

## Everything Must Go!!!

**By: Theresa Yurkewich**

**Case Commented On:** *Edmonton (City) v Peter*, [2015 ABQB 635](#)

It began with an ordinary accumulation of garbage bags. Next, a giant “Yard Sale” sign followed, made on cloth and propped up by the house. And in no time, the property located on Edmonton’s busy 113<sup>th</sup> Street was increasingly riddled with a variety of materials from household goods, to cardboard and other debris, and, on occasion, even a spray-painted “Closed” sign. By June 2015, it appeared Mr. Peter was running a permanent yard sale, visible from the street and encompassing both his front and back yard; and frankly, the City of Edmonton – and likely Mr. Peter’s neighbors – had enough. This article examines the decision of Justice J.B. Veit in *Edmonton (City) v Peter*, [2015 ABQB 635](#).

Under Section 546(1)(c) of the [Municipal Government Act, R.S.A. 2000, c. M-26](#), the City of Edmonton sought, and received, an order in June 2015 requiring Mr. Peter to removal all garbage bags, cardboard, loose litter, and debris from his property. Mr. Peter, however, appealed this order to the License and Community Standards and Appeal Board and continued to accumulate debris on his property. In fact, in his refusal to comply, Mr. Peter issued a “notice” to the City, objecting to the entrance of enforcement officers on his property without a warrant.

The provisions of section 546 of the *Municipal Government Act* relied upon by the City to issue the removal order are as follows:

546(0.1) In this section,

- (a) “detrimental to the surrounding area” includes causing the decline of the market value of property in the surrounding area;
  - (b) “unsightly condition”,
    - (i) in respect of a structure, includes a structure whose exterior shows signs of significant physical deterioration, and
    - (ii) in respect of land, includes land that shows signs of a serious disregard for general maintenance or upkeep.
- (1) If, in the opinion of a designated officer, a structure, excavation or hole is dangerous to public safety or property, because of its unsightly condition, is detrimental to the surrounding area, the designated officer may by written order
- (a) require the owner of the structure to
    - (i) eliminate the danger to public safety in the manner specified, or
    - (ii) remove or demolish the structure and level the site;
  - (b) require the owner of the land that contains the excavation or hole to
    - (i) eliminate the danger to public safety in the manner specified, or
    - (ii) fill in the excavation or hole and level the site;

- (c) require the owner of the property that is in an unsightly condition to
  - (i) improve the appearance of the property in the manner specified, or
  - (ii) if the property is a structure, remove or demolish the structure and level the site.

(2) The order may

- (a) state a time within which the person must comply with the order;
- (b) state that if the person does not comply with the order within a specified time, the municipality will take the action or measure at the expense of the person.

The refusal by Mr. Peter to comply with the City's order over the next 3 months, led the City to bring an application via section 554(1)(b) of the *Municipal Government Act*, seeking a mandatory injunction of Mr. Peter's yard sale, thereby requiring him to end the sale and remove the items from his yard. This application was based on a variety of bylaw infringements, including Mr. Peter's failure to apply for and obtain a business license for his yard sale, and the excessive accumulation of material amounting to unsightliness.

Mr. Peter opposed the injunction application on five grounds, including that the City had no evidence he was actually running a sale or had made a transaction, and therefore arguing he did not require a business license to operate the yard sale itself. Further, he argued the term "unsightly" was too subjective for the court to enforce.

In support of its position, the City relied on section 6 of the [Community Standards Bylaw, City of Edmonton Bylaw 14600](#), which states in part:

6 (1) A person shall not cause or permit a nuisance to exist on land they own or occupy.

(2) For the purpose of greater certainty a nuisance, in respect of land, means land, or any portion thereof, that shows signs of a serious disregard for general maintenance and upkeep, whether or not it is detrimental to the surrounding area, some examples of which include:

- (a) excessive accumulation of material including but not limited to building materials, appliances, household goods, boxes, tires, vehicle parts, garbage or refuse, whether of any apparent value or not.

The City further relied upon the definition of "business" and "general business" within the [Business License Bylaw, City of Edmonton Bylaw 13138](#), and argued a yard sale met the classification of a second hand store, reading:

2 In this bylaw:

(a) "Business" means:

- (i) a commercial, merchandising or industrial activity or undertaking,
- (ii) a profession, trade, occupation, calling or employment, or
- (iii) an activity providing goods or services,

as described in Schedule "A", and whether or not for profit and however organized or formed, including a co-operative or association of Persons;

The relevant portions of Schedule A are as follows:

General Business: Any Business not otherwise specified in this Schedule.

Second Hand Store: Selling previously owned goods other than by Auction, Traveling or Temporary Sales or in a Flea Market or Farmer's Market.

In addition, section 82 of the *Business Licence Bylaw* provides:

82 In addition to any other requirements, before the issue or renewal of a Licence for a Second Hand Store a Person must submit to the City Manager, in a form acceptable to the City Manager:

(a) if the applicant is a corporation:

(i) the full name and date of birth of all primary managers, owners, partners, directors and officers of the corporation; and

(ii) a recent Police Information Check issued by the Edmonton Police Service for all primary managers, owners, partners, directors and officers of the corporation;

(b) if the applicant is an individual:

(i) the full name and date of birth of the applicant; and

(ii) a recent Police Information Check issued by the Edmonton Police Service for the applicant;

(c) the full name, date of birth and job title of every Person working in the Second Hand Store.

The City acknowledged that an exemption from the *Business License Bylaw* exists for a garage sale that lasts a minimum of three days, and occurs only once per year. Mr. Peter's "yard sale", however, had been enduring long past that limitation.

The Court deemed it necessary to proceed with the City's application, regardless of Mr. Peter's pending appeal of the June 2015 order, stating that the application was not based on the same facts as the June 2015 order, given that the situation had escalated, as admitted by Mr. Peter and as illustrated through the City's evidence.

The Court agreed with Mr. Peter that a yard sale is not a second hand store, however, as provided above, the *Business License Bylaw* still requires every business to be licensed as a general business. Referring to [Stewart v Canada](#), 2002 SCC 46, the Court applied a two-stage approach to summarize the principles of a "business". This approach includes determining whether the individual's activity is undertaken in pursuit of profit, and if so, whether the source of the income is business or property. Where the individual's nature of activity is clearly commercial, however, a pursuit of profit is established.

In regards to Mr. Peter’s activity, the Court looked subjectively at the evidence, searching for evidence of business like behaviour. In this case, the placement of a yard sale sign on the property was an indication of a commercial operation, regardless of whether any transactions actually occurred. The choice of the word “sale”, together with the photographs provided by the City, including the closed sign, established a commercial intent. In response to Mr. Peter’s argument that there was no evidence of any commercial transactions, at paragraph 43 the Court stated that “evidence of a transaction actually being concluded is not a necessary component of a “business”. A business owner that never concluded any transaction would be an unsuccessful business, but it would be a business all the same”.

Regardless of the lack of evidence that Mr. Peter was actually operating the sale, the Court relied on the circumstantial evidence, including his ownership and presumptive control of the land as well as his frequent attendance at the property.

In response to Mr. Peter’s argument that the term “unsightly” is too difficult to define, the Court applied section 6(2)(a) of the *Community Standards Bylaw* in conjunction with section 546(0.1) of the *Municipal Government Act*, to find that there was an excessive accumulation of material on Mr. Peter’s property, amounting to unsightliness, and ultimately permitting an order for removal of the materials and compliance by Mr. Peter.

In determining Mr. Peter was in breach of the City of Edmonton’s bylaws, the Court then turned to remedies, first discussing a typical hesitance to award injunctions. In this case, however, the Court stated there were no other remedies available to the City, especially given the City’s previous attempts to enforce the June 2015 order and the worsening of the situation. For this reason, the Court agreed that an injunction was necessary to resolve the situation and not only granted the City’s application, but also provided the City with the right to enter Mr. Peter’s property and remedy the situation if Mr. Peter did not do so himself.

It was Mr. Peter’s use of the word “sale” that ultimately led to his own downfall. In the end, the sign was ultimately relied upon to establish a commercial intent, rather than a personal endeavour, regardless of whether any transactions actually occurred on the property. Had Mr. Peter merely accumulated the materials in his yard, however, he would have still been trapped under the *Community Standards Bylaw*, due to his excessive accumulation of materials – seemingly increasing each day. For now, the moral of the story seems that the success of a business, or lack thereof, will not exempt an individual from the applicability of the *Business License Bylaw*, and if you wish to hoard items in your yard – limit it to a duration of three days per year.

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