TO:	CHAIR AND MEMBERS, BUILT AND NATURAL ENVIRONMENT COMMITTEE MEETING ON OCTOBER 17, 2011
FROM:	JAMES P. BARBER CITY SOLICITOR
SUBJECT	LONDON PROPERTY MANAGEMENT ASSOCIATION APPLICATION TO THE ONTARIO SUPERIOR COURT OF JUSTICE - COURT FILE NO. 2263/2010

RECOMMENDATION

That, on the recommendation of the City Solicitor, this report concerning the Judgment of the Ontario Superior Court of Justice issued September 30, 2011 upholding By-law No. C.P.-19, the Residential Rental Units Licensing By-law, **BE RECEIVED**.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

Report of the City Solicitor to the Board of Control at its meeting held on June 27, 2007
Report of the City Solicitor to the Planning Committee at its meeting held on August 24, 2009
Report of the City Solicitor to the City Council at its meeting held on September 21, 2009
Confidential Report of the City Solicitor to the Board of Control at its meeting held on September 27, 2010

BACKGROUND

On Friday, September 24, 2010 London Property Management Association ("LPMA") served an Application Record, seeking certain declarations and an order quashing By-law C.P.-19, the Residential Rental Units Licensing By-law, in whole or in the alternative, in part (the "Application").

The City Solicitor's Office provided legal opinion to the Board of Control at its meeting held on June 27, 2007, to the Planning Committee at its meeting held on August 24, 2009 and to the City Council at its meeting held on September 21, 2009, which addressed issues raised in the Application.

The Ontario Superior Court of Justice heard submissions from the LPMA and the City on May 9 and 10, 2011. As an intervener, the Information and Privacy Commissioner of Ontario also made submissions to the Court in connection with the issue of the application of the *Municipal Freedom of Information and Privacy Protection Act* ("MFIPPA").

On September 30, 2011, the Court released its Reasons for Judgment, a copy of which is attached at Appendix "A", upholding the By-law.

The Court made the following findings on the issues raised by LPMA:

1. No conflict with the *Residential Tenancies Act* – the Court held that it was not satisfied that dual compliance with the Act and the By-law was not possible or that the Act was frustrated (p. 12). The Court also held that the By-law does not create a new ground for the termination of a tenancy under the Act (p. 13).

2. No contravention of the *Ontario Human Rights Code* – the Court agreed with the City's submission that there is no evidence to support a finding that the By-law contravenes the *Code* as it applies throughout the City and does not target any specific group (p. 17).

3. No conflict with MFIPPA – the Court found that landlords are operating a business and as a result, the By-law does not conflict with the provisions of MFIPPA which protects personal information not business information (pp. 20-21).

4. The delegation under the By-law is lawful – the Court found that there is an exhaustive list of factors for the License Manager to consider and that the License Manager can refuse, suspend or revoke a license only where one of these enumerated grounds is satisfied. The Court also found that the By-law provides for a right of appeal from a decision of the License Manager and, as noted by the City, an applicant has the right to apply for judicial review from any decision of the License Manager (p. 22).

5. No bad faith – the Court found that (a) the By-law was not trying to prohibit a business and (b) that the actions of Council were not arbitrary (p. 24).

6. The provisions of the By-law are not vague or uncertain – the Court found that a "reasonably intelligent person could likely determine if they were a person who is operating a rental unit". The Court additional held that there was a difference between difficulty of interpretation and vagueness. Finally the Court held that while there were some inconsistent terms used, the inconsistency "is not so serious as to make it impossible to determine the meaning of this Licensing By-law". (pp. 26-27)

PREPARED BY:	**RECOMMENDED BY:**
JANICE L. PAGE **SOLICITOR**	**JAMES P. BARBER** **CITY SOLICITOR**

Encl.

CITATION: London Property Management Association v. City of London, 2011 ONSC 4710
COURT FILE NO.: 2263/2010
DATE: 2011/09/30

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
LONDON PROPERTY MANAGEMENT ASSOCIATION Applicant	Joe Hoffer, for the Applicant
– and –	
THE CORPORATION OF THE CITY OF LONDON Respondent	Janice L. Page, for the Respondent
– and –	
INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO Intervener	David Goodis, for the Intervener
	HEARD: May 10, 2011

REASONS FOR JUDGMENT

LEITCH J.

[1] This is an application under s. 273(1) of the *Municipal Act*, 2001, S.O. 2001, c. 25 to quash By-law CP-19, a by-law of the Corporation of the City of London (the "City") to provide for the licensing and regulation of residential rental units in the City (the "Licensing By-law").

[2] Section 273 of the *Municipal Act* permits any person to bring an application before this court to quash a by-law in whole or in part for illegality. Section 273(5) requires such an application to be made within one year after passage of the by-law in issue as was done in this case.

[3] The Applicant's position is that the Licensing By-law is illegal and should be quashed on the following grounds:

(a) it directly conflicts with and/or frustrates the purpose of superior Provincial legislation in violation of s.14 of the *Municipal Act*: (i) the *Residential Tenancies Act*, 2006 S.O. 2006, c. 17 as amended ("*RTA*"), (ii) the *Municipal Freedom and Protection of Privacy Act*, R.S.O. 1990, c. N56 as amended ("*MFIPPA*"), (iii) the *Human Rights Code*, R.S.O. 1990, c.H19 ("the *Code*") and (iv) the *Municipal Act*.

(b) the Licensing By-law was enacted in bad faith.

(c) the provisions of the Licensing By-law are vague and/or uncertain

The Standard of Review

[4] In *London (City) v. RSJ Holdings Inc.*, [2007] 2 S.C.R. 588, the Supreme Court of Canada, adopting a test from *Country Pork Ltd. v. Ashfield (Township)* (2002), 60 O.R. (3d) 529 (C.A.), stated at paras. 36 and 37 that the Superior Court can properly take jurisdiction over a s. 273 application if the application involves "a direct frontal attack on the underlying validity and legality of the by-law."

[5] *RSJ Holdings* also sets out the standard of review of a by-law. In reviewing the legality of the by-law, the proper standard is correctness. On the question of "illegality" which is central to a s. 273 review, municipalities do not possess any greater institutional expertise than the courts.

[6] This standard is adapted from the Supreme Court of Canada's decision in *Nanaimo (City) v. Rascal Trucking Ltd.*, [2000] 1 S.C.R. 342 where it was applied to a municipality's attempt to interpret a statute to determine the scope of its authority.

[7] The case law also recommends a deferential and purposive approach to municipalities' decisions. In *Cash Converters Canada Inc. v. Oshawa (City)* (2007), 86 O.R. (3d) 401, the Ontario Court of Appeal said at para. 20,

> The question of whether a by-law is *ultra vires* the jurisdiction of the enacting municipality is a question of law which is reviewed on the standard of correctness. However in determining the question, courts are

> to take a broad and purposive approach to the construction and interpretation of municipal powers.

The Relevant Provisions of the *Municipal Act*

[8] Section 8 of the *Municipal Act* provides that a municipality has powers that "shall be interpreted broadly so as to confer broad authority on a municipality to enable a municipality to govern its affairs as it considers appropriate and to enhance a municipality's ability to respond to municipal issues."

[9] Section 9 of the *Municipal Act* confers the powers of an actual person on a municipality.

[10] Section 10(1) of the *Municipal Act* permits a municipality to provide any, "service or thing that the municipality considers necessary or desirable for the public." Section 10(2) specifically authorizes a municipality to pass by-laws respecting economic, social and environmental wellbeing of a municipality; health, safety and wellbeing of persons; protection of persons and property; business licensing; and, services and things that the municipality is authorized to provide under s. 10(1).

[11] Section 14 of the *Municipal Act* states that a municipal by-law is without effect to the extent that it conflicts with a federal or provincial statute. Section 14(2) provides that without limiting the generality of subsection (1), there is conflict between a by-law of a municipality and a federal or provincial Act if the by-law frustrates the purpose of the Act.

[12] Section 23.2(1) authorizes a municipality to delegate its powers and duties under the Act. Section 23.2(1) provides that sections 9, 10 and 11 do not authorize a municipality to delegate legislative and quasi-legislative powers except those listed in subsection (2) and legislative and quasi-legislative powers may be delegated only to specific persons including individuals appointed by its council or an individual who is an officer, employee or agent of the municipality.

[13] Section 23.2(4) further restricts the delegation of legislative and quasi-legislative powers by providing that no delegation of a legislative power shall be made to an individual unless in the opinion of council, the power being delegated is of a minor nature. Section 23.2 (5) specifically

provides that the power to issue and impose conditions on a license is an example of a power considered to be of a minor nature.

[14] Section 151 permits a municipality to provide for a system of licenses with respect to a business, without limiting ss. 9, 10 and 11 of the Act, and permits a municipality to differentiate its licensing requirements between different types of businesses:

> 151. (1) Powers re licences- Without limiting sections 9, 10 and 11, a municipality may provide for a system of licences with respect to a business and may,
>
> (d) impose special conditions on a business in a class that have not been imposed on all of the business in that class in order to obtain, continue to hold or renew a license.

Summary of the Licensing By-law in Issue

[15] On January 1, 2007, the Province of Ontario enabled municipalities to pass a business Licensing By-law regulating residential rental units. Prior to that time, municipalities were prohibited from regulating such units.

[16] The preamble to the Licensing By-law provides that the City considered it necessary and desirable for the public to regulate the renting of residential premises for the purpose of protecting the health and safety of the persons residing in residential rental premises by insuring that certain regulations are met; that the required essentials, such as plumbing, heating and water are provided; that the residential rental premises do not create a nuisance to the surrounding properties and neighbourhood; and, to protect the residential amenity, character and stability of the residential areas.

[17] A Rental Unit is defined in the Licensing By-law as a building, or part of a building, consisting of one or more rooms, containing toilet and cooking facilities, designed for use as a single housekeeping establishment and used, or intended for use, as a rented residential premise.

[18] Rental Property is defined to include each building containing a Rental Unit and the lot on which the Rental Unit is situated.

[19] Pursuant to para. 2, the Licensing By-law prohibits anyone from operating a Rental Unit without holding a current valid license issued under the provisions of the Licensing By-law.

[20] The Licensing By-law applies to specific housing types as set out in Part 3 of the Licensing By-law.

[21] Part 4 of the Licensing By-law provides authority for the License Manager to administer the Licensing By-law. The License Manager is defined as the director of building controls for the City.

[22] Part 5 provides further requirements for an application for a license including the name address and telephone number of each owner and payment of a prescribed fee per rental property. This part also provides that every application may be subject to investigations by and comments or recommendations from the municipal or provincial departments or agencies as the License Manager deems necessary including but not limited to the director of building control; the manager of by-law enforcement; the fire chief; and the medical office of health.

[23] Part 6 of the Licensing By-law provides for the issuance of licenses and sets out information to be set out on the face of the license (including the name, address and telephone number of each licensee), what conditions may be imposed upon the issuance of a license and the fact that each valid license shall have a term of one year.

[24] These conditions include that the conduct of the applicant or licensee shall not afford reasonable cause to believe that they will not carry on or engage in the operation of the Rental Unit in accordance with the law or with honesty or integrity; that the Rental Unit and Rental Property shall comply with the requirements of the *Building Code Act*, the *Fire Prevention and Protection Act*, 1997, and the regulations there under and the City's Property Standards By-law; that the use of the Rental Unit and Rental Property is permitted or conforms with the uses permitted under the applicable zoning by-law or is a legal non-conforming use; and that the licensee shall ensure that a legible copy of the issued license is posted and maintained in a prominent position inside the Rental Unit near the front entrance.

[25] Part 7 of the Licensing By-law delegates to the License Manager the power and authority to issue, renew, refuse to renew, or revoke or suspend a license or impose conditions. Section

7.2 sets out the grounds for such decisions by the License Manager. This section provides that the License Manager may refuse to issue or renew a license or may revoke or suspend a license on the following grounds:

> (i) the conduct of the Applicant or Licensee, or any partner, officer, director, employee or agent of the Applicant or Licensee, affords reasonable cause to believe that the Applicant or Licensee will not carry on or engage in the operation of the Rental Unit in accordance with the law or with honesty or integrity;
>
> (ii) there are reasonable grounds to believe that an application or other documents provided to the Licence Manager by or on behalf of the Applicant or Licensee contains a false statement;
>
> (iii) an Applicant or Licensee is carrying on activities that are in contravention of this By-law; or
>
> (iv) an Applicant or Licensee does not meet all of the requirements of this By-law or that the Rental Unit or Rental Property does not comply with the provisions of this By-law.

[26] Decisions by the License Manager are to be made in writing and there is a right of appeal to a Hearings Committee.

[27] Part 8 of the Licensing By-law provides for a hearing before the Hearings Committee which is subject to the *Statutory Powers and Procedures Act*.

[28] Part 10 of the Licensing By-law sets out penalties for non-compliance with the provisions of the by-law.

The Overall Position of the Parties and Evidence Filed on the Application

[29] The Applicant's position is that once the City had the jurisdiction to licence residential rental units, the City determined to utilize the Licensing By-law to resolve issues relating to student housing. The Applicant questions the statement in the Licensing By-law's purpose that it is to "protect the residential amenity, character and stability of residential areas" and submits that the Licensing By-law targets student housing. Furthermore, the Applicant submits that City Council rejected the overwhelming majority of public input and submissions opposed to the

Licensing By-Law and the contents of two petitions containing over 9,000 signatures of tenants opposed to the proposed Licensing By-Law.

[30] With respect to the licensing application procedure, the Applicant notes that the City has not refused any licenses but has instead placed 842 of 2617 applications into "indefinite abeyance" since the Licensing By-law came into force on March 1, 2010.

[31] The application record includes affidavits from Ms. MacLaren and Mr. Angelini, both of whom applied for a license which resulted in them being directed to either remove or shut down units in their property which the License Manager asserted was an illegal use of the property. Both of these applicants retained counsel and provided evidence to disprove the License Manager's contention that the use was illegal.

[32] The City, in its responding application, set out that the City Council received nine public reports from civic administration prior to passing the Licensing By-law, held two open houses to consider options and convened two public participation meetings to consider a draft proposed bylaw. In addition, the City observes that the Applicant also had access to civic administration, including the City's lawyers and councillors, to voice concerns with the Licensing By-law.

[33] City Council received advice from the fire marshall who made a recommendation that the City consider regulation of Rental Units by way of licensing to address illegal conversions of properties as a result of an investigation into fires in illegal basement residential units. City Council also received information that the number of property standard complaints and tenant complaints were increasing significantly.

The Test Required under s. 14 of the *Municipal Act*

[34] As previously set out, section 14 of the *Municipal Act* provides that a municipal by-law is without effect to the extent that it conflicts with a provincial statute.

[35] In *Croplife Canada v. Toronto (City)* (2005), 75 O.R. (3d) 357 (C.A.), the Court of Appeal dealt with a by-law limiting the use of pesticides within the City of Toronto. To determine whether the by-law conflicted with federal or provincial legislation, the court applied the following test at para 63:

> ...the conflicts test explicitly provided in s. 14 of the *Municipal Act*, 2001 must be interpreted in accordance with the two-pronged test prescribed in Rothmans: (1) Is it impossible to comply simultaneously with the pesticide by-law and with the federal PCPA or the Ontario Pesticides Act?; (2) Does the by-law frustrate the purpose of Parliament or the Ontario legislature in enacting those laws? If the answer to both questions is "no," then the by-law is effective.

[36] Therefore, in order to determine whether the Licensing By-law conflicts with a provincial statute, the following inquiries must be made:

a. Is it impossible to comply simultaneously with the Licensing By-law and the superior legislation? and;

b. Does the Licensing By-law frustrate the purpose of the Ontario Legislature in enacting the superior legislation in issue?

[37] If the answer to either question is "yes", the Licensing By-law conflicts with superior provincial legislation and is without effect to the extent of any conflict.

The Interpretation of Impossibility of Dual Compliance and Frustration of Purpose

[38] In *Croplife,* the Court went on to say that if a particular level of government intends to occupy the field on an issue then they must use very clear language to express that intention. In *Croplife*, the first prong of the test was conceded. With respect to the second prong, the Court found that the by-law did not frustrate the purpose of the superior legislation. The superior legislation was permissive in the use of pesticides but did not propose to allow everyone to use any permitted pesticide in any unrestricted way. Therefore, superior legislation did not preclude the municipal by-law limiting the use of certain pesticides.

[39] In *Cash Converters*, the same test was used in examining a by-law requiring dealers of second hand goods to record personal information about sellers of such goods and to transmit that information electronically to the police department at least once daily. The court had to determine whether the by-law conflicted with s. 28(2) of *MFIPPA* which prohibits the collection of personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

[40] In *Cash Converters,* the City of Oshawa argued that the by-law did not conflict with *MFIPPA* because the collection of the information was necessary for the proper administration of a lawfully authorized activity. However, the by-law was found to be in conflict with *MFIPPA* because the City of Oshawa was unable to demonstrate that the collection of personal information and its transmission to the police was necessary to protect the sellers of second hand goods and their customers as required under s. 28(2).

[41] In *Law Society of British Columbia v. Mangat,* [2001] 3 S.C.R. 113, the federal *Immigration Act* provided that non-lawyers could appear before the Immigration Review Board for a fee. The provincial *Legal Profession Act* prohibited non-law society members from providing legal services. The court found that it was logistically possible to comply with both Acts by becoming a member in good standing of the law society or by not charging a fee. However, to require this would be contrary to the purpose of the impugned sections of the *Immigration Act.*

[42] In discussing operational conflict, the court said at para. 69:

> There will be a conflict in operation where the application of the provincial law will displace the legislative purpose of Parliament. The test is stated at p.191 [of *Multiple Access*]: "one enactment says 'yes' and the other says 'no'; 'the same citizens are being told to do inconsistent things'; compliance with one is defiance of the other".

[43] And at para. 72:

> In this case, there is an operational conflict as the provincial legislation prohibits non-lawyers to appear for a fee before a tribunal but the federal legislation authorizes non-lawyers to appear as counsel for a fee. At a superficial level, a person who seeks to comply with both enactments can succeed either by becoming a member in good standing of the Law Society of British Columbia or by not charging a fee. ... To require "other counsel" to be a member in good standing of the bar of the province or to refuse the payment of a fee would go contrary to Parliament's purpose in enacting ss. 30 and 69 (1) of the *Immigration Act.* In those provisions, Parliament provided that aliens could be represented by non-lawyers acting for a fee, and in this respect it was pursuing the legitimate objective of establishing an informal, accessible (in financial, cultural, and linguistic terms), and expeditious process, peculiar to administrative tribunals. Where there is an enabling federal law, the provincial law cannot be contrary to Parliament's purpose. ...

[44] Another way in which one law might frustrate the purpose of another is if the intention of the superior law is to provide a complete code for the subject matter in question. *Khan v. Metroland Printing, Publishing & Distributing Ltd* (2003), 68 O.R. (3d) 135 (aff'd on other grounds 75 O.R. (3d) 165) considers this issue. In this case, the court was deciding whether the *Libel and Slander Act* provided a complete code of procedure such that the *Rules of Civil Procedure* did not apply.

[45] The court stated at para. 69:

> A piece of legislation can be considered a code once it provides a comprehensive treatment or contains a comprehensive list of laws and procedures in that particular field. This was clearly why the *Landlord and Tenant Act* was found to be an "extensive-self contained code" in *Stone v. Metropolitan Toronto Housing Authority.* **[relied on by the Applicant as discussed below]**

Does the Licensing By-law directly conflict with and/or frustrate the purposes of the *RTA*?

[46] The *RTA* states at s. 3:

> This Act applies with respect to rental units in residential complexes, despite any other Act and despite any agreement or waiver to the contrary.

[47] And at s. 4:

> If a provision of this Act conflicts with a provision of another Act, other than the *Human Rights Code*, the provision of this Act applies.

[48] The Applicant submits that the *RTA* was intended to be a complete code to regulate all aspects of residential tenancies. The Applicant relies upon *Re Stone v. Metropolitan Toronto House Authority* 59 O.J. No. 1054 quoted by *Kahn* for the assertion that the *RTA* constitutes a complete code. It also relies on *Nistap Development Corp v. McIntyre,* [2009] O.J. 2960.

[49] *Re Stone* dealt with Part IV of the *RTA* (which has since been repealed) and found that this particular part was "an extensive self- contained code of procedure that must be followed in s. 113 'summary applications'" [Emphasis added]. *Nistap* dealt with the *Tenant Protection Act, 1997* (repealed and replaced by the *RTA*). This case found that the *Tenant Protection Act* "is a complete code of the rights between the landlord and the tenant" [Emphasis added].

[50] In my view, *Re Stone* and *Nistap* are different than the situation on this application. It is significant that *Re Stone* was dealing with one part of the landlord and tenant legislation for particular procedural purposes. In *Nistap*, the court dealt with the rights between landlords and tenants. The Licensing By-law regulates the rights of the landlord vis-à-vis the City.

[51] The purpose of the RTA set out in s. 1 supports the notion that the Licensing By-law was regulating different conduct. Section 1 of the RTA provides as follows:

> The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes.

[52] In my view, the legislature has not precluded other acts from dealing with units in residential complexes.

[53] In *114957 Canada Ltée (Spraytech,Société d'arrosage) v. Hudson (Town)*, [2001] 2 S.C.R. No. 42 at para. 40, similar provisions were taken to show that the legislature had contemplated the existence of complementary legislation:

> According to s. 102 of the Pesticides Act, as it was at the time By-law 270 was passed: "The provisions of the Pesticide Management Code and of the other regulations of this Act prevail over any inconsistent provision of any by-law passed by a municipality or an urban community." Evidently, the Pesticides Act envisions the existence of complementary municipal by-laws. As Duplessis and Hétu, supra, at p. 109, put it, [TRANSLATION] "the Quebec legislature gave the municipalities the right to regulate pesticides, provided that the by-law was not incompatible with the regulations and the Management Code enacted under the Pesticides Act". Since no Pesticide Management Code has been enacted by the province under s. 105, the [page273] lower courts in this case correctly found that the by-law and the Pesticides Act could co-exist. In the words of the Court of Appeal, at p. 16: [TRANSLATION] "The Pesticides Act thus itself contemplated the existence of municipal regulation of pesticides, since it took the trouble to impose restrictions."

[54] I note also that as a matter of statutory interpretation, courts should attempt to interpret two potentially conflicting pieces of legislation in a way that avoids a conflict. In *Brantford*

(City) Public Utilities Commission v. Brantford (City), (1998) 36 O.R. (3d) 419, the Ontario Court of Appeal said at para. 27:

> In dissolving the Public Utilities Commission and establishing the Hydro-Electric Commission the City was not exercising any of the powers given to municipalities by Bill 26. More importantly, in my view, the exercise of those powers did not conflict with s. 210.4 or the regulations. In approaching this issue it is important to bear in mind a fundamental principle of statutory construction that courts should attempt to avoid finding a conflict between two pieces of legislation. Anglin J. expressed this principle in *The Toronto Railway Company v. Paget* (1909), 42 S.C.R. 488 at p. 499:
>
> - It is not enough to exclude the application of the general Act that it deals somewhat differently with the same subject-matter. It is not "inconsistent" unless the two provisions cannot stand together.

[55] The Applicant asserts that there is a possible conflict between the Licensing By-law and the *RTA*. If a license is refused or revoked under the Licensing By-law, it may be impossible for the landlord to evict the tenant in a way that complies with the *RTA*. However, if the landlord does not evict the tenant then they will be violating the Licensing By-law. The Applicant asserts that a conflict may arise if the failure to get a license results in a tenant eviction.

[56] The Applicant points out s. 37 of the *RTA*, which provides that: a tenancy may be terminated only in accordance with this Act. However, s. 2.2 and 2.4 of the Licensing By-law provide, respectively, that no person shall operate a Rental Unit without holding a current valid license or while their license is under suspension.

[57] The Licensing By-law does not discuss what happens to the tenant in a scenario where a license is either refused or revoked. The Applicant points to Ms. McLaren's and Mr. Angelini's circumstances where the License Manager asserted the Rental Unit was illegal and could not be rented. Assuming that a refusal to grant, or a revocation of, a license renders the tenancy at an end the Applicant submits that there is an operational conflict between the statutes.

[58] However, I am not satisfied that dual compliance is not possible or that the *RTA* is frustrated. For example, if a license is not granted because of a failure to meet Building Code standards, the landlord may properly evict the tenant under s. 50 of the *RTA* in order to undertake repairs to the rental property.

[59] The Applicant asserted that another potential area of conflict that exists is between s. 6.6 of the Licensing By-law and s. 18 of the *RTA*. Section 18 of the *RTA* provides that, covenants concerning things related to a rental unit or the residential complex in which it is located run with the land, whether or not the things are in existence at the time the covenants are made. Therefore, when a building containing a rental unit is sold the purchaser must maintain the tenancy subject of the limited exceptions set out in s. 49.

[60] However, s. 6.6 of the Licensing By-law states "No licence issued under this By-law may be sold, purchased, leased, mortgaged, charged, assigned, pledged, transferred, distrained or otherwise deal with."

[61] Therefore, if a purchaser takes ownership of the Rental Unit, the previous license is no longer valid and the unit becomes unlicensed. A purchaser is unable to obtain a license in advance because, according to the Licensing By-law, only the owner of a unit may apply for a license. This results in a gap in time where the unit it unlicensed. The Applicant argues that because both the current owner and the purchaser are unable to evict the tenant under the *RTA* and the purchaser will be unable to comply with the Licensing By-law there are operational conflicts.

[62] However, I cannot accept this argument by the Applicant. The Licensing By-law contains no provisions which evict tenants. I disagree with the Applicant's submission that the Licensing By-law creates a new ground for termination of a tenancy not found in the *RTA*. The penalty for failing to comply with a Licensing By-law is the potential of a fine or a finding of contempt. The penalty section of the Licensing By-law provides for the imposition of a fine for contravening any provision of the Licensing By-law and s. 10.5 provides that the court which enters a conviction and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence (that is operating without a license) and requiring the person to correct the contravention in the manner and within the period that the court considers appropriate.

Does the Licensing Bylaw directly conflict with the *Code* by discriminating in the right to housing accommodation on the basis of age, marital status and receipt of public assistance?

[63] The purposes of the *Code* are stated in its preamble which includes the following:

> WHEREAS it is public policy in Ontario ... to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province;

[64] Further, s. 2 of the *Code* states as follows:

> 2. (1) Accommodation- Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability or the receipt of public assistance.

[65] On the first prong of the test under s. 14 of the *Municipal Act* dual compliance is possible. The Licensing By-law does not compel landlords to refuse to rent to any particular group. It merely requires them to meet certain safety standards and to maintain a license.

[66] The Applicant argues that the Licensing By-law has a discriminatory effect with respect to the right to accommodation on a ground protected by the *Code* contrary to s. 9 of the *Code* and as a result the Licensing By-law frustrates the purpose of the *Code*.

[67] In *Ontario (Director, Disability Support Program) v. Tranchemontagne* (2006), 102 O.R. (3d) 97 at para. 86, the Ontario Court of Appeal set out the appropriate test to apply when determining whether discrimination exists for the purposes of the *Code*. This test asks,

1. Does the law create a distinction based on an enumerated or analogous ground?
2. Does the distinction create a disadvantage by perpetuating prejudice or stereotyping?

[68] The *Code* does not list student status as an enumerated ground. Therefore, it is necessary to analyze whether student status is an analogous ground.

[69] The considerations for analogous grounds often come from the jurisprudence surrounding s.15 of the *Charter*. In *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203, the majority of the Court, in considering the grounds enumerated in s. 15, says at para. 13,

> It seems to us that what these grounds have in common is the fact that they often serve as the basis for stereotypical decisions made not on the basis of merit but on the basis of a personal characteristic that is immutable or changeable only at unacceptable cost to personal identity. This suggests that the thrust of identification of analogous grounds at the second stage of the Law analysis is to reveal grounds based on characteristics that we cannot change or that the government has no legitimate interest in expecting us to change to receive equal treatment under the law. To put it another way, s.15 targets the denial of equal treatment on grounds that are actually immutable, like race, or constructively immutable, like religion.

[70] The issue of whether student status is an analogous ground was considered in *Allen v. Canada (Canadian Human Rights Commission)*, [1992] F.C.J. No. 934 and *Wong v. University of Toronto*, [1989] O.J. No. 979.

[71] In *Allen*, the Federal Court of Canada was dealing with a claim made against the Human Rights Commission regarding a complaint under the *Canadian Human Rights Act*. A group of students was claiming that they were discriminated against based on race, and in particular, that student status was equivalent to race. In dismissing this claim McGillis J. said,

> A review of the jurisprudence, literature and international human rights conventions and agreements reveals that "race" is not an ambiguous term, but rather is consistently referred to in the context of inheritable, physical attributes. Student status is not an inheritable, physical attribute, but rather is a transient, non-physical state. Accordingly, a group of students may not properly be included in the definition of the word "race" for the purposes of making a complaint on a prohibited ground of discrimination under the Act. Furthermore, student status is not analogous to any ground of discrimination proscribed in subsection 3(1) of the Act.

[72] In *Wong*, the Ontario District Court briefly considered whether an academic appeals process mandated by the University discriminated against a student on the basis of his student status,

> Finally the plaintiff argues that to deny him access to the courts discriminates against students within the meaning of section 15(1) of the Canadian Charter of Rights and Freedoms. While I am not denying Mr. Wong access to the courts and this point was not argued extensively before me, I agree with the defendants that the rights of students are not analogous to those listed in section 15(1).

[73] I reach a similar conclusion and do not consider student status an analogous ground. However, because the Applicant asserts that the Licensing By-law discriminates on the basis of age, marital status and receipt of public assistance I will consider whether the Licensing By-law creates a distinction based on these grounds and whether this distinction creates a disadvantage that perpetuates stereotypes and prejudice. In relation to this question, the purpose of the by-law is important (*Sacre Coeur (Municipalite) c. Lacombe*, [2010] 2 S.C.R. 453,at para. 20).

[74] The Applicant argues that the Licensing By-law has a collateral purpose to limit the rental housing available to students and also to young single people and those who receive social assistance and the City has enacted the by-law with that purpose in mind. According to the Applicant, the effect of the Licensing By-law is to impose restrictive conditions on the rental properties typically occupied by students, young single people and recipients of social assistance.

[75] In *Tranchemontagne, supra,* the Court of Appeal stated at para. 90 that,

> In the human rights context, in most instances, it will be evident that a *prima facie* case of discrimination has been established based solely on the claimant's evidence showing a distinction based on a prohibited ground that creates a disadvantage (in the sense of withholding a benefit available to others or imposing a burden not imposed on others). An inference of stereotyping or of perpetuating disadvantage or prejudice will generally arise based on that evidence alone.
>
> However, in other instances a more nuanced inquiry may be necessary to properly assess whether a distinction based on an enumerated ground that creates a disadvantage actually engages the right to equal treatment under the Code in a substantive sense.

[76] In *Hendershott v. Ontario (Ministry of Community and Social Services)*, [2011] O.H.R.T.D. No. 478, the Ontario Human Rights Tribunal considered *Tranchemontagne* and stated at para. 55,

> I would not interpret the discussion of prejudice or stereotyping as adding a new element to the traditional human rights analysis. I adopt the reasoning of the Court of Appeal that in most cases under the *Code*, prejudice and stereotyping will be inferred where the claimant is able to link their identity to the prohibited ground and prove that the ground was a factor in the disadvantage they experienced. In those cases where the claimant's identity and/or the subject-matter of their claim appear inconsistent with the purposes of the *Code*, consideration of issues such as prejudice and stereotyping may be useful in clarifying whether or not the allegations raise concerns for substantive equality.

[77] The City points out that the Human Rights Commission was provided with a copy of the Licensing By-law and provided the City with the following qualified advice on March 24, 2009:

> In general, by-laws can come into conflict with the *Code* when they either intend to target particular groups based on *Code* grounds in their creation or enforcement, or where they tend to have an adverse impact on people from *Code* protected groups. Where licensing by-laws are not connected to a rational purpose, target particular geographic areas where residents are known to be from *Code*-protected groups, and a negative impact results (example loss of affordable housing, or higher scrutiny from officials), this could be problematic from a human rights perspective. In this case, however, the licensing scheme is city-wide and based on structure type (example – four or fewer rental units), not on the characteristics of renters, and appears to be based on objective rationale that these units are more likely to be in a higher need for repair.

[78] I agree with the City's submission that there is no evidence to support a finding that the Licensing By-law contravenes the *Code*. It applies throughout the City. It does not target any particular person or group of people or whether or not the housing is affordable. Rather, it targets specific types of dwellings. The Licensing By-law does not conflict with the *Code*.

Does the Licensing By-law directly conflict with *MFIPPA*?

[79] Section 5.1 of the Licensing By-law requires every application for a licence to include,

> (a) the name, municipal address and telephone number of each Owner;
> (b) if the Owner is a partnership, the name, address and telephone number of each partner;
> (c) if the Owner is a corporation, the address of its head office, the name, address and telephone number of each director and officer;
> (d) the municipal address and legal description of the Rental Unit; ...

[80] Section 6.1 provides the information the licence must include, information which the Applicant asserts is personal and which the City asserts is business contact information. Section 6.2 requires that the licence be visibly and prominently displayed inside near the front entrance of the rental unit,

> 6.1. Every licence issued under this By-law shall be in the form and manner as provided by the Licence Manager and without limitation shall include on its face the following information;
>
> (a) the licence number
> (b) the name, address and telephone number of each Licensee;
> (c) the date the licence was issued and the date it expires; and,
> (d) the municipal address of the Rental Unit
>
> 6.2 Every licence that is issued for the first time, and every renewal thereof, is subject to the following conditions of obtaining, continuing to hold and renewing a licence all of which shall be performed and observed by the Applicant or the Licensee:
>
> (k) the Licensee shall ensure that a legible copy of the license is issued under this By-law is posted and maintained in a prominent and visible position inside the Rental Unit near the front entrance.

[81] As the Intervener notes, this application raises the threshold issue of whether the names, addresses and telephone numbers collected by the city under the Licensing By-law qualify as "personal information" under the definition in sections 2(1) and 2(2.1) of *MFIPPA*. The definition of "personal information" in s. 2(1) of *MFIPPA* is as follows:

> "Personal information" means recorded information about an identifiable individual, including,
>
> (d) the address, telephone number....of the individual.

[82] Section 2(2.1) states the following:

> "Personal information" does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

[83] Section 28 (2) of *MFIPPA* states,

> (2) Collection of personal information- No person shall collect personal information on behalf of an institution unless the collection is expressly

> authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

[84] Section 31 of *MFIPPA* states,

> 31. Use of personal information- an institution shall not use personal information in its custody or under its control except,
>
> (a) if the person to whom the information relates has identified that information in particular and consented to its use;
> (b) for the purpose for which it was obtained or compiled or for a consistent purpose; or
> (c) for a purpose for which the information may be disclosed to the institution under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act*.

[85] Whether the information required by the Licensing By-law is personal information is central to the question of dual compliance. If it is business information than it is outside the ambit of *MFIPPA*. If the information required by the Licensing By-law is business information it is not subject to *MFIPPA* and therefore there can be no problem with dual compliance.

[86] The Intervener in this case made three submissions. The first submission raises the doctrine of adequate alternative remedy. Their position is that this court can decline to make a ruling on this issue because judicial review of the Commissioner's decision is available.

[87] In support of its first submission, the Intervener referred me to *C.B. Powell Ltd. v. Canada (Border Services Agency)*, [2010] F.C.J. No. 274, where the Federal Court of Appeal said at para 31,

> ...absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted.

[88] In *Ontario (Information and Privacy Commissioner) (Re)*, [2011] O.J. No. 1071 (S.C.) at para. 31, the court set out the six factors enumerated by the Supreme Court of Canada in *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3 to consider in determining whether an appeal mechanism is an adequate alternative remedy,

> 1. The procedures on appeal including the convenience of the alternative remedy.

2. The nature of the appellate body, *i.e.* its investigatory, decision-making and remedial capacities.
3. The powers of the appellate body and the manner in which they were to be exercised.
4. Expeditiousness and costs.
5. The burden of the previous finding.
6. The nature of the error.

[89] However, I am unable to accept this first submission from the Intervener. In *Reynolds v. Ontario (Information and Privacy Commissioner)*, [2006] O.J. No. 4356 the applicant argued that the information and privacy Commissioner had a duty to adjudicate privacy complaints because of s. 1(b) of *MFIPPA* which sets out one of the purposes of the legislation as being to "protect the privacy of individuals with respect to personal information about themselves held by institutions." However, the court found that there was a striking difference in the way the legislation handled access disputes and privacy complaints and the Commissioner only had tribunal jurisdiction for access disputes.

[90] The other submissions of the Intervener were that this court could adopt the Commissioner's finding that the information in issue was not "personal information" under s. 2(1) of *MFIPPA* as a result of the Applicant's privacy complaint to the Commissioner or for this court to make a ruling on the *MFIPPA* issues.

[91] The Court of Appeal in *Cash Converters* at para. 28 was clear that the Commissioner has "recognized expertise in the interpretation and application of the statues relating to personal information and the protection of privacy" and the Commissioner is given "primary responsibility...for supervising compliance." However, notwithstanding these observations, the court did not defer to the decision of the Commissioner and decided the issue itself although adopting the Commissioner's approach to the interpretation of the section in question (paras. 40 to 45).

[92] In my view, it is appropriate to take that same approach here and this court should make a ruling on the *MFIPPA* issue raised on this application. In my view, landlords who lease Rental Units are engaged in business whether or not the landlord is an individual leasing a Rental Unit in his own home or a corporate landlord leasing units in a large apartment building. Both landlords are operating a business. As a result, I am satisfied that the Licensing By-law does not

conflict with the provisions of the *MFIPPA* which protects personal information because the information requested comes within the exclusion set out in s. 2(2.1) of *MFIPPA*. It is contact information that identifies the individual in a business capacity.

Does the Licensing By-law directly conflict with the *Municipal Act* by unlawfully delegating Municipal powers?

[93] What is at issue here is the delegation to the License Manager of the power to revoke, refuse or suspend a license. Section 23.1 of the *Municipal Act* gives the City a general power to delegate. Section 23.2 (1) (c) allows for delegation to an individual who is an officer, employee or agent of the municipality. However, according to section 23.2 (4) the powers that may be delegated to such persons are restricted to powers of a minor nature. Section 23.2 (5) indicates that the power to issue and impose conditions on a license is an example of a power considered to be of a minor nature.

[94] The Applicant relies on *2927625 Ontario Ltd. (c.o.b. Doll House) v. Kitchener (City)*, [2007] O.J. No. 4319 (S.C.) for the proposition that the authority to refuse licenses is a major judicial power that cannot be delegated. However, the proposition that the authority to refuse a license cannot be delegated under any circumstances does not mesh well with jurisprudence from the Supreme Court of Canada. Further, as noted by the City, the *Dollhouse* case did not interpret section 23.2 in its entirety.

[95] In *Vic Restaurant Inc. v. Montreal (City)*, [1959] S.C.R. 58, the Supreme Court considered a by-law that gave the director of police the power to refuse permits to sell liquor. In that case, the delegation was improper because no directions for the exercise of this power were given to the director of police, they were able to arbitrarily refuse a permit. The majority of the Court said,

> The power to fix the terms upon which they are to be issued has been vested in the city council. For that body to say that before the Director of Finance may issue a licence, the Director of Police, in his discretion, may prevent its issue by refusing approval is not to fix the terms, but is rather an attempt to vest in the Chief of Police power to prescribe the terms, or some of the terms, upon which the right to a licence depends. In this case, granted the necessary power had been given to the council by the charter, the by-law might, as pointed out in the judgment of this Court in Bridge's

> case, have prescribed a state of facts the existence of which should render a person ineligible to receive a permit...Nothing of this nature appears in this by-law but, as in the cases to which I have referred in the other provinces, it has been left without direction to the Chief of Police to decide whether the applicant should or should not be permitted to carry on a lawful calling.

[96] In *Toronto (City) v. Outdoor Neon Displays Ltd.*, [1960] S.C.R. 307, the court found that a delegation to refuse a permit was lawful because "the bylaw states with sufficient particularity the grounds on which the approval of a proposed location is to be granted or withheld."

[97] Finally, the Ontario Court of Appeal has recently applied this kind of reasoning in *Adult Entertainment Assn. of Canada v. Ottawa (City)*, [2007] O.J. No. 2021. In that case, the Chief License Inspector and the Chief of Police were able to refuse licenses for adult entertainment parlours. Anyone wishing to obtain a license for an adult entertainment parlour had to submit a floor plan to the Chief License Inspector and the Chief of Police for inspection. The court found that this was a proper delegation because it was,

> ...clear that the Chief License Inspector and the Chief of Police do not have an unbridled discretion to approve or not approve the issuance of a license to an adult entertainment parlour owner at their whim on a case-by-case basis and without regard to any standards.

[98] The Licensing By-law provides an exhaustive list of factors in s.7.2 (b) for the Licence Manager to consider. It is only where one of these enumerated grounds is satisfied that the license manager may refuse, suspend or revoke a license. Following the jurisprudence above, I am satisfied that the delegation under the Licensing By-law is lawful. In addition, the Licensing By-law provides for a right of appeal to a Hearings Committee from a decision of the License Manager to refuse to issue a license, to refuse to renew a license, to revoke a license or to impose conditions on the license. As the City notes, issues respecting the proper administration of the Licensing By-law are subject to judicial review.

Is the Licensing By-law illegal because it was enacted in bad faith?

[99] Although the trend has been to take a deferential approach to municipalities, this does not apply in cases of bad faith. The Ontario Court of Appeal said in *Grosvenor v. East Luther Grand Valley (Township)* (2007), 84 O.R. (3d) 346 at para. 42,

> This provision [s. 272 of the *Municipal Act, 2001*] reinforces the notion that municipal by-laws properly enacted are not to be lightly quashed; they are not open to review even if they are unreasonable. It is a pre-condition to that immunization from review, however, that the by-law is "passed in good faith". This, in turn, reinforces the essential character of a valid and legal by-law: it must be enacted in good faith.

[100] However, the case law shows that the standard to establish bad faith on the part of a municipal council is high. There is a presumption of good faith that must be overcome by the party alleging bad faith.

[101] These principles are outlined in the Ontario Superior Court case of *Uukkivi v. Lake of Bays (Township)* (2004), 2 M.P.L.R. (4th) 240. In discussing bad faith, Low J. stated that, "The onus is on the applicant to establish bad faith. To establish bad faith the applicant must show that the township acted other than in the public interest" and "By-laws are presumed to have been enacted in good faith unless the person attacking them proves the contrary."

[102] Referencing a British Columbia Court of Appeal case, Low J. also concluded "...courts should be slow to find bad faith in the conduct of democratically elected representatives acting under legislative authority, unless there is no other rational conclusion."

[103] The Divisional Court case of *H.G. Winton Ltd. v. North York (Borough)* (1978), 20 O.R. (2d) 737, describes what may constitute bad faith,

> To say that council acted in what is characterized in law as "bad faith" is not to imply or suggest any wrongdoing or personal advantage on the part of any of its members. But it is to say, in the factual situation of this case, that council acted unreasonably and arbitrarily and without the degree of fairness, openness, and impartiality required of a municipal government. [citations omitted]

[104] This case also provides some indicia of bad faith,

> That the by-law was pushed through with inordinate speed, that it was designed to give the pretense of being operative on a larger area, that usual Borough practices and procedures were set aside, and that the two most affected parties were kept in the dark- all point to a lack of good faith. So also, does the fact that the by-law singles out one property, to the clear detriment of its owners, for a use classification different to that

> applicable to all other owners covered by the same zoning category under the borough's comprehensive zoning scheme.

[105] The Applicant argues that the use of a Licensing By-law is improper here because the City is attempting to regulate land use rather than regulating and governing the manner in which a business is carried on.

[106] In *Prince George (City) v. Payne*, [1978] 1 S.C.R. 458, the Supreme Court considered the power of council to pass a resolution denying a license for an adult boutique. In that case, the Court found that the council was trying to use its licensing power to restrict land use because the effect of the resolution was to prohibit this type of business from operating in Prince George.

[107] In *Neighbourhoods of Windfields Ltd. Partnership v. Death* (2008), 48 M.P.L.R. (4th) 183, Howden J. of the Ontario Superior Court discussed some examples where a Licensing By-law was found in effect to be a zoning by-law,

> The Rogers text gives the following examples of by-laws passed under the licensing authority or similar authority which were ruled to have been in effect zoning by-laws: a by-law prohibiting the location of a gas station in a specified area, a by-law restricting the operation of self-service stations at certain locations; a by-law prohibiting a public garage within a certain radius of single dwellings; and a by-law restricting the operation of an adult entertainment parlour to certain defined areas.

[108] I am satisfied that this case falls outside of the examples given above. Here, the City is not trying to prohibit a particular business or stop it from operating in particular areas. Rather, the Licensing By-law applies citywide. I find that the Licensing By-law is regulating a business.

[109] In regards to the bad faith issue more generally, the indicia outlined above are not present. The evidence is that the normal procedures were followed, public meetings were held, and that the action by the council was not arbitrary. I cannot find that the Applicant has met the high standard required to establish bad faith.

Are sections of the Licensing By-law so vague and/or uncertain that they should be quashed?

[110] The standard for finding a law void for vagueness is high. Two Supreme Court cases canvas this issue.

[111] The first, *Montreal City v. Arcade Amusements Inc* [1985] 1 S.C.R. 368, deals with whether a by-law regulating the uses of arcades was too vague. Writing for the Court, Beetz J. quoted with approval from *Re London Drugs Ltd v. City of North Vancouver* (1972), 24 D.L.R. (3d) 305, where it was said that,

> It may be that the by-law here will occasion some difficulty in interpretation. But difficulty of interpretation is not to be confused with vagueness and uncertainty to the point of invalidity.

[112] Beetz J. also adopted the standard of vagueness found in the book Principes de contentieux administrative (1982) Pepin and Ouellete:

> [TRANSLATION] In short, the vagueness must be so serious that the judge concludes that a reasonably intelligent man, sufficiently well informed if the by-law is technical in nature, is unable to determine the meaning of the by-law and govern his actions accordingly.

[113] Beetz J. further stated that "Mere uncertainty as to the scope of a by-law will not suffice to make it void" and "Each case is practically unique and the courts have to determine each time whether the true meaning of the by-law in question can be understood by the persons to whom it applies."

[114] In *R v. Nova Scotia Pharmaceutical Society*, [1992] 2 S.C.R. 606 the Supreme Court again considered the concept of vagueness, this time in relation to constitutional vagueness. Gonthier J. speaking for the court stated that, "The doctrine of vagueness can therefore be summed up in this proposition: a law will be found unconstitutionally vague if it so lacks in precision as not to give sufficient guidance for legal debate."

[115] The Ontario Court of Appeal has applied both decisions when interpreting whether a by-law is vague.

[116] In *Adult Entertainment Assn. of Canada v. Ottawa (City)*, [2007] O.J. No. 2021, the Court said,

> A law is too vague where it "does not provide an adequate basis for legal debate" and "does not sufficiently delineate any area of risk and thus can provide neither fair notice to the citizen nor a limitation of enforcement discretion"...Language is not an exact tool, however, and a law cannot be expected to predict the legal consequences of all possible courses of conduct...A law is unconstitutionally vague if it cannot, even with judicial interpretation, give meaningful standards of conduct.

[117] In *Bayfield (Village) v. MacDonald*, [1997] O.J. No. 1892, the Court was considering whether a by-law was vague because it failed to define certain terms used. Here the Court quoted the passage from Pepin and Ouellette above and found that the provisions were not too vague.

[118] Here, where there is no *Charter* argument, the appropriate test is likely the *Montreal City* test. However, as the two tests are similar in scope and application, the jurisprudence regarding unconstitutional vagueness is also helpful.

[119] The Applicant's argument that the Licensing By-law is void for vagueness is mainly based on a lack of definitions in the Licensing By-law.

[120] Their first submission is that it is unclear who is prohibited from operating a rental unit without a license because the terms "person" and "operate" are undefined. This argument is not strong enough to meet the standard for vagueness. A reasonably intelligent person could likely determine if they were a person who is operating a rental unit.

[121] The second submission is that the definition of "converted dwelling" does not provide clear notice of whether the Licensing By-law applies to a particular property owner. This argument is based on the fact that as a result of the definition in the Licensing By-law, in order to know whether a property is a "converted dwelling" the owner must know what kind of dwelling was on the property prior to July 1, 1993, and whether the dwelling has since been altered. Here, I think the comments of Beetz J. in *Montreal City* regarding difficulty in interpretation and uncertainty regarding scope apply.

[122] The third and final submission is that it is unclear to whom the Licensing By-law applies because of the use throughout the Licensing By-law of "owner", "registered owner", "person" and "licensee" where only "owner" and "licensee" are defined terms. I am not satisfied that these potential flaws in the Licensing By-law are able to meet the high standard set out by the Supreme Court. The inconsistency in use of terms, while unfortunate, is not so serious as to make it impossible to determine the meaning of the Licensing By-law.

Conclusion

[123] For the foregoing reasons, the application is dismissed. The extensive factums and fulsome submissions from counsel on these issues were very helpful in considering the issues raised upon this application.

[124] If necessary, counsel may make brief submissions on the issue of costs within the next 30 days.

Justice L. C. Leitch

Released: September 30, 2011