

# Municipal actions. Court reactions.

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With the actions of municipalities having such a direct and wide-ranging impact on the communities they serve, conflicts inevitably occur and court cases result. Here are a few recent cases you may find of interest.

## **Freeze on redevelopment by City not a taking**

The City of Vancouver adopted an official development plan under the Vancouver Charter that designated former railway lands owned by the CPR as a public thoroughfare for transportation and greenways. This froze the redevelopment potential of the site and the CPR sought compensation.

The Supreme Court of Canada held that the City had acted within its powers to freeze the use of the land with a view to preserving it for future development and did not have to compensate the CPR. The plan did not prevent all reasonable uses of the property and the CPR could still use the land to operate a railway and was not prohibited from leasing the land for uses conforming to the by-law.

## **Naked truth about adult entertainment licensing**

The Ontario Court of Appeal ruled that the City of Windsor does not have the power to require people working nude, or partially nude, in adult entertainment parlours to be separately licensed and pay an annual special licence fee of \$466.00.

## **Reclaiming railway? Build those fences**

A municipality bought a stretch of abandoned railway right-of-way, allowing it to be used and developed as a multi-purpose walkway and riding trail. Concerned landowners complained about the lack of fencing dividing their lands from those of the trail and the nuisances and disruptions caused by motorized vehicles and attempted to enforce a provision of the *Line Fences Act* that required a municipality buying land formerly used as a railway line to build and maintain fences along the boundaries of the land.

The municipality reacted by enacting a by-law designating the trail as a "highway", thus bringing it within an exception to the municipality's obligation under the *Line Fence Act*. The Ontario Court of Appeal struck down the by-law based on a finding by the lower court that the Township had acted in bad faith and had attempted to avoid responsibility that it knew it had. *Grosvenor et al v. East Luther Grand Valley (Township)*, 2007 ONCA 55, Ontario Court of Appeal

## **Trash talk: Garbage may be personal property**

The Halifax Regional Municipality decided that all solid waste generated in the Region should stay within municipal boundaries for disposal. The goal was to encourage source separation and reduce the amount of waste product diverted to landfills. The revenue from tipping fees for the landfill site inside the Region accounted for 25% of the Region's solid waste management budget, and the Region also received from the Province \$22.00 per ton for every ton of solid waste diverted from disposal.

The Region learned that some haulers were taking waste to landfill sites outside of its boundaries, where tipping fees were substantially lower. In response, the Regional Council enacted a by-law that prohibited the export of solid waste from the Region and required it to be disposed of in the Region. The Court struck down the by-law on the basis of lack of statutory authority, unlawful extraterritorial effect, unlawful municipal purpose, unlawful monopoly, and “quasi-expropriation of personal property”. The Court of Appeal has given leave to appeal from this decision. The appeal was heard on May 8, 2007, with judgment reserved.

### **City can profit from towing services**

The City of Abbotsford issued an RFP for the purchase of vehicle tow services for a five-year term. The towing services related to vehicles involved in motor vehicle accidents that needed to be towed off the City’s roadways, at rates imposed by the City. An unsuccessful bidder challenged the City’s award of an exclusive towing contract to the successful bidder by reason of the fact that the City required, in exchange for the contract, that the towing company enter into a revenue-sharing agreement, as well as provide free towing to the City for its own vehicles.

The Court held that the City had the power to enter into a revenue-sharing agreement, and there was no evidence that the scheme was not for the purposes of good government. The issue of whether or not the municipality ought to raise revenue by extracting a profit-sharing agreement in exchange for an exclusive contract was a matter of policy, and the City’s decision was not patently unreasonable.

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