MUNICIPAL LAW

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I. INTRODUCTION

I wish to apologize for the fact that again I am not including a section on municipal assessment and taxation; there are a couple of reasons for this failure on my part, but in the next survey I plan to include a substantial section on this topic.

II. LEGISLATION AND SOURCE MATERIALS

As I have previously stated, for obvious reasons I will not attempt to review recent developments in municipal legislation. However, the following major changes in the legislative schemes of the various provinces should be noted: the statutes of Alberta were revised in 1970 with no changes in the scheme of municipal legislation; Manitoba's statutes were also revised in 1970 and in the process The Local Authorities Election Act [1] and The Municipal Assessment Act [2] were split off from The Municipal Act which was itself re-enacted in 1970. [3] In Ontario the process of municipal regionalization was carried further with the enactments including to date the Regional Municipality of Ottawa-Carleton Act, [4] the Regional Municipality of Niagara Act, [5] the City of Lakehead Act, [6] The District Municipality of Muskoka Act, [7] and The Regional Municipality of York Act. [8] The only other piece of legislation on which to report is the re-enactment of the Planning Act of Nova Scotia. [9]

In regard to source materials, in the period under survey two volumes of continuing legal education lectures were published covering municipal

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[1] Man. Stat. 1970 c. 40.

[2] Man. Stat. 1970 c. 33.

[3] Man. Stat. 1970 c. 100. In the process of re-enactment changes were made to many sections.

[4] Ont. Stat. 1968 c. 115. *See also* Milner, *The Regional Municipality of Ottawa-Carleton Act, 1968*, 19 U. TORONTO L.J. 80 (1969).

[5] Ont. Stat. 1968-69 c. 106, *as amended*, Ont. Stat. 1968-69 c. 107.

[6] Ont. Stat. 1968-69 c. 56.

[7] Ont. Stat. 1970 c. 32.

[8] Ont. Stat. 1970 c. 50. Literature on the scheme of regionalization being carried out in Ontario can be obtained from the provincial government.

[9] N.S. Stat. 1969 c. 16.

law topics: the Special Lectures of the Law Society of Upper Canada, 1970 [10] and the Issac Pitblado Lectures, 1967-68. [11] As well, the following articles appeared: Portigal, "The Municipal Government Act—Notice of Intention to Commence an Action in Tort Against a Municipality;" [12] Houde, Kenniff and Leclerc, "La portée de l'article 435a du Code municipal quant à l'entretien des trottoirs l'hiver"; [13] Hutchins and Potvin, "The Quebec Municipal Code and the degree of duty of a Municipal Corporation for the Maintenance of its Sidewalks in Winter: Evolution in Law"; [14] Harvey, "Municipal Corporations and the Power to Expropriate Land for Private Development"; [15] Krueger, "The Provincial-Municipal Government Revolution in New Brunswick"; [16] Garant, "Le contrôle gouvernemental des administrations décentralisées: la tutelle administrative"; [17] Gibbs, "Urban Renewal, the Statutes and their Effect"; [18] Johnson, "Provincial-Municipal Intergovernmental Fiscal Relations"; [19] Tremblay, "Les institutions municipales du Québec"; [20] Bourassa, "Le Système municipal québécois"; [21] Rowat, "Le Système municipal canadien"; [22] and, "Compagnie du Téléphone Saguenay-Québec v. Ville de Port-Alfred." [23] Finally, for those interested in the structural reform of local government, the Local Government Boundaries Commission of Manitoba has put out a series of reports in the last two years dealing with education units in rural Manitoba, education, health and municipal units in the Metropolitan Winnipeg area, and health and municipal units in rural Manitoba. [24]

I should also mention a report which I overlooked in the last survey, which was published in 1968 by the Saskatchewan Department of Municipal Affairs and prepared by R. M. Bryden, entitled *Saskatchewan Planning Legislation Study.*

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[10] See particularly the following lectures at 159-225: Kennedy, *Some Observations on Planning Law*; McCallum, *Practice Before Planning Board, Council, Municipal Board and Ministers*; Rogers, *Practice Before the Committee of Adjustment.*

[11] This volume contains the following lectures: Owen, *Major City Cores in Canada* at 94-99; McNairay & Plokin, *Regulation By Local Government* at 114-122, and Nugent & Smethurst, *Condominiums, Air Rights and Co-operative Apartments* at 13-37.

[12] 8 ALTA. L. REV. 452 (1970).

[13] 11 C. DE D. 46 (1970).

[14] 11 C. DE D. 56 (1970).

[15] 18 CHITTY'S L.J. 118 (1970).

[16] 13 CAN. PUB. ADMIN. 51 (1970).

[17] [1969] DROIT ADMIN. 223.

[18] 7 ALTA. L. REV. 309 (1969).

[19] 12 CAN. PUB. ADMIN. 166 (1969).

[20] [1969] DROIT ADMIN. 113.

[21] SYSTÈME POLITIQUE 337.

[22] SYSTÈME POLITIQUE 319.

[23] 10 C. DE D. 383 (1969).

[24] All of these reports (or plans as they may be entitled officially) should be available from the Queen's Printer of Manitoba. The report for Greater Winnipeg (*i.e.*, THE PROVISIONAL PLAN FOR LOCAL GOVERNMENT UNITS IN THE GREATER WINNIPEG AREA) is a particularly thorough piece of research on the subject of governing a large urban centre; with it should be read the Government of Manitoba's WHITE PAPER ON PROPOSALS FOR URBAN RE-ORGANIZATION IN THE GREATER WINNIPEG AREA.

III. JUDICIAL DECISIONS

A. *Municipal Corporations Generally—Powers, Duties, Procedure at Meetings*

Judge Darling rendered a lengthy judgment in *Regina v. Harrold*[25] quashing the conviction of a man who had been charged with violating the Vancouver Abatement and Control of Noise by-law. The accused was a member of the International Society of Krishna Consciousness (Canada), duly incorporated by letters patent of Canada, and it was in connection with his participation in a proselytizing expedition that he had been charged. As Judge Darling described the facts:

> The group, consisting of four to six adherents (and the Crown said sometimes up to ten in number) were wont to go forth into the streets of Vancouver in accordance with their religious tenets, chanting their transcendental sounds (or mantra), to the accompaniment of a small drum and two or three cymbals, clothed in saffron robes and other manner of dress of the followers of their God Krishna, bringing their sublime message, as they described it, to the peoples of the city so that they too would benefit from the religious experience and achieve peace and serenity. The appellant and his group are obviously sincere and convinced of their religious tenets, going back into history, especially in India, some hundreds of years. The respondent does not contend otherwise than that the appellant and his group were following a *bona fide* religious belief, sincerely held and honestly being pursued at all relevant times, and that the chanting and sound of drums and cymbal were wholly within the mandate as revealed by their Master Lord Sri Chaitanya and that no other motive but a religious one is entailed. The group, during the period in question, would wend their way down Granville and Hastings Sts. in the downtown core of the city during the business hours of the week (and at other times and places), pausing at street corners on the sidewalk, sometimes up to an hour, to continue their chanting and to endeavour to project their message to the public.
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> Unfortunately their well-intended message did not communicate itself thusly to certain members of the public as a transcendental sound bringing peace and serenity, but (according to the Crown evidence) as an annoying and disturbing sound which distracted some of them from their business pursuits of, for example, making out advertising copy, making mathematical calculations of traffic victims' claims or pursuing the credit standings of customers of merchants along the way. As one witness described the sounds, to him it was like the constant tapping of a pencil on the table or the continuous tapping by a person on the next-door wall. Their evidence was that it was distracting and rendered concentration on their work wellnigh impossible. My sincere feelings go out to these people as I find their evidence was honestly given.[26]

The learned judge quashed the conviction on the ground that the by-law did not extend so as to prohibit members of a legitimate religious sect from carrying out bona fide religious activities, for religious freedom is a subject exclusively for the federal government.

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[25] 75 W.W.R. (n.s.) 673 (B.C. County Ct. 1970).

[26] *Id.* at 676-7.

Napanee v. Doornekamp [27] concerned the general "police" power which municipalities in many jurisdictions possess to pass by-laws and make regulations for the health, safety, morality and welfare of their inhabitants. In this case the Town of Napanee attempted in vain to justify as such a regulation, a refusal to issue a building permit unless the applicant assumed all responsibility for any future flooding of his land. The case also points up the care which municipalities, as creatures of statute, must take to make certain of the existence and substance of the power pursuant to which they purport to act.

The propriety of deliberations at council meetings were behind two cases. In one of the cases, a mayor declared a motion for the adoption of a committee report to be lost on the basis that, while a simple majority voted for the motion, the majority of the councillors in favour did not constitute a two-thirds majority which the mayor thought (wrongly as it turned out) was necessary. The mayor's decision in declaring the motion lost was challenged at the time, but the mayor paid no heed to the objection. On a mandamus application for an order requiring the mayor either to declare the motion carried, or to put the question to the council as he ought to have done according to the council's procedural by-law once his decision had been questioned, the court refused the first alternative order requested, but acceded to the second. To have made the first order would have entailed the court ordering an entity to exercise a duty in a certain way — an order that a court cannot make on a mandamus application (although one finds such orders). [28] Moreover the mayor had made a declaration (albeit a wrong one) that the motion had been lost and mandamus cannot be used to overturn an act already accomplished; rather, its use is confined to situations, as with the second alternative order requested, where an entity refuses to carry out a duty. In the other case, *Watling v. Oak Bay* [29] a motion to quash a zoning by-law was made upon a number of grounds; probably the most interesting one concerned the propriety of the deliberations of the council in passing the by-law.

Local improvements provided the fodder for the following three cases. The Saskatchewan Court of Appeal in *Re Campbell* [30] had occasion to reiterate what had long ago been established and what should surely have been a matter of common sense, namely, that a local improvement must not only be of the type of public work so authorized statutorily to be undertaken, [31] but must also be a public work that will be of special benefit to and enhance the value of the abutting properties. In this case it was found that road widening and sidewalk replacement to enable the conversion of an essentially residential street into an arterial thoroughfare was a public work for the benefit of the public generally or community at large, rather than

[27] [1970] 2 Ont. 419, 11 D.L.R.3d 129 (High Ct.).

[28] *Re* Spear, 1 N.B.2d 729, 5 D.L.R.3d 556 (1969).

[29] 70 W.W.R. (n.s.) 534 (B.C. Sup. Ct. 1969).

[30] 6 D.L.R.3d 456 (Sask. 1969).

[31] For example, as provided in The Local Improvements Act, SASK. REV. STAT. c. 154, § 3(1) (1965).

abutting property owners. The other two cases [32] dealt with failures to observe the relevant statutory procedure prescribed in connection with the passage of local improvement by-laws.

In the "by the way" category, *Re Christmas* [33] points up the importance of municipal corporations exercising powers through the use of a by-law (as opposed to the use of a resolution) when so expressly required. *Lewis v. Prescott* [34] dealt with the creation of reserve funds and Municipal Board approval in Ontario. And in *Sillery v. Canadian Petrofina Ltd.* [35] a by-law, which was passed pursuant to a power delegated in the Cities and Towns Act of Quebec [36] to enable municipalities to impose and levy taxes on "stock in trade . . . of all descriptions," and which simply imposed a tax on one named type of stock in trade, was held to be discriminatory and thus void.

B. *Disqualification of Councillors*

Barber v. Calvert [37] involved an attempt to unseat the mayor of Carberry, who had been in office since 1953, on the basis of an agreement entered into and carried out between the mayor and the municipality whereby the mayor purchased a piece of land from the municipality subject to certain conditions, and on the basis of business dealings between the mayor and the municipality whereby the mayor had been supplying the municipality with gasoline and oil for its vehicles. Reversing the trial judge, the Manitoba Court of Appeal held, *inter alia,* that according to sections 303 and 304 of The Municipal Act [38] and by virtue of the land transaction itself, the mayor lost his qualification to remain a member of the Carberry council; furthermore, the action could not become statute barred because the disqualification was a continuing one. The court also pointed out that its declaration of disqualification would not of itself vacate the office of the mayor; it was up to the mayor to vacate his office by disclaimer or for someone to bring an election petition. The court refused to declare the land transaction agreement to be null and void, indicating that this could only be done by an action against the Town of Carberry.

Dexter Havelock Clingan Beach lost his seat on the Nipawin town council as a result of the decision in *Re Mollberg's Application.* [39] Mr. Beach had prior to his election entered into a subdivision development

[32] Langs v. Preston, [1970] 3 Ont. 365, 13 D.L.R.3d 129; Saskatchewan Wheat Pool, 13 D.L.R.3d 754 (Sask. Q.B. 1970). In the latter case a failure to give precisely the stipulated number of days notice, was characterized as a voidable defect and thus cured by the effluxion of time and by § 228(1) of The City Act, SASK. REV. STAT. c. 147 (1965); as well, in connection with the court's reference (at 760) to its power "to set aside a by-law" and the statement of Cartwright J. (as he then was) in Wiswell v. Winnipeg, [1965] Sup. Ct. 512, at 514, 51 W.W.R. (n.s.) 513, at 514, 51 D.L.R.2d 754, at 755, see Harvey, *Casenote,* 3 MAN. L.J. 66, at 69-70 (1969).

[33] 14 D.L.R.3d 228 (Alta. 1970).

[34] [1970] 3 Ont. 759, 14 D.L.R.3d 143 (High Ct.).

[35] [1970] Sup. Ct. 533, 11 D.L.R.3d 606.

[36] QUE. REV. STAT. c. 233, § 523 (1941).

[37] [1971] 2 W.W.R. 401 (Man.).

[38] MAN. REV. STAT. c. 173 (1954).

[39] 74 W.W.R. (n.s.) 715 (Sask. Dist. Ct. 1970).

agreement, which was still extant and pursuant to which there were mutual obligations between the town and himself. The judge pointed out, *inter alia*, that notwithstanding the good faith and praiseworthy intentions of the individual concerned, the provisions of the disqualifying section of the relevant statute [40] had to be strictly enforced. [41]

C. *Nuisance and Negligence*

Does the piling of snow in the central portion of a street, in the course of snow clearing, in such a fashion as to obstruct the view of motorists approaching an intersection constitute non-repair of a highway or a nuisance on a highway? Not according to Mr. Justice Disbery who, in a well-researched judgment, held that the plaintiffs "have arguable claims on the ground of negligence or for the creation of a dangerous trap upon the highway." [42]

In *Beaulieu v. Riviere-Verte*, [43] a municipality employed an independent contractor to construct a sewer which the municipality was empowered to install. The negligent work of the contractor resulted in leakage which in turn contaminated the plaintiff's well. Insofar as the municipality's liability was concerned, it hinged, of course, on whether the resulting damage to the plaintiff flowed from casual or collateral negligence, on the part of the contractor, or on the failure of the contractor to perform some duty for which the municipality was responsible. Likening the facts to those in *Hardaker v. Idle District Council* [44] wherein a contractor, while constructing a sewer, damaged gas pipes with the result that there was an explosion which in turn damaged the plaintiff's furniture, the court held the Village of Riviere-Verte liable. Is the analogy a correct one?

In another case in which a well was affected by the construction of a municipal public work, the plaintiff was able to succeed, despite his failure to comply with the apparently relevant statutory sections governing the launching of actions against a city, [45] for he could base his cause of action on an easement agreement which he had executed with the municipality in connection with the offending public work. [46]

Dubois v. Sault Ste. Marie [47] involved an action arising out of an incident where a car being driven into a ditch, cut across a "stopped-up" portion of a city street. The city had posted a temporary barrier and warning

[40] The Town Act, SASK. REV. STAT. c. 148, § 22(1) (1965).

[41] The Manitoba Court of Appeal in the *Calvert* case, *supra* note 36, referred with approval to these remarks.

[42] Allan v. Saskatoon, 11 D.L.R.3d 369 (Sask. Q.B. 1970). *See also* Arsenault v. Moncton, 1 N.B.2d 815 (Q.B. 1969), a straightforward case dealing with the care required of both a municipal corporation and pedestrians in connection with snow removal and clearing operations.

[43] 2 N.B.2d 304, 13 D.L.R.3d 110 (1970).

[44] [1896] 1 Q.B. 335, 74 L.T.R. 69 (C.A.).

[45] The City Act, SASK. REV. STAT. c. 147, §§ 574, 576-78 (1965) and The Sewage Drainage Inquiry Act, Sask Stat. 1969 c. 60, § 3(2).

[46] Potyondi v. Melville, 74 W.W.R. (n.s.) 77 (Sask. Q.B. 1970)

[47] [1971] 1 Ont. 462, 15 D.L.R.3d 564 (1970)

device which had been removed by vandals. The court found that the actual cause of the accident was not the ditch which was simply a hazard, but rather the failure of the city "to provide adequate [advance] warning to motorists" ot the hazard, and thus section 443(3) of the Ontario Municipal Act [48] was not a bar to the action. But why was the city liable at all, for it would appear that the ditch, being on a legally closed portion of a former highway, could not be said to constitute non-repair of a highway? It appears that this important issue was not considered.

Easily the most interesting negligence case in my estimation was that of *Welbridge Holdings Ltd. v. Winnipeg*, [49] the trial judgment of which was noted in the last municipal law survey. [50] The Manitoba Court of Appeal, by a majority decision of four to one, dismissed an appeal from the judgment of Mr. Justice Hunt who had dismissed the action. The issue at stake was the liability of a municipal corporation to a developer whose project was frustrated by the botching of the passage of a necessary amendment to the applicable zoning by-law on the part of the municipal corporation. The judgment of the trial judge and the judgments delivered in the court of appeal are all worth reading, and I must say that on several of the issues at stake, particularly the two procedural ones concerning whether the action was statute barred and the issue concerning the legal relationship between the Board of Adjustment and the Metropolitan Corporation, the dissenting reasons of Mr. Justice Freedman (as he then was) are just as convincing as the reasons of the majority.

D. *Expropriation*

Within the last couple of years the governments of at least Ontario, Canada and Manitoba have re-enacted their expropriation legislation to accomplish a standardization of expropriation procedures for most if not all expropriating entities within each of their jurisdictions, the provision of pre-acquisition hearings on the fairness and necessity of proposed expropriations, and the codification of the bases upon which compensation is to be determined. [51] The legislation in these three jurisdictions is now quite similar. [52]

Two cases decided during the period under survey come to mind in connection with municipal expropriations: *Re Favretto*, [53] follows up

[48] ONT. REV. STAT. c. 249 (1960).

[49] 4 D.L.R.3d 509 (Man. Q.B. 1969); *aff'd* 72 W.W.R. (n.s.) 705, 12 D.L.R.3d 124 (1970). On December 17, 1970 the Supreme Court, in an unreported decision, dismissed the final appeal in this case.

[50] 4 OTTAWA L. REV. 244, at 251-52 (1970).

[51] The Expropriations Act, Ont. Stat. 1968-69 c. 36; The Expropriation Act, Can. Stat. 1969-70 c. 41; The Expropriation Act, Man. Stat. 1970 c. 78.

[52] *See also* J. MORDEN, AN INTRODUCTION TO THE EXPROPRIATIONS ACT 1968-69 (ONTARIO), (1969); Morden, *The Compensation Provisions in Bill C-200—The Expropriation Act (Canada)*, 18 CHITTY'S L.J. 77 (1970); E. TODD, THE FEDERAL EXPROPRIATION ACT, A COMMENTARY (1970); SPECIAL LECTURES OF THE LAW SOCIETY OF UPPER CANADA, 1970, at 225.

[53] [1970] 3 Ont. 55, 12 D.L.R.3d 320 (High Ct.).

Re Tweed Realty Ltd., [54] where the Court of Appeal of Ontario held that, when a municipality expropriates the land which it needs for a particular public work plus an additional quantity of land for good measure in a two by-law process, the second by-law expropriating the additional land must recite the relevant enabling section in The Municipal Act; in *Favretto*, Mr. Justice Houlden held that the *Tweed* case should be restricted to its facts and not applied so as to require any such recital where additional land is expropriated under the same by-laws as the land needed for certain work.

In *Gross v. Saskatoon* [55] the operators of a grocery store alleged that they were injuriously affected by a municipal expropriation and construction of a public work, although they did not have any of their lands taken. They were unsuccessful in their claim for compensation for it was held that, in terms of the applicable test as enunciated in *Autographic Register Systems v. C.N.R.*, [56] their damage did not amount to a nuisance but simply to customer inconvenience. It was not damage to the land involved but only to their business, and it was occasioned not by the construction of the public work involved but rather by the user of that public work.

E. *Land Planning and Use Control*

Re Priamo [57] dealt with a situation in which *A* alone and *A* and *B* as joint tenants in partnership owned abutting parcels of land which were apparently under part lot subdivision control pursuant to section 26(3) of The Planning Act of Ontario. [58] *A* sold the piece of land which he alone owned and then *A* and *B* entered into an agreement of purchase and sale to sell the piece of land which they owned as partners. Their prospective purchaser requisitioned the consent of the Committee of Adjustment on the reasoning that *A*, pursuant to section 26(3) [59] should have obtained the requisite consent to the earlier sale for he retained a fee in abutting land as a joint tenant and thus the earlier sale was null and void, which in effect would mean that *A* would still have the fee in the land abutting that now being conveyed by *A* and *B* as partners. Judge Sutherland ruled against the requisition on a vendors and purchasers application holding that *A* in the first sale situation did not retain "the fee" as one of two partners in the abutting land and thus the Committee of Adjustment's consent was neither necessary in the first sale nor in the second sale. The learned judge expressed the belief that through section 26(3) it was the intention of the legislature "to prevent property being purchased in large blocks and then being sold off in small portions without the municipality being able to place restrictions on such practices," which was not the situation at hand. As well, the learned judge referred to appropriate partnership law

[54] [1968] 2 Ont. 126, 68 D.L.R.2d 287.
[55] 73 W.W.R. (n.s.) 272 (Sask. Dist. Ct. 1970).
[56] [1933] Can. Exch. 152.
[57] [1970] 1 Ont. 591 (County Ct. 1969).
[58] ONT. REV. STAT. c. 296 (1960).
[59] ONT. REV. STAT. c. 296, § 26(3) (1960).

and statutory interpretation sources to justify his interpretation of section 26(3).

Interestingly, twenty days earlier in a very similar case, *Re Venta Investments Ltd.* [60] Judge Cavers dealt with lands owned by *A* and *B* and *A* and *C* as tenants in common. *A* and *B* were selling their lands and their purchaser requisitioned the obtaining of the required consent under section 26(1) (*b*), a section similar to section 26(3) but covering a slightly different situation. Without giving any reasons unfortunately, Cavers came to a conclusion opposite to that which Sutherland came in the *Priamo* case. [61]

Section 30(7)(*b*) of The Planning Act of Ontario, which gives protected status to proposed uses which are made non-conforming by the passage of a prohibitory by-law if the plans for the proposed non-conforming use "have, prior to the day of the *passing*" of the prohibitory by-law, been duly approved, again figured in several cases. (Emphasis added).

The decision in *Mapa v. North York* [62] which held that the "approval" contemplated in section 30(7) (*b*) is zoning and not building construction approval, was applied in *Re Walmar Investments Ltd.*, [63] a recent similar case. The *Walmar* case also points up the fact that in Ontario it is only in connection with subdivision developments that municipalities can require developers to enter into subdivision agreements. In yet another case similar to *Mapa, Regina v. Barrie*, [64] it was made clear that, in the light of the plain meaning to be ascribed to the wording of section 30(7) (*b*), approval of plans on the same day as the prohibitory by-law is passed is not soon enough, for the section requires approval to be obtained "prior to the day of" passage. Nonetheless, on "the weight of the equities" the court of appeal upheld the decision of the high court judge who on a mandamus application had ordered the building permit in question to be issued. I am baffled by the many cases in Ontario which seem to apply section 30(7) (*b*) as if it read that the requisite approval of plans has to be obtained prior to the date the by-law becomes *effective* rather than as it does read, prior to "the day of the *passing* of the by-law." (Emphasis added).

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[60] [1970] 1 Ont. 589 (County Ct. 1969).

[61] *See also* with respect to the meaning of the word "fee" in § 26(1)(*b*), *Re* Redmond, [1971] 1 Ont. 436, 15 D.L.R.3d 538 (1970) (whether it includes the interest held by a mortgagee) and *Re* Dacey, [1970] C.C.L. 1824 (Ont.) (unreported). In *Re* Carter, [1970] 1 Ont. 800, 9 D.L.R.3d 550 (High Ct. 1969), the court dealt with the term "fee" as it appeared in the then § 26(1)(*b*) of The Planning Act, ONT. REV. STAT. c. 296 (1960); the decision in the *Carter* case generated two other applications to the Ontario courts, namely Regina v. King, [1971] 1 Ont. 441, 15 D.L.R.3d 543 (High Ct. 1970) and *Re* Hookings, [1971] 1 Ont. 520 (High Ct. 1970). Section 26 of The Planning Act was repealed and re-enacted in 1970 and the current § 26(2), according to Osler J. in the *Hookings* case, at 521, was enacted "presumably to overcome the effect of *Re Carter and Congram.*" *Re* Vasey, [1971] 1 Ont. 477, 15 D.L.R.3d 659 (High Ct. 1970) considered whether an easement is such an interest as is described in the current § 26(2)(*b*) of The Planning Act.

[62] [1967] Sup. Ct. 172, 61 D.L.R.2d 1. See the first annual municipal law survey, 3 OTTAWA L. REV. 258, at 274-75 (1968).

[63] [1970] 1 Ont. 109, 12 D.L.R.3d 664.

[64] [1970] 1 Ont. 200, 8 D.L.R.3d 52 (1969)

I am not one who is given to commenting upon the quality of prose contained in judgments, mainly because I do not consider myself to be sufficiently qualified to do so; however, I must say that I found the judgment of Mr. Justice Wright in *Regina v. Lawson* [65] to be refreshingly lucid. In addition, the learned judge refused to issue an order of mandamus in connection with a building permit application in a situation where a municipality had passed a prohibitory by-law which had not yet been approved by the Municipal Board. In my view, the judge interpreted and applied section 30(7) (*b*) correctly.

Whitchurch v. McGuffin [66] is another in a series of cases, concerning the expansion of non-conforming uses, which date from the 1948 decision in *Central Jewish Institute v. Toronto.* [67] The wording of the relevant protective section of the Ontario Planning Act [68] was changed not too long after the *Central Jewish* decision, quite conceivably to overcome the reasoning employed therein by Mr. Justice Rand; nevertheless, the courts have continued to apply in effect Rand's reasoning with the result that total immunization is placed on any land or building used bona fide to whatever slight extent for a use which becomes non-conforming.

In another mandamus proceeding [69] a municipality was unable to rely on defects in a building permit application, for on the facts the municipality had indicated quite clearly to the applicant that even if his application was letter perfect it was not going to issue the building permit. The case also deals with a municipality's power to nullity the registration of subdivision plans in an area over which the municipality imposes subdivision control pursuant to section 26 of The Planning Act.

Nepean v. Leikin [70] is primarily a case exemplifying the application of section 14(1) of The Interpretation Act of Ontario [71] which deals with the effect of the repeal of a statute on acquired rights. In this case, the facts involved an agreement to sell a piece of land in connection with which, at the time the agreement was entered into, no consent of the Committee of Adjustment was needed pursuant to the then relevant section of The Planning Act, [72] but at the time that the deal was closed such consent was needed under the amended Planning Act.

In connection with the granting of conditional consents, it was pointed out in obiter by Mr. Justice Evans that section 32*b*(9*a*) of The Planning Act requires Committees of Adjustment to grant such consents in a two-stage process and to see to it that any conditions which they impose are fulfilled before ultimately granting their consent. In the case at hand, the

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[65] [1971] 1 Ont. 451, 15 D.L.R.3d 553 (High Ct. 1970).

[66] [1970] 2 Ont. 181, 10 D.L.R.3d 211 (High Ct. 1969).

[67] [1948] Sup. Ct. 101, [1948] 2 D.L.R. 1.

[68] Currently § 30(7)(*a*), ONT. REV. STAT. c. 296 (1960).

[69] *Re* Labelle, [1970] 2 Ont. 458, 11 D.L.R.3d 168 (High Ct.).

[70] [1971] 1 Ont. 567, 16 D.L.R.3d 113. *See also Re* Vasey, [1971] 1 Ont. 447, 15 D.L.R.3d 659 (High Ct. 1970).

[71] ONT. REV. STAT. c. 191 (1960).

[72] ONT. REV. STAT. c. 296 (1960).

Committee had given its consent, albeit ostensibly subject to a condition, in a one-stage process which would in turn make the application of section 32*b*(13) unreasonable.

The Edmonton Development Appeal Board was involved in the cases of *Re Zorba's Food Services Ltd.* [73] and *Regina v. Development Appeal Board.* [74] In the former case, the Appellate Division of the Alberta Supreme Court wrestled with the question of whether the Board had jurisdiction to vary conditions which it had earlier attached to a development permit. The three judges sitting were, for different reasons, in agreement that the Board had such power. In the latter case, the Board reopened a hearing after making a decision to allow the appellant to be heard; the appellant had received no notice of the hearing initially and thus had not appeared. It was held that the Board had no jurisdiction to do so. *Re Figol* [75] also concerned the power of the Edmonton Appeal Board, as well as the power of a Development Control Officer, under The Planning Act of Alberta [76] and the question of whether an applicant for a development permit must own the land involved. And, yet another Edmonton case, *Goldbar Developments Ltd. v. Edmonton,* [77] deals with the approval power of a municipal council under section 33 of the Alberta Planning Act with respect to a replotting scheme which has been prepared with municipal council authorization and which has received all the necessary preliminary consents and approvals.

The always difficult question of whether or not a statute or by-law gives anyone a cause of action against a violator of the statute or by-law was the subject of *Caldwell v. Saskatoon.* [78] Falling back on the definitive statement on this question uttered by Mr. Justice Duff in *Orpen v. Roberts,* [79] Mr. Justice MacDonald held that a ratepayer in Saskatchewan has no right to apply for an injunction in connection with the breach of a zoning by-law. [80] The applicant was actually complaining about the issuance of a building permit which he alleged was in contravention of the zoning by-law. His remedies were, according to the learned judge, to lay a charge or to appeal the issuance of the building permit to the board of zoning appeals.

In the realm of judicial decisions with singularly spectacular effect must be placed the decision of the Appellate Division of the Alberta Supreme Court in *City Abattoir (Calgary) Ltd. v. Calgary,* [81] for the decision left the

[73] 74 W.W.R. (n.s.) 218, 12 D.L.R.3d 618 (Alta. 1970).

[74] 9 D.L.R.3d 727 (Alta. 1969).

[75] 71 W.W.R. (n.s.) 321, 8 D.L.R.3d 1 (Alta. 1969).

[76] Alta. Stat. 1963 c. 43

[77] 7 D.L.R.3d 629 (Alta. 1969).

[78] 71 W.W.R. (n.s.) 152 (Sask. Q.B. 1969).

[79] [1925] Sup. Ct. 364, at 370, [1925] 1 D.L.R. 1101, at 1106.

[80] The learned judge indicated that in Ontario and Manitoba ratepayers have such a right; while this is certainly true under Ontario legislation (§ 486 of The Municipal Act, ONT. REV. STAT. c. 249 (1960)) I think that this statement is erroneous insofar as Manitoba ratepayers are concerned. *Supra* note 77, at 157.

[81] 70 W.W.R. (n.s.) 460, 8 D.L.R.3d 457 (Alta. 1969). The city, apparently, was launching an appeal to the Supreme Court.

city of Calgary without any zoning by-law.[82] Somewhat similarly, when the dust settled in *Regina v. Chamberlist*[83] the city of Whitehorse was left without a parking meter by-law. The case involved issues of constitutional law.

Mention should also be made of *Regina v. Hall*[84] which contains a general explanation, in addition to a determination concerning the practical application of section 30(*a*) of The Planning Act of Ontario;[85] *Re Thomas*[86] which deals with the jurisdiction of a board of variance under the Municipal Act of British Columbia;[87] *Regina v. Brown Camps Ltd.*[88] wherein this time the problem was attributable "to the lack of care and precision in the drafting of" a restricted area by-law of the Town of Mississauga — again Brown Camps Ltd. was unsuccessful;[89] and of *Re Kay-Bee Investments Ltd.*[90] which dealt with the question of whether a land use by-law which had been "approved" by the Ontario Municipal Board could in reality be held to have been approved and thus to be in force when a large number of conditions were attached by the Board.

Lastly, there were four decisions of note in which the courts considered definitions of terms. In *Re Edgely Farms Ltd.*[91] Mr. Chief Justice Gale speaking for the Ontario Court of Appeal held that a purchaser, party to a valid and subsisting agreement of purchase and sale has a sufficient interest to come within the meaning of "owner" in section 32*b*(2*a*) and thus can make a required application for the consent of a Committee of Adjustment under section 26 of The Planning Act.[92] *Catkey Construction (Toronto) Ltd. v. Bankes*[93] considered whether an owner at the end of a stopped-up highway, whose property does not front on the highway, "abuts" on the highway within the meaning of that term as used in legislation enabling owners of such property to purchase the land involved. Mr. Justice Dickson in *Silverwood v. Watt*[94] defined for his purposes the term "mobile home."

It is always a pleasure to read the learned judgments of Judge Tyrwhitt-Drake; in *North Saanich v. Alger*[95] he considered the questions of

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[82] *See also* The Calgary Herald, Sept. 18, Oct. 7, 9, 20, Nov. 5, Dec. 15, 1969, and Feb. 24, 1970.

[83] 72 W.W.R. (n.s.) 746, 12 D.L.R.3d 291 (Y.T. 1970).

[84] [1970] 2 Ont. 576.

[85] ONT. REV. STAT. c. 296 (1960).

[86] 72 W.W.R. (n.s.) 54 (B.C. 1969).

[87] B.C. REV. STAT. c. 255 (1960). The judgment also contains in terms of judicial review generally, a succinct statement on who can launch certiorari applications.

[88] [1970] 1 Ont. 388, at 391, 8 D.L.R.3d 502, at 505.

[89] *See* [1969] 2 Ont. 46.

[90] [1971] 1 Ont. 741 (High Ct. 1969).

[91] [1970] 3 Ont. 131, 12 D.L.R.3d 459.

[92] *Supra* note 84. As well, the court held that the Municipal Board has the power to refuse to allow an appellant to withdraw an appeal; if the Board allows an appellant to withdraw, it cannot allow another interested party to take up the appeal.

[93] [1970] 2 Ont. 687, 15 D.L.R.3d 13.

[94] 2 N.B.2d 894 (Q.B. 1970).

[95] 70 W.W.R. (n.s.) 657 (B.C. 1969).

what is a farm, who is a farmer, and what comprises farming as part of the answer to the issue at hand, namely, whether a municipality was entitled to an injunction against a certain individual whom the municipality alleged was breaching the residential zoning by-law applicable to his land.

F. *Miscellaneous Cases*

The delegation of power by a legislature to an individual identified as a particular minister of the crown may mean that the legislature intended to empower that particular representative of Her Majesty as such, or it may mean that the legislature simply wished to empower that particular individual, and his ministerial title was a convenient means of describing him. This difficult question was the subject of an appeal from the decision of Mr. Justice Grant in *Re Kingston Enterprises Ltd.* [96] At issue was whether the Minister of Municipal Affairs was entitled to be reimbursed for his costs. [97]

Anthes Imperial Ltd. v. Earl Grey [98] indicates that in Saskatchewan under The Mechanics' Lien Act [99] municipalities are just as liable as any other owner to having liens registered against their land in proper cases in connection with the installation of municipal works.

The constitutional validity of section 14(10)(*h*)(ii) of the Ontario Municipal Act [100] which empowers the Municipal Board to make compensation orders to holders of licences under The Public Vehicles Act who are adversely affected by an amalgamation or annexation, was called into question in *Re Local Lines (Sudbury) Ltd.* [101] on the ground that the section is ultra vires of the Legislature of Ontario in that it purports to confer judicial functions on persons not appointed to their office pursuant to section 96 of the B.N.A. Act. The court upheld the validity of the section in question. Amalgamation and annexation in a different context were at the centre of *Re Parry Sound*; [102] in this case the question was whether Parry Sound could in one and the same application to the Municipal Board not only annex certain localities but also amalgamate the resulting enlarged municipality with certain other existing municipalities. The court in deciding the question in the affirmative distinguished the apparently similar case of *Re Canada Cement Ltd.* [103]

Silver's Garage Ltd. v. Bridgewater [104] is another case which underlines the care with which people ought to contract with municipalities to ensure that they have a legally binding contractual agreement in existence. Here

[96] [1969] 1 Ont. 221, 2 D.L.R.3d 102 (High Ct. 1968). See last year's municipal law survey, 4 OTTAWA L. REV. 244, at 250 (1970).

[97] *Re* Kingston Enterprises Ltd., [1970] 3 Ont. 361, 12 D.L.R.3d 516 (High Ct.).

[98] 75 W.W.R. (n.s.) 566, 13 D.L.R.3d 234 (Sask. 1970).

[99] SASK. REV. STAT. c. 277 (1965).

[100] ONT. REV. STAT. c. 249 (1960).

[101] [1969] 2 Ont. 740, 6 D.L.R.3d 644.

[102] [1971] 1 Ont. 483, 15 D.L.R.3d 665 (1970).

[103] [1949] Ont. 75, [1949] Ont. W.N. 77 (High Ct. 1948).

[104] 1 N.S.2d 161, 8 D.L.R.3d 243 (1969).

the supplier of a snow clearing machine acted in the absence of any by-law or resolution on the mere strength of conversations with individual council members and municipal officials. The town used the machine involved for the entire winter and then decided that it did not wish to buy it. Although I do not question the resulting decision against the supplier, I wonder whether in light of the authorities cited, [105] Mr. Justice Cooper, speaking for the court, was correct in stating that the existence of at least a resolution is necessary for a supplier to succeed on the basis of an executed contract.

The status of policemen vis-à-vis the municipal corporation which employs them, in light of the relevant legislation in Ontario was considered in *Re St. Catharines Police Association* [106] where it was held that policemen are not legally "employees" of a municipal corporation.

With regard to the limitation section in The Village Act of Saskatchewan regarding damage actions against villages, [107] it is to be read alone unextended by section 34 of The Interpretation Act [108] for the maxim *generalia specialibus non derogant* applies.

And finally I end this survey with this fleeting reference to the momentous case of *Re Listowel* [109] which decided that it is within the jurisdiction of the Ontario Municipal Board to determine municipal boundaries under the Municipal Corporations Quieting Orders Act. [110]

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[105] *Id.* at 253.

[106] [1971] 1 Ont. 430, 15 D.L.R.3d 532 (High Ct. 1970).

[107] SASK. REV. STAT. c. 149, § 372 (1965).

[108] SASK. REV. STAT. c. 1 (1965).

[109] [1969] 2 Ont. 547.

[110] ONT. REV. STAT. c. 251 (1960).