 CarswellMan 30, 2015 MBQB 20, 65 C.P.C. (7th) 176, Simonsen J. (Man. Q.B.).

CONSTRUCTION LAW

155. Statutory regulation — Building permits — Failure to obtain permit —— Property owner built storage shed 1.54 metres from lot line of her property — Municipality alleged that its zoning by-law required six metre setback from lot line — Chambers judge dismissed municipality's petition for order declaring that construction was in contravention of by-law, declaring that construction was done without building permit and requiring demolition of building — Chambers judge held that property owner's accessory building did not offend by-law, as it was more than one metre from side lot line — Municipality appealed — Appeal allowed — Chambers judge erred in applying strict construction approach — If chambers judge had applied contextual and purposive approach to interpretation of by-laws, he would have concluded that applicable setback was six metres because exterior side lot line was "exterior lot line" for purpose of setback requirement.

Langford (City) v. Dos Reis (2015), 2015 CarswellBC 351, 2015 BCCA 55, Donald J.A., Goepel J.A., Harris J.A. (B.C. C.A.); reversing (2014), 23 M.P.L.R. (5th) 249, 2014 BCSC 727, 2014 CarswellBC 1126, R.T.C. Johnston J. (B.C. S.C.).

156. Statutory regulation — Miscellaneous —— City's building inspector made order which found that home constructed and sold by home builder was in unsafe condition as its concrete foundation was structurally deficient, and which specified and required taking of certain remedial action within 90 days — Home builder appealed pursuant to s. 25 of Building Code Act, 1992 — Interim ruling sought concerning whether order could and should be made permitting home builder and its engineering experts to access property and take certain samples from home's concrete foundation — Home builder also requested ancillary relief, including adjournment of appeal pending taking and analysis of such samples by home builder's engineers, and their preparation of plan of remediation, and stay of various provisions in building inspector's order, pending hearing of appeal — Interim relief sought by home builder denied — Court had no jurisdiction to grant interim relief sought by home builder, insofar as its request for access to property was concerned — Adjournment was being sought only to facilitate completion of contemplated work by home builder's engineers, and home builder's preparation of plan of remediation, and as court was unable to order access as requested to permit completion of such work, basis for suggested adjournment fell away — As for requested stay, such relief could not be granted without implicit finding that making or operation of order was somehow unjust or inappropriate, which was essence of central issue to be decided on underlying appeal — Order was intended to address situation involving building thought to be unsafe, and indefinite stay of such order, without substantive finding that order should not have been made, and/or more persuasive evidence that no harm was likely to result from such stay, seemed unwise.

Birani Homes Ltd. v. London (City) (2015), 2015 ONSC 1034, 2015 CarswellOnt 2206, I.F. Leach J. (Ont. S.C.J.).

157. Statutory regulation — Repairs, alterations and additions — Condominiums —— Architect was hired by condominium corporation for inspection of premises — Architect inspected premises and discovered some deficiencies in common parts of condominium, including firewalls — Architect prepared report in which he recommended that condominium corporation not accept work from contractor until deficiencies were repaired — Subcontractor was in charge of work pertaining to firewalls — Contractor decided to carry out repair work and incurred expenses amounting to $60,000 — Contractor brought action seeking $60,000 from subcontractor — Action dismissed — Evidence showed that contractor had failed to properly notify subcontractor before carrying out work — As result of its failure to properly notify subcontractor, contractor lost its right to claim expenses it incurred by carrying out work — Contractor did not adduce any evidence supporting architect's claim about existence of deficiencies — No evidence showed that subcontractor should have noticed said deficiencies — Hence, Court could not conclude that subcontractor committed fault or acted negligently in any way — In addition, legal warranty provided for in art. 2118 of Civil Code of Quebec did not apply — Therefore, contractor's action should fail.

9165-2115 Québec inc. c. Karl Fischer Design inc. (2014), 2014 CarswellQue 10700, 2014 QCCQ 9363, EYB 2014-243329, Fournier J.C.Q. (C.Q.).

MUNICIPAL LAW

158. Attacks on by-laws and resolutions — Practice and procedure — On quashing by-laws or resolutions — Miscellaneous —— Former taxi licensing system in municipality included standard taxicab license ("STL"), ambassador license ("ambassador"), and accessible taxicab owner licenses ("accessible") — STL's benefits included transferability and leasing, while ambassador holders could not lease, transfer or sell license — Municipality consulted with taxicab industry; resulting staff report recommended creation of single taxi license to be known as TTL — TTL would have more favourable conditions than ambassador but would reduce

some benefits of STL — Standing licensing and standards committee ("L&SC") held public hearing and referred implementation of TTL back to municipal staff for further study for additional year — Municipal council passed resolutions providing for implementation of TTL regime and for mandatory conversion of STLs, to TTLs by specified date — Resolutions were converted into formal by-law amendments — Municipal taxi alliance was composed primarily of those who hold STLs — Alliance brought application to quash resolutions — Alliance argued that municipality failed to give proper notice, failed to follow its own procedure and acted in bad faith — Application granted in part — Resolution and consequent by-law amendment providing for mandatory deadline for conversion of all taxi licenses to TTLs were illegally passed — That resolution and that portion of by-law were quashed — Remainder of TTL regime was validly enacted and remainder of relief sought was refused — Municipality had no common law duty of procedural fairness to provide notice — Municipality did not fail to provide proper notice of its intention to enact aspects of TTL regime — There was no advance notice of municipality's intention to consider and enact change that would force persons who continued to own STLs to convert their licenses to TTLs — That issue was not on published agenda for council meeting because it was not raised previously — Failure to give notice of intention of mandatory conversion was in breach of notice requirements of municipality's procedural by-law — It was proper for municipality to consider and vote on referred recommendations and municipality did not breach procedural by-law — Municipality acted as it historically did and treated entire L&SC report, including referred recommendations, as being before it for action — Municipality's failure to provide notice of its intention to enact mandatory conversion deadline was substantive breach and went to root of validity of section of by-law amendment that provided for mandatory conversion date — Council did not act in bad faith in enacting any of amendments to taxi licensing by-law.

Toronto Taxi Alliance Inc. v. Toronto (City) (2015), 2015 ONSC 685, 2015 CarswellOnt 1070, 33 M.P.L.R. (5th) 103, Stinson J. (Ont. S.C.J.).

159. By-laws — Enforcement — Miscellaneous —— Animal control — Complainant alleged that, while she was walking small dog, she encountered accused and his two large dogs, one of whom was not yet on leash — Complainant alleged that one dog chased after her and bit her right forearm, puncturing sleeve of jacket she was wearing — Photographs showed series of small scabs in semi-circular shape, consistent with upper jaw of dog, and large area of bruising on complainant's forearm, and rip on complainant's jacket — Trial of accused charged under Animal Control By-law as being person who allowed his dog to bite, attack, terrorize, or endanger person or animal — Accused convicted — Only conclusion was that complainant's injuries were from bite and not scratch from dog's claws, and it would have been evident to accused that dog did bite complainant's arm — Accused did not make out defence of due diligence — Accused was aware that dog was hyper-excitable, and yet he did not maintain proper control of dog, allowing her to leave vehicle unleased, in close proximity to complainant and small dog.

R. v. Namura (2014), 2014 CarswellBC 4110, 2014 BCPC 335, H.W. Gordon Prov. J. (B.C. Prov. Ct.).

160. By-laws — Form and content —— Interpretation — Company running retirement homes brought application for declaration that definition of "habitable unit" in relevant municipal by-law was inoperative and did not apply to applicants' registered retirement homes — As result, company sought return of $17,520.63 that was allegedly overpaid to municipality for water and sewage services — Municipality's position was that meaning of by-law was clear and not uncertain — Municipality further submitted that intention was also clear and any ambiguity should be resolved by applying ordinary English meanings to words "habitable" and "unit" — Application dismissed — Section 1 of by-law specifically stated that it applied to retirement homes or homes for aged — By-law was intended to apply to two registered retirement homes owned by company, as they were registered retirement homes that were connected to municipal water distribution system — Term "habitable units" was not specifically defined in by-law — Application judge found that municipality's intention was clear: they were units that were private habitable spaces for sole and exclusive use by occupants of retirement lodge or home where no separate kitchen was provided — Fact that residents of registered retirement homes have their meals in single dining room where food is prepared in one kitchen did not render meaning and intent of by-law uncertain.

3673928 Canada Inc. v. Hawkesbury (Town) (2015), 2015 ONSC 800, 2015 CarswellOnt 798, Robert J. Smith J. (Ont. S.C.J.).

161. Development control — Development agreements and conditions — Conditions — Miscellaneous —— Applicant corporation had option to purchase property located in respondent rural municipality, on which it wanted to establish composting facility — In 1990, then owners of property obtained conditional use approval permitting them to develop land as landscaping business, which included establishment of composting facility, on condition that land owner sign development agreement, but conditional use approval would expire if not acted on for 12 months — Development agreement was executed and caveat registered against land, but developer took no steps to comply, and land continued to be used only for agricultural purposes, despite title changing hands several times prior to litigation herein — When corporation inquired whether development agreement could be assigned, municipality reviewed matter and discharged caveat — Corporation's application for order that municipality acted in bad faith in vacating caveat against land that authorized use as compost facility, and for declaration that conditional use order remained valid, was dismissed — Trial judge found conditional use order contained two distinct steps: execution of development agreement and development for use as landscaping business — Trial judge found no steps were ever taken by any owner over two decades to use land for anything — Trial judge found municipality was not in breach of conditional use order, which ceased to exist due to developer's inaction, and furthermore, nothing in development agreement bound municipality to any obligations — Trial judge found once expiry of agreement came to municipality's attention, it properly discharged caveat — Corporation appealed — Appeal dismissed — Trial judge made no palpable or overriding error — Acquired right regarding land use cannot be interfered with by municipality except as allowed for by statute — Discontinuing nonconforming use for more than 12 consecutive months caused acquired right to lapse — Interruption of non-conforming use of land was not reasonable, as eighteen years passed without any activity associated to non-conforming use — Although matter had not been raised at trial, interests of justice required considering it, and no new evidence was required.

Samborski Garden Supplies Ltd. v. MacDonald (Rural Municipality) (2015), 2015 MBCA 26, 2015 CarswellMan 109,

Christopher J. Mainella J.A., Diana M. Cameron J.A., Marc M. Monnin J.A. (Man. C.A.); affirming (2014), 304 Man. R. (2d) 209, 22 M.P.L.R. (5th) 267, 2014 MBQB 78, 2014 CarswellMan 157, Rempel J. (Man. Q.B.).

162. Development control — Development permits — Jurisdiction and powers — Development appeal board —— Merchant operated liquor store located less than 500 metres from respondent's proposed development of liquor store — City of Edmonton Subdivision and Development Appeal Board refused respondent's application for development permit to operate liquor store — Respondent's appeal was allowed and matter was remitted to board for re-hearing — On re-hearing, board allowed issuance of development permit, and was satisfied that applicant's liquor store and respondent's development would not be legal non-conforming uses because they did not co-exist at date of enactment of zoning by-law — Applicant brought application for permission to appeal decision of board — Application dismissed — There was no arguable error of law or jurisdiction in board's approach or in its exercise of discretion — There was no error of law or jurisdiction in board's conclusion that neither liquor store would be legal non-conforming use because they did not co-exist at date of enactment of zoning bylaw — Board did not err in failing to consider or to apply s. 70 of Edmonton zoning bylaw which affirmed that 500 metre separation provision took precedence and applied to respondent's proposed development.

Liquor Stores Limited Partnership v. Edmonton (City) (2015), [2014] B.C.J. No. 2839, [2015] A.J. No. 173, 2015 ABCA 63, 2015 CarswellAlta 244, Peter Costigan J.A. (Alta. C.A.).

163. Development control — Development permits — Miscellaneous —— Respondent corporation was owner of sub-area in issue — Corporation was using portion of sub-area to operate presentation centre in which public could view promotional material for properties that corporation was marketing — Zoning for sub-area restricted its use to park, recreational and ancillary uses, but respondent city had granted development permit to corporation to construct and operate presentation centre for three years from time it was occupied — City granted extension of development permit for further three years — Petitioner brought petition, seeking order setting aside decision of city granting extension of development permit, and seeking declaration that any use of sub-area had to be in conformity with its zoning, which restricted uses to "park and recreational uses and customarily ancillary uses" — Petition dismissed — City had jurisdiction to relax use provisions of zoning by-law relating to sub-area in limited circumstances set out in s. 565A(e) of Vancouver Charter — No basis could be seen for concluding that decision to extend development permit was unreasonable — Petitioner had not shown any grounds on which it was appropriate to make declaration sought — Declaration sought was contrary to findings made in case — There would be no utility in such declaration.

F.C.R.A. False Creek Residents Assn. v. Vancouver (City) (2015), 2015 BCSC 322, 2015 CarswellBC 540, Sewell J. (B.C. S.C.).

164. Development control — Development permits — Practice and procedure —— Housing project was in state of disrepair, according to engineering report, and significant expenditures would be required to address its deficiencies — Company saw opportunity to build tower on lands occupied by housing project, in exchange for property it owned across street, which would be suitable for new building to replace social housing at housing project — Company formulated proposal, and city was interested in proposal and negotiated land exchange contract with company — Company applied for rezoning of city's property — City council enacted rezoning by-law — Company applied to development permit board for development permit for its property — Company's development permit application was approved, and city council endorsed board's approval — Petitioner brought petition seeking judicial review of various decisions made by city and board — Zoning by-law and development permit quashed, and new hearings ordered — City's limited approach to public hearing was unfair — Procedure city adopted was unfairly restrictive, in presenting public with package of technical material that was opaque, compared to material presented in court, in limiting comment on integrated nature of project, and in failing to provide intelligible financial justification for it — Appropriate order was to quash zoning by-law and development permit and direct new hearings on each, permitting concerned citizens to address whole project, including essence and value of land exchange to city and its residents.

Community Assn. of New Yaletown v. Vancouver (City) (2015), 2015 BCSC 117, 2015 CarswellBC 161, T.M.M. McEwan J. (B.C. S.C.).

165. Municipal liability — Negligence — Building review, inspections and permit issuance —— Plaintiff purchased property that shared common wall with adjoining property — There was fire at property, and building had to be demolished, but common wall remained — Rather than reviewing design for proposed new building in house, defendant city sent it to O Inc., which was designated review agency pursuant to Ontario Building Code — O Inc. issued certificate which stated that proposed building complied with Ontario Building Code — Plaintiff applied to city and obtained conditional building permit, which allowed for construction of footings — Plaintiff's excavator was excavating along common wall when it collapsed — Plaintiff took position that city undertook inspection of property after fire and had obligation to also inspect adjoining property for damage from fire — City brought motion for order to dismiss plaintiff's claim against it — Motion dismissed — It appeared that city was not liable for any acts or omissions of O Inc., given language of s. 31(3) of Building Code Act, 1992 — City did not inspect adjoining property, and it might have some liability in this matter because reasonable person, even lay person, could have believed that there might be damage to adjoining property given fact that two properties shared common wall and fire was extensive — It was not established that there was no genuine issue relating to city's potential liability that required trial.

1606533 Ontario Inc. v. Raposo (2015), 32 M.P.L.R. (5th) 219, 2015 CarswellOnt 1050, 2015 ONSC 490, Vallee J. (Ont. S.C.J.).

166. Municipal liability — Negligence — Property maintenance — Miscellaneous —— On December 25, 2010, plaintiff slipped and fell on snow or ice in front of house in new subdivision, injuring herself — She said that slip and fall happened on sidewalk in front of house — On November 19, 2012, plaintiff sued municipality, owners of home, and developer — Municipality and developer defended and cross-claimed against their co-defendants — Plaintiff's statement that she fell on "the sidewalk", which was covered in ice and snow was ambiguous, in that she did not specify

whether it was municipal sidewalk or sidewalk leading from steps of house to municipal sidewalk — Municipality did not assume jurisdiction over roads in subdivision until January 7, 2012 — On October 25, 2013, on consent, plaintiff dismissed action against municipality — Municipality's only exposure thereafter was to developer's crossclaim — Municipality brought motion for summary judgment dismissing developer's crossclaim — Motion granted — Based solely on plaintiff's sworn evidence at her examination for discovery, it was found on balance of probabilities that she fell on snow covered driveway at new house — While municipality had obligation under subdivision agreement to clear ice and snow from roadways, it was not responsible for clearing driveways and sidewalks — Developer's crossclaim against municipality was dismissed.

Morand v. Brampton (City) (2015), 2015 ONSC 877, 2015 CarswellOnt 1684, Trimble J. (Ont. S.C.J.).

167. Municipal liability — Nuisance — Miscellaneous —— On December 25, 2010, plaintiff slipped and fell on snow or ice in front of house in new subdivision, injuring herself — She said that slip and fall happened on sidewalk in front of house — On November 19, 2012, plaintiff sued municipality, owners of home, and developer — Municipality and developer defended and cross-claimed against their co-defendants — Plaintiff's statement that she fell on "the sidewalk", which was covered in ice and snow was ambiguous, in that she did not specify whether it was municipal sidewalk or sidewalk leading from steps of house to municipal sidewalk — Municipality did not assume jurisdiction over roads in subdivision until January 7, 2012 — On October 25, 2013, on consent, plaintiff dismissed action against municipality — Municipality's only exposure thereafter was to developer's crossclaim — Municipality brought motion for summary judgment dismissing developer's crossclaim — Motion granted — With respect to sidewalks, s. 44(9) of Municipal Act, 2001 imposes liability for only gross negligence on municipality's part — Section 46 says that ss. 44(4) to 44(15) apply to claim brought in nuisance — Therefore, s. 44(9), which sets standard of care as gross negligence, still applies as to claims in nuisance — Section 46 extends application of ss. 44(8) to 44(15) to cases founded in nuisance, because s. 44 does not address actions brought in nuisance, which is separate and distinct cause of action at common law — But for s. 46, procedural requirements in s. 44(8) to 44(15) might not apply to causes of action founded in nuisance.

Morand v. Brampton (City) (2015), 2015 ONSC 877, 2015 CarswellOnt 1684, Trimble J. (Ont. S.C.J.).

168. Municipal liability — Nuisance — Miscellaneous —— Contamination by salting — Plaintiffs brought action in nuisance against defendant county for damage to crops on their farm as result of defendant's application of de-icing materials (road salt) during its winter road-clearing operations — Plaintiffs claimed that salting of roads created private nuisance on their land which reduced their crop yields and burdened them with contaminated and hence stigmatized land, diminishing value of their property — Defendant relied on social utility of salting and maintain that plaintiffs had not proven causation between salting of roads and damage to their crops — Action allowed — Plaintiffs' expert evidence was credible and supported by soil analysis and numerous studies pertaining to dispersal, spreading, and infiltration of road salts into soils — Pattern of salt dispersal on plaintiffs' farm was consistent with plaintiffs' engineering opinion that higher levels of salt contamination were found closest to road — Only reasonable, logical inference was that salt was coming from spray and off road itself — On balance of probabilities, dispersion of road salt by defendant along portion of plaintiffs' property caused damage to their land and to their soya and wheat crops from about 1999 to present — Neither social utility of conduct or lack of negligence on defendant's part would excuse liability for environmental nuisance — Damage caused by salt to plaintiffs' farm was significant harm which amounted to unreasonable interference with their property for which they were entitled to be compensated.

Steadman v. Lambton (County) (2015), 2015 CarswellOnt 833, 2015 ONSC 101, Thomas J. Carey J. (Ont. S.C.J.).

169. Municipal liability — Occupier's liability —— Claimant was swimming in pool at sport complex when she cut her hand on plastic reel which was part of lane divider commonly known as kiefer — Claimant said that cut bled for 15 minutes, and that cut was unsightly and had to be covered up at work to avoid clients seeing it — Claimant sought damages against city for pain and suffering — Claim dismissed — City was not liable in negligence — Under Occupiers Liability Act, city did not breach their obligation to ensure that pool users were reasonably safe — Claimant acknowledged that it was not uncommon to get scratched by lane dividers — Being well aware of risk, claimant clearly decided that it was not unreasonable risk as she swam at complex daily — Injury did not require stitches or stop claimant from attending pool daily thereafter — Claimant did not seek medical attention — Pool's maintenance program for inspection and repair of kiefers was not inadequate or inappropriate — It was understandable that pool had limited resources and had to prioritize on basis of safety of its users — Evidence was that maintenance procedures were consistent with those at other community pools — Maintenance procedures were not negligently carried out — Even after incident, employees could not tell from visual inspection what claimant had cut herself on.

Kwong v. Surrey (City) (2014), 32 M.P.L.R. (5th) 336, 2014 BCPC 338, 2014 CarswellBC 4115, P.M. Bond Prov. J. (B.C. Prov. Ct.).

170. Municipal tax assessment — Business tax — Miscellaneous —— City made assessment against landlords of commercial office space for business tax for spaces they rented out to their tenants for parking — Assessment Review Board ("ARB") upheld assessment and landlords were granted leave to appeal ARB decision to Court of Queen's Bench — Landlords appealed ARB decision — Appeal allowed — ARB's decision about imposition of business tax on landlords was unreasonable and not within range of possible acceptable outcomes — ARB's decision was cancelled with respect to business tax imposed on properties in question and matter referred back to ARB for rehearing — ARB made fundamental error in its review of assessments in light of s. 4 of by-law by misapplying appropriate tests in case law and coming to conclusion that by managing space landlords own, and deriving profit from this space, it was occupying it for business purposes — ARB placed too much emphasis on fact that there were separate agreements in many cases between landlord and tenants which allowed city to therefore tax landlords — Landlords leased space to tenants on relatively permanent basis, and based on leases in question, parking spaces were set aside, or used exclusively by tenants — Error ARB made was to jump past determination of whether landlords here used parking

spaces for their business and dealt immediately with who had more "control" — City's argument that ARB decision could be found to be reasonable since it had come to conclusion, although opposite to prior authority on point, that was justifiable on basis of law was not accepted — ARB's decision was unreasonable in that it upheld imposition of business tax on landlords of parking spaces leased on permanent basis to its tenants.

Altus Group Ltd. v. Calgary (City) (2013), 573 A.R. 68, 61 Admin. L.R. (5th) 131, 87 Alta. L.R. (5th) 215, [2014] 2 W.W.R. 146, 16 M.P.L.R. (5th) 67, 2013 ABQB 617, 2013 CarswellAlta 1999, K.M. Eidsvik J. (Alta. Q.B.); affirmed on other grounds (2015), 2015 ABCA 86, 2015 CarswellAlta 303, Barbara Lea Veldhuis J.A., Patricia Rowbotham J.A., Peter Martin J.A. (Alta. C.A.).

171. Municipal tax assessment — Grounds for invalidating assessment — Illegality —— Municipality assessed shopping centre at $31,328,500 — Shopping centre owner appealed assessment — Municipality then re-assessed centre from "community shopping centre" to "power centre" and raised assessed value to $40,795,500 — Owner appealed — Appeal allowed — Board erred when it decided on assessment that was not subject of complaint before it — Only assessed person or taxpayer has right to file complaint — Municipality was attempting to illegally appeal assessment — Board could not permit municipality to change assessment and essentially act as complainant — Assessment of property for given year is not subject to amendment by municipality during complaint process.

Edmonton East (Capilano) Shopping Centres Ltd. v. Edmonton (City) (2013), 14 M.P.L.R. (5th) 252, 570 A.R. 208, 2013 CarswellAlta 1745, 2013 ABQB 526, J.D. Rooke A.C.J.Q.B. (Alta. Q.B.); affirmed on other grounds (2015), 2015 CarswellAlta 324, 2015 ABCA 85, Frans Slatter J.A., Patricia Rowbotham J.A., Ronald Berger J.A. (Alta. C.A.).

172. Municipal tax assessment — Nature and form of assessment — Powers and duties of assessors —— During owner's appeal from assessment of municipal tax on its mall, city applied to change mall's categorization from "community shopping center" to "power shopping center" with effect of increasing assessment — Assessment Review Board accepted city's argument in part and increased assessment — Owner's appeal was allowed — City appealed — Appeal dismissed — While city could correct errors, omissions or misdescriptions under s. 305 of Municipal Government Act, it could not merely change position on about how to categorize and assess property — Owner's complaint that assessment was too high did not also raise issue of whether it was too low — City did not have right to complain about assessment — City's approach, that it could seek correction of inadequate assessments only if property owner filed complaint, was not reasonable interpretation of Act — City had ability to reassess property every year so any inadequate assessment would only prevail for one taxation year before city could reassess — There was no room in complaint procedure for municipality to effectively mount cross-complaint and seek increase in assessment.

Edmonton East (Capilano) Shopping Centres Ltd. v. Edmonton (City) (2015), 2015 CarswellAlta 324, 2015 ABCA 85, Frans Slatter J.A., Patricia Rowbotham J.A., Ronald Berger J.A. (Alta. C.A.); affirming (2013), 14 M.P.L.R. (5th) 252, 570 A.R. 208, 2013 CarswellAlta 1745, 2013 ABQB 526, J.D. Rooke A.C.J.Q.B. (Alta. Q.B.).

173. Municipal tax assessment — Practice and procedure on assessment appeals and objections — Jurisdiction and power — Board or tribunal —— City assessed business tax on parking spaces leased by landlords of office buildings to their tenants — Local Assessment Review Board dismissed landlords' appeals on basis that such leasing constituted use or operation of "business in premises" within meaning of city by-law — Landlords' appeal was allowed — City appealed; Landlords cross-appealed — Appeal dismissed; Cross-appeal dismissed — Chambers judge properly rejected landlords' arguments that Board was insufficiently independent — There was no suggestion that Board members' tenure or remuneration would be at risk for making decisions that did not please city — Precedent established that common law doctrines of independence did not apply to such boards — Provisions of Municipal Government Act delegating authority to city with respect to appointment, remuneration and terms of Board members, clearly expressed legislative intent regarding independence of Board — Provisions ousted common law guarantees of independence — Board did not lack necessary degree of independence.

Altus Group Ltd. v. Calgary (City) (2015), 2015 ABCA 86, 2015 CarswellAlta 303, Barbara Lea Veldhuis J.A., Patricia Rowbotham J.A., Peter Martin J.A. (Alta. C.A.); affirming (2013), 573 A.R. 68, 61 Admin. L.R. (5th) 131, 87 Alta. L.R. (5th) 215, [2014] 2 W.W.R. 146, 16 M.P.L.R. (5th) 67, 2013 ABQB 617, 2013 CarswellAlta 1999, K.M. Eidsvik J. (Alta. Q.B.).

174. Municipal tax assessment — Practice and procedure on assessment appeals and objections — Jurisdiction and power — Board or tribunal —— During owner's appeal from assessment of municipal tax on its mall, city applied to change mall's categorization from "community shopping center" to "power shopping center" with effect of increasing assessment — Assessment Review Board accepted city's argument in part and increased assessment — Owner's appeal was allowed — City appealed — Appeal dismissed — Provision authorizing Board to "change" assessment was flexible because complaints could relate to issues that were not directly monetary in nature — Provision did not signal that Board was entitled to make any variations to assessment that it chose — Reading provisions in context, only taxpayers could raise issues in response to which Board could change assessment — Complaint that assessment was too high did not also raise issue of whether it was "too low".

Edmonton East (Capilano) Shopping Centres Ltd. v. Edmonton (City) (2015), 2015 CarswellAlta 324, 2015 ABCA 85, Frans Slatter J.A., Patricia Rowbotham J.A., Ronald Berger J.A. (Alta. C.A.); affirming (2013), 14 M.P.L.R. (5th) 252, 570 A.R. 208, 2013 CarswellAlta 1745, 2013 ABQB 526, J.D. Rooke A.C.J.Q.B. (Alta. Q.B.).

175. Municipal tax assessment — Practice and procedure on assessment appeals and objections — Miscellaneous —— During owner's appeal from assessment of municipal tax on its mall, city applied to change mall's categorization from "community shopping center" to "power shopping center" with effect of increasing assessment — Assessment Review Board accepted city's argument in part and increased assessment — Owner's appeal was allowed — City appealed — Appeal dismissed — Municipality had no ability to complain about assessment — Only taxpayers could raise issues in response to which Board could change assessment, and complaint that assessment was too high did not also raise issue of whether it

was "too low" — There was no room in complaint procedure for municipality to effectively mount cross-complaint and seek increase in assessment.

Edmonton East (Capilano) Shopping Centres Ltd. v. Edmonton (City) (2015), 2015 CarswellAlta 324, 2015 ABCA 85, Frans Slatter J.A., Patricia Rowbotham J.A., Ronald Berger J.A. (Alta. C.A.); affirming (2013), 14 M.P.L.R. (5th) 252, 570 A.R. 208, 2013 CarswellAlta 1745, 2013 ABQB 526, J.D. Rooke A.C.J.Q.B. (Alta. Q.B.).

176. Municipal tax assessment — Practice and procedure on assessment appeals and objections — Right of appeal — Miscellaneous —— In establishing three groupings of current and future multi-residential development lands, assessor considered location, servicing and zoning, but not whether phasing designation of subject land in applicant municipality affected its value for assessment purposes — Subject land, owned by corporate respondent, was designated as Phase II land, which owner cannot develop, but assessor "grouped" it with Phase I land, which can be developed, because of its multi-family residential zoning — Phasing of subject land had been changed from Phase I to Phase II in 1999 and parties agreed that change in phasing effectively prohibited any type of development from occurring — In both 2011 and 2012, respondent appealed city assessor's assessment of subject land to board of revision, which dismissed appeal on each occasion — Assessment appeals committee ("committee") allowed two appeals concerning same land, pertaining to tax years 2011 and 2012 — Municipality brought application for leave to appeal — Application dismissed — Legislation itself provides that if municipality's zoning by-law is inconsistent with its official community plan, zoning by-law will be of no force and effect with respect to inconsistency, and, no development can occur that is contrary to municipality's official community plan — Municipality agreed that land use control put in place through official plan prevented development of subject land, thus, even if committee erred in finding inconsistency as matter of law, it had no bearing on decision — Since committee could choose among only three groupings, finding that multi-family residential zoning did or did not have value was not relevant question — If assessor could not consider phasing without sale or sales, then committee would have erred by finding that assessor should have considered phasing — Leave should not be granted in relation to this question because of circumstances of case — Evidence indicated that normally, phasing and zoning are consistent — Subject land was anomalous and bore phasing designation that was not only inconsistent with its zoning, but its phasing designation was changed for express purpose of preventing development — Municipality's application did not meet any of branches to establish importance — Firstly, fact that land was almost ready for development but municipality changed phasing means that question of appropriate assessment in case of this type was unlikely to arise again — Secondly, land was now part of Phase I, so issue can never arise again in relation to this land.

Saskatoon (City) v. North Ridge Development Corp. (2015), 2015 CarswellSask 75, 2015 SKCA 13, Jackson J.A., In Chambers (Sask. C.A.).

177. Municipal tax assessment — Practice and procedure on assessment appeals and objections — Right of appeal — Question of fact or law —— Subject property was site of former municipal bus barns and had been redeveloped as market — Current owner had purchased leasehold interests for $28,000,000 and five years later purchased land from municipality for $13,500,000 — Municipality assessed property based solely on land value at $275 per sq. ft. — Owner applied for leave to appeal arguing that $13,500,000 purchase price best was fair market value which municipality was required by law to charge — Application dismissed — Value of land not question of law but fact or mixed fact and law — Aggregate value of land must include value of unexpired leasehold interest — Assessment Review Board's decision not to apply reduction for contamination not unreasonable — Existence of allegedly conflicting decisions does not on its own warrant judicial intervention unless particular decision unreasonable — Assessment Review Board accepted municiipality's land value and owner had not demonstrated it had reasonable chance of success on appeal.

Eau Claire Market Inc. v. Calgary (City) (2015), 2015 CarswellAlta 330, 2015 ABQB 131, B.A. Millar J. (Alta. Q.B.).

178. Municipal tax assessment — Tax exemptions — Tax exempt properties — Charitable institutions — Land leased by institution —— Taxpayer was registered charity under Income Tax Act (ITA) and non-profit corporation focusing on community support — Taxpayer was established pursuant to Toronto Young Men's Christian Association Act, 1923 (YMCAA) which received Royal Assent on March 27, 1923, and was not amended since its enactment — Section 10 of YMCAA provided exemption from property taxation for "buildings, lands, equipment and undertaking of the said association so long as and to extent to which they are occupied by, used and carried on for the purposes of the said association" — Taxpayer's application for exemption from assessment for municipal property tax for properties that it occupied under leases in four buildings was dismissed — Trial judge found leased premises were not exempt from taxation — Trial judge found that while as matter of real property law, leases are "land", court interpreted reference to "lands of the said association" in s. 10 of YMCAA to mean lands owned by taxpayer — Trial judge found owning leasehold interest in land is different from owning land — Trial judge found YMCA's four leased premises were not owned by YMCA and were therefore, not exempted from assessment for municipal property tax — Taxpayer appealed — Appeal dismissed — Leased premises were not buildings or lands of Toronto YMCA occupied and used for its purposes, and therefore were not exempt from municipal property taxation by virtue of s. 10 of YMCAA — Tenancy was interest in land rather than land — Term land in YMCAA did not have different, expanded meaning — Taxation was based on language used in private act, and other private acts with different wordings considered in other cases might generate different results.

Young Men's Christian Assn. of Greater Toronto v. Municipal Property Assessment Corp. (2015), 2015 CarswellOnt 2419, 2015 ONCA 130, G. Pardu J.A., K. van Rensburg J.A., Paul Rouleau J.A. (Ont. C.A.); affirming (2014), 121 O.R. (3d) 34, 25 M.P.L.R. (5th) 105, 2014 CarswellOnt 8192, 2014 ONSC 3657, Perell J. (Ont. S.C.J.).

179. Municipal tax assessment — Tax rates — General considerations in fixing rate —— Petitioners owned approximately 10,000 acres of land within municipality — About 9,000 acres were classified as managed forest land (Class 7) for property assessment and taxation purposes — In March 2004, province approved boundary extension application that allowed municipality to extend its boundaries to include managed forest lands outside city owned by

MR Inc. — Tax rate limit on MR Inc. lands was included in that extension — For several years, municipality set tax rate for all Class 7 lands using capped taxation rate it was required to use for MR Inc. lands — Municipality reconsidered its approach in 2013 during planning for 2014 tax rate by-law because of loss of tax revenue from closing of mill — Municipality decided to set tax rates for managed forest lands at provincial average, to be phased in over three-year period from 2014 to 2016 — Effect of by-law was increase in petitioners' tax rate for 2014 of more than two and one-half times rate for 2013 — By 2016, petitioners' tax rate would be more than five times that of MR Inc. — Petitioners brought application for judicial review of authority of municipality to adopt by-law — Application dismissed — It was common ground that property falling outside of municipality was taxed at lower rate — Municipality had express authority under s. 14(1) of Local Government Act to establish limit on tax rate for newly acquired lands — While s. 197(3) of Community Charter required municipality to set one tax rate for all properties within class, it allowed for express exemptions such as exemption found in s. 14(4) of Act — Section 14(1) and (4) of Act authorized province to fix rate for class of land within designated area and exempt municipality from having to apply same rate to other lands in that class that fell outside designated area.

TimberWest Forest Corp. v. Campbell River (City) (2015), 2015 CarswellBC 138, 2015 BCSC 102, L.A. Fenlon J. (B.C. S.C.).

180. Planning appeal boards and tribunals — Jurisdiction — General principles —— TP appealed draft plan approval and rezoning approval — Developer brought motion to dismiss appeals — Motion granted; appeals dismissed — TP's real issue was with approval process of design of stormwater management facilities, which design approval was not before this board.

Waterloo (City) By-law No. 2014-045, Re (2015), 2015 CarswellOnt 2128, Blair S. Taylor Member (O.M.B.).

181. Planning appeal boards and tribunals — Practice and procedure — Notice — Of appeal —— Telephone conference call was convened for purpose of hearing and deciding motion for direction brought by company in regard to appeals of region and township's official plan amendments — On last day for filing of appeals, package containing appeal documents in relation to official plan amendments was filed with region on behalf of company — Package was accompanied by cheque in amount of $125.00 as appeal fee — On same day, counsel for company was notified by region that subject appeals were incomplete as result of fees and form of payment — Region's position was that company had until end of business day to remedy deficiency — Despite being provided with required payment next business day, region subsequently took position that company's appeals were not being validly made — Region returned company appeal package by registered mail on basis that it was incomplete due to fees filed not being equal to required fees — Company brought motion for order determining that appeals were validly made — Motion granted — Once notified of deficiency, company acted promptly to remit required fees to region — Municipality did not act reasonably by refusing to accept fees after close of business day.

Phelps Homes Ltd., Re (2014), 2014 CarswellOnt 18831, M.A. Sills Member (O.M.B.).

182. Powers of municipal corporation — Miscellaneous —— City owned and operated electrical utility that provided service to customers who were almost entirely residents of city — M Co. was electric utility that provided service to rest of province and provided transmission service — City paid transmission fees to M Co. to wheel power from mainland sources through provincial interconnections and M Co.'s transmission lines — City applied for permit to build transmission line to run between its substation and M Co.'s switching station in order to avoid certain transmission charges — Island Regulatory and Appeals Commission denied application — City appealed — Appeal dismissed — Commission made error of law, failing to take into account implications of city being municipal utility — Commission viewed financial advantage only from perspective of benefit through reduced electric utility rates for city's customers — Commission did not take into account that financial interests of city, its citizens, city's utility and most of its customers were in common or that non-financial aspirations should be taken into account — Full consideration of future public convenience and necessity of area would involve consideration of broader interests of city and its citizens and customers — City's aspirations were intangible benefits that should have been taken into account within rubric of public interest or public convenience and necessity — Despite such error, Commission's determinations that city could not avoid applicable tariff and that it did not show positive business case were sufficient bases upon which to deny application.

Summerside (City) v. Maritime Electric Co. (2015), 2015 CarswellPEI 9, 2015 PECA 1, 33 M.P.L.R. (5th) 6, David H. Jenkins C.J.P.E.I., John K. Mitchell J.A., Michele M. Murphy J.A. (P.E.I. C.A.).

183. Subdivision control — Miscellaneous —— City put levy in place on applicants for subdivision — Plaintiff developers paid levy by providing cash or letters of credit to city totaling approximately $458,000 — City did not use money, and road construction set out in agreements were built with other money or not at all — Developers brought action against city for return of amount provided — Developer's brought motion for summary judgment — Motion dismissed, action dismissed — City's resolution was intra vires — Levy was development charge and not local improvement levy, and was properly enacted under s. 637(23)(e)(iii) of The City of Winnipeg Act.

Riverside Realty & Construction Ltd. v. Winnipeg (City) (2015), 32 M.P.L.R. (5th) 200, 2015 CarswellMan 30, 2015 MBQB 20, 65 C.P.C. (7th) 176, Simonsen J. (Man. Q.B.).

184. Tax collection and enforcement — Remedies available to municipality — Miscellaneous —— R, as sub-tenant, entered into sublease with township, as sub-landlord, for premises in marina from which he operated restaurant — Township gave sub-tenant notice that unless he paid certain arrears due under sublease, which included realty tax arrears, by certain date, it would terminate sublease and sue for arrears — Sub-tenant vacated premises and township sued to collect arrears — Township was awarded judgment of $35,176.41, which included amount for realty tax arrears fixed at $18,060.42 — Sub-tenant appealed — Appeal dismissed — Sublease made sub-tenant responsible for all realty taxes applicable to subject property, which covered all realty taxes that arose during term of sublease and township could retroactively collect realty taxes for premises — There was no authority to support sub-tenant's position that township could not collect realty taxes from him

by suing for tax arrears under sublease but was limited to realty tax recovery mechanisms available to municipality under Municipal Act, 2001 — Township was not estopped from collecting realty taxes under sublease by operation of doctrine of laches — Township was not responsible for delay — Sub-tenant did not act to his detriment as result of any conduct by township in respect of treatment of realty taxes under sublease — Trial judge did not err in interpreting sublease.

St. Joseph (Township) v. Rowe (2015), 51 R.P.R. (5th) 229, 2015 CarswellOnt 2418, 2015 ONCA 128, David Brown J.A., Gloria Epstein J.A., K.M. Weiler J.A. (Ont. C.A.).

185. Zoning — Judicial interpretation of zoning by-laws — General principles of construction —— Strict construction — Property owner built storage shed 1.54 metres from lot line of her property — Municipality alleged that its zoning by-law required six metre setback from lot line — Chambers judge dismissed municipality's petition for order declaring that construction was in contravention of by-law, declaring that construction was done without building permit and requiring demolition of building — Chambers judge applied strict construction approach in interpreting by-law — Chambers judge held that property owner's accessory building did not offend by-law, as it was more than one metre from side lot line — Chambers judge found that lot line was not front or rear lot line, but was "exterior side lot line" — Chambers judge held that because by-law did not refer to exterior side lot line, there had to be distinction between exterior side lot line and exterior lot line — Municipality appealed — Appeal allowed — Chambers judge erred in applying strict construction approach — If chambers judge had applied contextual and purposive approach to interpretation of by-laws, he would have concluded that applicable setback was six metres because exterior side lot line was "exterior lot line" for purpose of setback requirement — Chambers judge's interpretation defeated purpose of by-law scheme to function as comprehensive scheme of regulation — Only interpretation of by-law scheme that was consistent with its purpose was that exterior side lot line was exterior lot line for purpose of by-law setback requirement.

Langford (City) v. Dos Reis (2015), 2015 CarswellBC 351, 2015 BCCA 55, Donald J.A., Goepel J.A., Harris J.A. (B.C. C.A.); reversing (2014), 23 M.P.L.R. (5th) 249, 2014 BCSC 727, 2014 CarswellBC 1126, R.T.C. Johnston J. (B.C. S.C.).

186. Zoning — Judicial interpretation of zoning by-laws — Interpretation — Terms in by-laws — Dwelling house —— Property was developed by defendant non-profit organization — City contended that defendant was operating boarding and lodging house under auspices of approval for semi-detached dwelling — Defendant was charged under land use by-law with using property without valid development permit where use was limited as permitted or discretionary use in zone — Defendant found guilty — Wording "valid development permit" in charging section applied to actual use taking place on lands, and use occurring at property was boarding and lodging use — Dominant purpose test was applied, and essential character of property was examined — Domestic use was not predominantly taking place at property — Facility was operating alcohol recovery home, with each client entering into lease and contracting individually with defendant — Defence of officially induced error was not made out — Defendant was given multiple warnings that it was operating outside its use once facility was built and being operated, and was given numerous opportunities to comply — Defendant could not relay on promissory estoppel — Defendant could not rely on authorization it believed had been given as excuse to continue to violate provisions of by-law and continue to maintain operation of facility which was that of boarding and lodging house, and thereby avoid penal liability.

R. v. Safe Harbour Homes Ltd. (2014), 32 M.P.L.R. (5th) 318, 2014 ABPC 302, 2014 CarswellAlta 2705, Francine Roy J.P. (Alta. Prov. Ct.).

187. Zoning — Judicial interpretation of zoning by-laws — Interpretation — Terms in by-laws — Lot —— Property owner built storage shed 1.54 metres from lot line of her property — Municipality alleged that its zoning by-law required six metre setback from lot line — Chambers judge dismissed municipality's petition for order declaring that construction was in contravention of by-law, declaring that construction was done without building permit and requiring demolition of building — Chambers judge applied strict construction approach in interpreting by-law — Chambers judge held that property owner's accessory building did not offend by-law, as it was more than one metre from side lot line — Chambers judge found that lot line was not front or rear lot line, but was "exterior side lot line" — Chambers judge held that because by-law did not refer to exterior side lot line, there had to be distinction between exterior side lot line and exterior lot line — Municipality appealed — Appeal allowed — Chambers judge erred in applying strict construction approach — If chambers judge had applied contextual and purposive approach to interpretation of by-laws, he would have concluded that applicable setback was six metres because exterior side lot line was "exterior lot line" for purpose of setback requirement — Chambers judge's interpretation defeated purpose of by-law scheme to function as comprehensive scheme of regulation — Only interpretation of by-law scheme that was consistent with its purpose was that exterior side lot line was exterior lot line for purpose of by-law setback requirement.

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188. Zoning — Legal non-conforming use — What constitutes —— Property owner used agricultural land zoned as A1-Agricultural for storage of recreational vehicles, other vehicles, boats and containers (RVs) — City enacted zoning By-law 8000 which replaced zoning By-law 4500, authorizing five principle and sixteen secondary uses for A1-Agricultural zones, none which expressly allowed storage of RVs — Property owner was found to be in violation of By-law 8000 for permitting storage of RVs belonging to persons who were not registered owners of property — Hearing judge determined that aerial photographs were insufficient evidence to prove that property owner's use of property was legal non-conforming use as defined in s. 911(1) of Local Government Act allowing use to be grandfathered under By-law 8000 — Property owner appealed — Appeal dismissed — Property owner was guilty of violating By-law 8000 — Property owner did not prove that his use of property under By-law 4500 was lawful — By-law 8000 did not turn permitted use into non-conforming use, and there was no need to reconsider issue of whether property owner made out case for legal non-conforming use under s. 911(1) of Act — Plain meaning of By-law 4500 and By-law 8000 was identical — Wording in By-law 4500 did not amount to silence on issue of whether storage

of RVs was permitted use for A1-agricultural zones — Since storage of RVs was not specifically permitted by Part V of By-law 4500, it followed that use was not permitted under By-law 4500.

7 Kuipers Holdings Ltd. v. Kelowna (City) (2015), 33 M.P.L.R. (5th) 96, 2015 CarswellBC 506, 2015 BCSC 299, G.P. Weatherill J. (B.C. S.C.).

189. Zoning — Rezoning land — Application to rezone — Amending use and development standards — Use —— Applicant corporation had option to purchase property located in respondent rural municipality, on which it wanted to establish composting facility — In 1990, then owners of property obtained conditional use approval permitting them to develop land as landscaping business, which included establishment of composting facility, on condition that land owner sign development agreement, but conditional use approval would expire if not acted on for 12 months — Development agreement was executed and caveat registered against land, but developer took no steps to comply, and land continued to be used only for agricultural purposes, despite title changing hands several times prior to litigation herein — When corporation inquired whether development agreement could be assigned, municipality reviewed matter and discharged caveat — Corporation's application for order that municipality acted in bad faith in vacating caveat against land that authorized use as compost facility, and for declaration that conditional use order remained valid, was dismissed — Trial judge found conditional use order contained two distinct steps: execution of development agreement and development for use as landscaping business — Trial judge found no steps were ever taken by any owner over two decades to use land for anything — Trial judge found municipality was not in breach of conditional use order, which ceased to exist due to developer's inaction, and furthermore, nothing in development agreement bound municipality to any obligations — Trial judge found once expiry of agreement came to municipality's attention, it properly discharged caveat — Corporation appealed — Appeal dismissed — Trial judge made no palpable or overriding error — Acquired right regarding land use cannot be interfered with by municipality except as allowed for by statute — Discontinuing nonconforming use for more than 12 consecutive months caused acquired right to lapse — Interruption of non-conforming use of land was not reasonable, as eighteen years passed without any activity associated to non-conforming use — Although matter had not been raised at trial, interests of justice required considering it, and no new evidence was required.

Samborski Garden Supplies Ltd. v. MacDonald (Rural Municipality) (2015), 2015 MBCA 26, 2015 CarswellMan 109, Christopher J. Mainella J.A., Diana M. Cameron J.A., Marc M. Monnin J.A. (Man. C.A.); affirming (2014), 304 Man. R. (2d) 209, 22 M.P.L.R. (5th) 267, 2014 MBQB 78, 2014 CarswellMan 157, Rempel J. (Man. Q.B.).

190. Zoning — Rezoning land — Conditions —— Applicant corporation had option to purchase property located in respondent rural municipality, on which it wanted to establish composting facility — In 1990, then owners of property obtained conditional use approval permitting them to develop land as landscaping business, which included establishment of composting facility, on condition that land owner sign development agreement, but conditional use approval would expire if not acted on for 12 months — Development agreement was executed and caveat registered against land, but developer took no steps to comply, and land continued to be used only for agricultural purposes, despite title changing hands several times prior to litigation herein — When corporation inquired whether development agreement could be assigned, municipality reviewed matter and discharged caveat — Corporation's application for order that municipality acted in bad faith in vacating caveat against land that authorized use as compost facility, and for declaration that conditional use order remained valid, was dismissed — Trial judge found conditional use order contained two distinct steps: execution of development agreement and development for use as landscaping business — Trial judge found no steps were ever taken by any owner over two decades to use land for anything — Trial judge found municipality was not in breach of conditional use order, which ceased to exist due to developer's inaction, and furthermore, nothing in development agreement bound municipality to any obligations — Trial judge found once expiry of agreement came to municipality's attention, it properly discharged caveat — Corporation appealed — Appeal dismissed — Trial judge made no palpable or overriding error — Acquired right regarding land use cannot be interfered with by municipality except as allowed for by statute — Discontinuing nonconforming use for more than 12 consecutive months caused acquired right to lapse — Interruption of non-conforming use of land was not reasonable, as eighteen years passed without any activity associated to non-conforming use — Although matter had not been raised at trial, interests of justice required considering it, and no new evidence was required.

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191. Zoning — Rezoning land — Practice and procedure on rezoning —— Housing project was in state of disrepair, according to engineering report, and significant expenditures would be required to address its deficiencies — Company saw opportunity to build tower on lands occupied by housing project, in exchange for property it owned across street, which would be suitable for new building to replace social housing at housing project — Company formulated proposal, and city was interested in proposal and negotiated land exchange contract with company — Company applied for rezoning of city's property — City council enacted rezoning by-law — Company applied to development permit board for development permit for its property — Company's development permit application was approved, and city council endorsed board's approval — Petitioner brought petition seeking judicial review of various decisions made by city and board — Zoning by-law and development permit quashed, and new hearings ordered — City's limited approach to public hearing was unfair — Procedure city adopted was unfairly restrictive, in presenting public with package of technical material that was opaque, compared to material presented in court, in limiting comment on integrated nature of project, and in failing to provide intelligible financial justification for it — Appropriate order was to quash zoning by-law and development permit and direct new hearings on each, permitting concerned citizens to address whole project, including essence and value of land exchange to city and its residents.

Community Assn. of New Yaletown v. Vancouver (City) (2015), 2015 BCSC 117, 2015 CarswellBC 161, T.M.M. McEwan J. (B.C. S.C.).

192. Zoning — Zoning by-laws — Restrictive land uses — Heritage —— In 1986, City of Winnipeg placed hotel on list of historical buildings pursuant to Historical Buildings By-Law — In December 2010, s. 157 of City of Winnipeg Charter (Charter) was amended to require city to register historical designation notices in land titles office within one year — City registered historical designation notice on hotel's title in February 2012, about two months late — Hotel owner's application to remove notice from hotel's title and to remove hotel from list of historical buildings was dismissed — Trial judge found notice provisions in s. 157 of Charter were meant to be directory rather than mandatory, and consequences of failure to comply with those provisions were to be dealt with on case-by-case basis — Trial judge found reasons supporting this conclusion included that s. 157 amendments were one aspect of broader legislative scheme regarding historical buildings, and that amendment to s. 157.1 was silent as to consequence of late filing of notice — Trial judge found in amending s. 157.1 of Charter, legislature could not have intended that late filing of notice would mean that notice should be discharged and property removed from list of historical buildings, and to do so would vitiate steps that led to city council's resolution to designate building, would effectively quash that resolution, and would mean that narrow objective of notice provisions would trump broader objectives of by-law — Trial judge found nature of non-compliance and resulting prejudice did not favour relief sought by hotel owner — Trial judge found hotel was validly designated building, at request of owner, for almost 25 years before amendments to s. 157 of Charter came into force — Trial judge found city's registration of notice came only two months after time frame specified in s. 157 of Charter, and, critically, nothing of significance occurred in those two months — Hotel owner appealed — Appeal dismissed — Trial judge was correct in holding that requirement to file notices with land titles office under s. 157.1(4)(b) is directory and not mandatory — Amendments in s. 157.1 encompass larger public purpose of preservation of historical buildings and not just mechanism by which notice should be registered — Delay was not significant and did not create prejudice — No inconsistency existed between by-law and Charter, so that by-law was not over-ridden by s. 4 of Charter.

St. Charles Enterprises Ltd. v. Winnipeg (City) (2015), 2015 CarswellMan 82, 2015 MBCA 20, Christopher J. Mainella J.A., Marc M. Monnin J.A., William J. Burnett J.A. (Man. C.A.); affirming (2014), 305 Man. R. (2d) 112, 2014 MBQB 100, 2014 CarswellMan 247, 24 M.P.L.R. (5th) 82, Martin J. (Man. Q.B.).

PUBLIC LAW

193. Elections — Practice and procedure on controverted elections — In municipal elections — Irregularities — General principles —— DW won election for Chief by one vote — Petitioner was candidate who came in second — Petitioner alleged irregularities in election process and brought petition seeking declarations that DW was not duly elected, election was invalid, and new election was required — Petition dismissed — Number of irregularities occurred in election, but there was no evidence that any of irregularities affected results of election — Errors made were ones of form rather than substance — Election was conducted in accordance with law — Petitioner's evidence may have established that five voters were not physically present in community for six months before election, but fell short of establishing that they were not ordinary residents of community — Returning officer exercised her power to request declarations of eligibility — Record included declarations of eligibility of some individuals — Returning officer was not cross-examined as to why she decided to request declarations of eligibility from some people and not other — There was n evidence to suggest that returning officer exercised discretion to require declarations of eligibility improperly — Deputy returning officer discussed advance poll with individuals, but it was not plausible that he set out to persuade anyone to vote at advanced poll — Evidence did not show deputy returning officer acted improperly in his interaction with individual about advance polls — There was no evidence that such interaction had any impact on outcome of elections — Petitioner did not establish that deputy returning officer failed in his duties as far as maintaining control of ballot box at advanced poll — Failure of proxies to comply with requirement of statutory declaration was not fatal because other documentation was available for review as part of record — It was clear that one proxy form was amended, but document standing alone did not establish that it was amended without consent — Although proxy names were not entered on voters' register as required, documents included in record allowed determination that substantive rules governing proxy voting were complied with — There was no indication that two separate proxies cast vote for same voter.

Chocolate v. Mantla (2014), 2014 NWTSC 86, 2014 CarswellNWT 104, L.A. Charbonneau J. (N.W.T. S.C.).

WORDS AND PHRASES*

AGRICULTURAL LAND

Saskatchewan

♦ . . . land that is being actively farmed.

(Municipal law)

Saskatoon (City) v. North Ridge Development Corp. (2015), 2015 CarswellSask 75, 2015 SKCA 13 (Sask. C.A.), at para. 6 Jackson J.A.

ERROR OF LAW

Alberta

♦ An incorrect statement of the legal standard, or test, or an application of incorrect factors in applying the law to the facts is an error of law. Where there is discretion involved in applying the law to the facts, the application of the discretion is not a question of law, but a question of mixed law and fact; however, if a wrong legal principle is used in the application of the law to the facts, or in the exercise of the discretion, there is an error of law.

(Municipal law)

Eau Claire Market Inc. v. Calgary (City) (2015), 2015 CarswellAlta 330, 2015 ABQB 131 (Alta. Q.B.), at para. 10 Millar J.

HABITABLE UNIT

Ontario

♦ The Merriam-Webster Dictionary defines the term habitable as follows: "capable of being lived in: suitable for habitation". The term unit includes the following definition: "a single thing, person, or group that is a constituent of a whole".

. . . . .

. . . the intended meaning of [the relevant by-law] is clear and that the term "habitable unit" applies to each unit at [two nursing homes] that are inhabited by an occupant as their private space.

(Municipal law)

3673928 Canada Inc. v. Hawkesbury (Town) (2015), 2015 ONSC 800, 2015 CarswellOnt 798 (Ont. S.C.J.), at para. 16, 30 Smith J.

KIEFER

British Columbia

♦ [The claimant] was swimming in the pool at Surrey Sport & Leisure Complex on July 20th, 2011, when she cut her right hand on a plastic reel which was part of the lane divider commonly known as a "kiefer".

(Municipal law; Torts)

Kwong v. Surrey (City) (2014), 32 M.P.L.R. (5th) 336, 2014 BCPC 338, 2014 CarswellBC 4115 (B.C. Prov. Ct.), at para. 1 Bond Prov. J.

MULTI-FAMILY RESIDENTIAL LAND

Saskatchewan

♦ l. . . and located in areas touching existing development and with full services adjacent and zoned for some form of multi-family residential use

(Municipal law)

Saskatoon (City) v. North Ridge Development Corp. (2015), 2015 CarswellSask 75, 2015 SKCA 13 (Sask. C.A.), at para. 6 Jackson J.A.

PERIPHERAL LAND

Saskatchewan

♦ . . . "future urban development land" or "peripheral land" located primarily on the City's outskirts and with limited or no services adjacent to it.

(Municipal law)

Saskatoon (City) v. North Ridge Development Corp. (2015), 2015 CarswellSask 75, 2015 SKCA 13 (Sask. C.A.), at para. 6 Jackson J.A.

PHASING

Saskatchewan

♦ Phasing is a means by which another arm of the City, not the Assessor, determines when development may take place.

(Municipal law)

Saskatoon (City) v. North Ridge Development Corp. (2015), 2015 CarswellSask 75, 2015 SKCA 13 (Sask. C.A.), at para. 7 Jackson J.A.

*An alphabetical list of individual words and phrases that are given judicial consideration in the cases digested in this issue. Whenever possible, the entries are taken verbatim from the judgment.

QUESTION OF MIXED LAW AND FACT

See ERROR OF LAW.

TRANSIENT USE

Alberta

♦ There was undisputed evidence that the clients live at the facility each for different periods of time. However, I find [the defence witness's] own evidence regarding the presence of the clients: "we don't always have them; it is a very transient thing", to be significant and compelling evidence that what is taking place at the facility is pre-dominantly a boarding and lodging use. In this Court's view, "transient" use means something quite different than semi-permanent or permanent use. I have considered the definition of the word "transient" in the *Oxford Dictionary*, which means "lasting for a short time; impermanent."

. . . . .

The Court finds that there is other corroborating evidence which reflects a lack of permanent or semi-permanent use. For instance, in one of the photographs . . . which depicts the notice about payment of monthly cleaning supplies and toilet paper, it states that they must be paid "during your stay". I find the choice of the word "stay" further indicia of the transient use being made of the facility.

(Municipal law)

R. v. Safe Harbour Homes Ltd. (2014), 32 M.P.L.R. (5th) 318, 2014 ABPC 302, 2014 CarswellAlta 2705 (Alta. Prov. Ct.), at para. 43, 45 Roy J.P.

CORRIGENDUM

In the article, "Metro Vancouver's Waste Woes" by Olga Rivkin, the date of the rejection of Metro Vancouver's solid waste management bylaw is incorrectly set out as October 17, 2015. The actual date that the by-law was rejected was October 17, 2014.