

Publisher's Note

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Auerback and Mascarin

The Annotated Municipal Act Second Edition

The Annotated Municipal Act, Second Edition, helps you navigate this complex piece of legislation and is your single most important resource in municipal law. This publication includes analysis of each section of the Ontario *Municipal Act, 2001* and includes a concordance to the former Act.

This release features updates to the case law and commentary comprising the annotations of the *Municipal Act, 2001*.

Highlights

Municipal Act, 2001 — General — Purposes — Section 2 — The respondent city enacted a by-law that prohibited businesses from providing single-use plastic bags to customers and required them to charge a mandatory minimum fee for paper and reusable bags. The petitioner, an organization that represented manufacturers and distributors of plastic shopping bags, maintained that the by-law was an environmental regulation and that while the city's community charter permitted it to enact by-laws for the protection of the natural environment it could only do so with the approval or agreement of the provincial government. The petitioner sought

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an order setting aside the by-law. Petition dismissed. In determining whether municipal legislation authorized the exercise of a certain power, a broad and purposive approach must be taken, and both the purpose and effects of the by-law must be considered. The city's powers set out in the community charter included the power to make regulations in relation to business. In order to be considered a by-law for protection of the natural environment within the meaning of ss. 8(3)(j) and 9(1)(b) of the community charter, the by-law must regulate conduct of parties directly engaged in activities considered to have a negative environmental impact. The by-law at issue addressed a transaction in which a merchant packaged goods purchased by a customer. While a plastic checkout bag might ultimately find its way into the natural environment, that was a result of subsequent actions by the customer or by others who subsequently came into possession of a bag, and it was not an inevitable, direct, or immediate result of the transaction the by-law sought to regulate. In its immediate effect the by-law was properly characterized as business regulation rather than a by-law for protection of natural environment. Sections 193 and 194 of the community charter, which prohibited charging fees except in limited circumstances, were not applicable to the fees mandated by the by-law. The defining feature of a municipal tax or fee must, in the ordinary meaning of those terms, be that the funds collected were at some point remitted to the municipality that imposed the tax or fee, which was not the case here. The by-law required businesses to charge a fee for paper or reusable bags, but they were not required to remit those fees or any portion of them to the city. The by-law was within the city's authority under the community charter: *Canadian Plastic Bag Association v. Victoria (City)*, 2018 CarswellBC 1581, 78 M.P.L.R. (5th) 299 (B.C. S.C.).

Municipal Act, 2001 — Municipal Liability — Section 450 — The plaintiff company owned and operated the Ambassador bridge, which connects Canada and the United States. The Canadian part of the bridge was in the defendant city. The company bought property near the bridge for its future expansion or replacement. Residents of that neighbourhood complained the properties purchased by the company were vacated or boarded up. They brought actions in nuisance against the company. The company brought this separate action for contribution and indemnity from the city. The city claimed the company had no reasonable cause of action, and that the action was frivolous and vexatious. The city brought a motion to strike the company's pleadings. Motion dismissed. The company was to amend its pleadings. It was possible for the company to demonstrate at trial that the city's failure to issue demolition permits for the houses the company had purchased contributed to a nuisance. The cause of action was somewhat novel, but this was not bar to proceeding with cause of action. The company's interpretation of the applicable law was reasonable, including on the issue of jurisdiction. There was a possibility of joint and several liability. The company had partly pleaded the facts of a claim to misfeasance in public office. The city also argued, relying on s. 450 of the *Municipal Act, 2001*, that there was no cause of action against a municipality for a policy decision, in this case related to the passage of the demolition control by-law. The city further maintained that the decision to issue demolition permits was the exercise of the discretion pursuant to that policy decision, and that, accordingly, it was entitled to immunity. However, the statutory immunity provided by the *Municipal Act, 2001*

does not apply to nuisance cases. Further, if the company was successful in proving that at trial that the city exceeded its jurisdiction, it may also be successful in demonstrating that there was no municipal immunity for bad faith conduct or conduct. The company also argued it was not attacking the city's policy decision to enact the by-laws, but rather its operational decision to unlawfully and improperly deny demolition permits. Further, if the city's operational decision to refuse to issue demolition permits was not done in good faith, it could prevail at trial: *Canadian Transit Company v. City of Windsor*, 2018 CarswellOnt 11683, 77 M.P.L.R. (5th) 303 (Ont. S.C.J.).

