Court File No. CV-11-439487-000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

BRYAN BATTY, MARI REEVE-NEWSON, LANA GOLDBERG, ANN CROOKE, AND DAVE VASEY

Applicants

- and -

THE CITY OF TORONTO, TORONTO POLICE SERVICES BOARD, TORONTO FIRE SERVICES

Respondents

FACTUM OF THE INTERVENER,

THE CANADIAN CIVIL LIBERTIES ASSOCIATION

November 17, 2011

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PART I - THE FACTS

1. The Canadian Civil Liberties Association ("CCLA") intervenes as a friend of the Court to assist in resolving the constitutional issues raised by this Application. The CCLA takes no position on any disputed facts in this case. The CCLA's submissions focus on the application of the Trespass Notice and the City of Toronto by-laws.

PART II - ISSUES AND ARGUMENT

A. Overview

2. The CCLA's submissions are focused on the application of the City of Toronto by-laws at issue in this appeal and whether they constitute an unjustified infringement of freedom of expression and peaceful assembly as guaranteed under sections 2 (b) and (c) of the *Charter*.

3. The CCLA submits that the erection of structures in parks and presence in parks overnight can constitute expressive activity, which is fundamental to the message of the demonstration. Any limitations on this expressive conduct must take place under s. 1 of the *Charter*. The government must show a pressing and substantial objective and that its eviction and by-laws are minimally intrusive. Not all objectives qualify as pressing and substantial. The Notice and by-laws effectively constitute an absolute ban on certain types of activities, without any consideration of the value of constitutionally protected expressive conduct or less restrictive alternatives. As such, they are overbroad and not minimally intrusive.

B. Section 2(b) of the *Charter*

4. Freedom of expression is the lifeblood of democracy and is of fundamental importance to the maintenance of a free and democratic society.[1] The analytical steps for considering a claim of

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[1] *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326, at p. 1336, per Cory J.; *Committee for the Commonwealth of Canada v. Canada* (1991), 77 DLR (4th) 385 (S.C.C.) at p. 406.

freedom of expression which involves the use of public spaces were set out by the Supreme Court of Canada in the *Translink* and *City of Montreal* cases:[2]

> (i) Does the speech/conduct at issue have expressive content that brings it within the *prima facie* protection of s. 2(b)?
>
> (ii) If so, does the method or location of this expression remove that protection?
>
> (iii) If the expression is protected by s. 2(b), does the government action, legislation or by-law deny that protection?

If the law/by-law is found to have infringed s. 2(b) of the *Charter*, the analysis then shifts to determining whether the infringement is justified under s. 1 of the *Charter*.

(i) The activities at issue have expressive content

5. Courts have consistently afforded s. 2(b) of the *Charter* extremely broad scope. All activity that "attempts to convey meaning" is *prima facie* "expression" within the meaning of s. 2(b).[3] The type of expression at issue in this case – political speech – is highly valued and protected and lies at the core of the rights and values protected by s. 2(b).[4]

6. Form and content "can be inextricably connected",[5] and a wide range of actions and objects can be found to convey meaning. The intimate connection between the form and content of expressive activity was expanded upon in *Ontario (A.G.) v. Dieleman*:[6]

> When analyzing expressive activity, the form of expression may be as important as its content. Indeed, in many instances, the form and content of expression are inseparable. American examples which come to mind include the burning of a draft card as in *United States v. O'Brien* ... or the desecration of a flag as in *Texas v. Johnson* ... Dissenting expression may also involve unconventional, indeed offensive, speech. Protests are rarely polite. Dissenting speech may shock and offend, and may be intended to have such effects in order for the message "to

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[2] *Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component*, 2009 SCC 31, [2009] 2 S.C.R. 295 ["*Translink*"], para. 37; *Montréal (City) v. 2952-1366 Québec Inc.*, [2005] 3 S.C.R. 141, para 56.

[3] *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 ("*Irwin Toy*"), at p. 969, per Dickson C.J.C.

[4] *R v. Sharpe*, [2001] 1 S.C.R. 45, at para. 765, per McLachlin C.J.

[5] *Irwin Toy, supra.*

[6] *Ontario (A.G.) v. Dieleman* (1994), 20 O.R. (3d) 229 (Ont. Gen. Div.) at p. 290 (citations omitted).

> register": see Emerson, "Towards A General Theory of the First Amendment" .... This relationship between the form and content of expression sometimes makes it difficult to draw a line between the two. This is reflected in the words of Lamer C.J.C. in *Reference re: ss. 93 and 195.1(1)(c) of the Criminal Code* ...:
>
> > The content of expression is conveyed through an infinite variety of forms including the written or spoken word, the arts and physical gestures or acts. While the guarantee of free expression protects all content, all forms are not, however, similarly protected. In Irwin Toy, supra, the court stated that it was not necessary in that case to delineate when and on what basis a form of expression chosen to convey a meaning falls outside the sphere of the guarantee. While that statement applies with equal force to this appeal, I, nevertheless, think it is appropriate at this stage of *Charter* jurisprudence to make some additional comments.
> >
> > As I have stated, form and content are often connected. In some instances they are inextricably linked. One such example is language. In my view, the choice of the language through which one communicates is central to one's freedom of expression.

7. The activities targeted by the City's Notice and the by-law – namely the erection of structures, attendance in parks during certain hours and presence on public property - have expressive content and are inextricably linked to the message conveyed by the protesters. In *Weisfeld v. Canada*, the Federal Court of Appeal found that the erection of a temporary and then later a semi-permanent shelter which was continuously inhabited by several protesters for about six months was protected expression within the ambit of s. 2(b):

> ...The act of private citizens building a very visible structure on the grounds of Parliament Hill, as well as maintaining a vigil there for more than two years, certainly conveys some kind of meaning. Similar peace camp protests were used in other countries at that time. This camp was meant to link up with other similar protests. The structure itself, therefore, helped to dramatize the message the appellant was seeking to communicate. It also manifested the protestors' commitment to the cause.
>
> In my view, expression goes beyond words. People may choose to amplify or dramatize their messages in many ways: a sandwich board, a soapbox, a megaphone, a flag, a banner, a placard, a picture, a petition, all can be used to convey a message or to assist one in conveying a message more effectively. These "props" are part and parcel of the manner in which one chooses to express oneself and are as deserving of protection as the words used to convey the

meaning. The Peace Camp structures and the tables used are, therefore, included in the concept of expression. [7]

8. Similarly, in *Vancouver (City) v. Zhang*, the British Columbia Court of Appeal affirmed the chambers judge's finding that a billboard and meditation hut erected on city streets by Falun Gong participants "were 'part and parcel of the manner' in which the Falun Gong participants chose to express themselves and ... deserving of protection."[8]

9. It is clear that the "occupation" of the Park, and the 24-hour presence with tents has expressive content and is a fundamental part of the message. Some of the messages the Applicants seek to convey by the occupation include: that government has been manipulated by corporate interests, and that the protest is a demonstration of a new community structure that is transparent, inclusive and consultative. This is quintessential political expression and is protected by s. 2(b) of the *Charter*.

(ii) The method of expression is consistent with s. 2(b) values

10. The CCLA submits that nothing about the method or location of the targeted expression – presence in a public park and erection of structures in support or furtherance of peaceful expression -- has the effect of removing these activities from the scope of s. 2(b). The key question to be asked under this branch of the test is whether the "method or location" of expressive activity "clearly undermines the values that underlie the guarantee", namely "(1) democratic discourse, (2) truth finding and (3) self-fulfillment".[9]

11. In determining whether the place of expressive activity would subvert the values underlying s. 2(b), the "historical or actual function" of the place serve as "indicator[s]", "markers" or "factors" to be considered.[10] However, as the Supreme Court of Canada has

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[7] *Weisfeld v. Canada*, 1994 CanLII 9276 (FCA),

[8] *Vancouver (City) v. Zhang*, 2010 BCCA 450, at para. 32. See also: *R. v. Banks*, 2007 ONCA 19; *RWDSU v. Dolphin Delivery Ltd.* (1986), 25 C.R.R. 321 (S.C.C.), at 331-32; *BCGEU v. B.C. (A.G.)*, [1988] 2 S.C.R. 214 at 230, 244-45; *R. v. Drapeau* (1999), 175 DLR (4th) 656 (Que.C.A.).

[9] *Montréal (City), supra,* at paras. 72 and 74, per McLachlin C.J.C. and Deschamps J.

[10] *Translink, supra*, at para 39; *Montréal (City),supra*, at paras. 74-77, per McLachlin C.J.C. and Deschamps J.

emphasized, "the ultimate question ... will always be whether free expression in the place at issue would undermine the values the guarantee is designed to promote."[11] If the expressive activity's method or location does not clearly undermine s. 2(b) values, the activity is s. 2(b) "expression". Limitations must be justified under s. 1.[12]

12. The history and actual use of public parks for expressive activities is consistent with s. 2(b) values. Parks are critical public forums which serve as a linchpin of democratic freedoms, often providing essential and unique public spaces for a wide variety of expressive activities.

13. Public parks have historically been used as central gathering points for the communication and dissemination of viewpoints. As the Supreme Court of Canada stated in *City of Montreal*, "the public square and the speakers' corner have by tradition become places of protected expression" (at para. 61). Similar comments were made by Chief Justice Lamer and Justice McLachlin (as she then was) in *Committee for the Commonwealth of Canada:*[13]

> ... the economic and social structure of our society is such that the largest number of individuals, or potential listeners, is often to be found in places that are state property. One thinks immediately of parks or public roads which, by their very nature, are suitable locations for a person wishing to communicate an idea.
> ...
> ...[The Crown's] contention [that it has an absolute right to regulate expression on all property it owns] is belied by a venerable tradition which supports the view that some types of state-owned property are proper forums for public expression. The right of free speech has traditionally been associated with streets and by-ways and parks -- all government property.

14. Parks are frequently approved by the City of Toronto to be sites for gatherings, concerts and festivals. These events may include the attendance of a significant number of people and the erection of large tents, stages, or other structures. Parks are also frequently used for activities involving political expression, including rallies, demonstrations, gatherings, signs and booths

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[11] *Montréal (City), supra,* at para. 77, per McLachlin C.J.C. and Deschamps J.; *Translink, supra*, at paras 41-42; *Ramsden v. Peterborough* (1993), 16 C.R.R. (2d) 240 (S.C.C.), at 248-53.

[12] See, e.g., *Translink, supra*, at paras. 118, 122-123 and 129-133; *Keegstra*, at pp. 728-734 (per Dickson C.J.C.) and pp. 835 and 837 (per McLachlin J., in dissent, but not on this point); and *R. v. Zundel*, [1992] 2 S.C.R. 731 , p. 758

[13] *Committee for the Commonwealth of Canada, supra,* at p. 392, per Lamer C.J.C. and p. 449 per McLachlin J.

distributing information. During the G20 last year, for example, large public marches and rallies frequently started and ended at parks – including the park at issue in this case. Indeed, during the G20, the government suggested at first Trinity Bellwoods Park, and later Queen's Park, as 'designated speech areas' which would be ideal for public expression and assembly.

(iii) Municipal by-laws and trespass notices restricting expressive activity infringe s. 2(b) of the *Charter*

15. If the purpose or effect of the Notice or the by-laws is to restrict expressive activity, then they infringe s. 2(b).[14] So long as the activity at issue in this case is considered expressive, the effect of the Notice and by-laws is to restrict such activity. Although the by-laws at issue in this case may not generally be *intended* to limit expressive activity, it is their effect as applied in the circumstances of this case that is relevant.

16. The state is not in the same position as a private owner of property when the use of property for expressive purposes by citizens is at issue. The *Charter* requires that the management of state property makes room for *Charter*-protected expressive conduct. Further, engaging in *Charter*-protected expressive conduct constitutes "a right or authority conferred by law" pursuant to s. 2(1) of the *Trespass to Property Act*.[15]

C. Section 2(c) of the *Charter*

17. Like other *Charter* guarantees, freedom of peaceful assembly is one of the fundamental democratic rights and must be interpreted purposively.[16] Freedom of assembly is a way for people to come together and exchange or voice ideas among themselves and with others. The expression of dissent and opinions held by groups of people should be respected as a way of ensuring accountability and an on-going public discussion on issues deemed important by some people. Public assemblies are an important means of political participation and self-realization

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[14] *Irwin Toy, supra,* pp. 971-972.

[15] *R. v. Behrens,* 2001 Carswell Ont. 5785 (O.C.J.), paras. 66-69; *Committee for the Commonwealth of Canada, supra,* at pp. 422 and 426 per L'Heureux-Dubé J. and pp. 449-450 per McLachlin J.

[16] R. Stoykeweych, "Street Legal: Constitutional Protection of the Public Demonstration in Canada" (1985), 43 U. of T. Fac. L. Rev. 43 at 44-46.

for many people.[17] A finding that an activity is protected under freedom of expression necessarily implies that assemblies or gatherings to engage in that protected freedom must necessarily receive protection as well.[18]

18. It is submitted that the Notice and by-law, by restricting entry into parks between 12:01 a.m. and 5:30 a.m. and by banning the erection of any structures in connection with an assembly, constitute a *prima facie* violation of freedom of peaceful assembly.

D. Section 1 of the *Charter*

19. The onus is on the Respondents to establish that the legislation and by-laws at issue and the actions of evicting protestors constitute reasonable limits on the freedoms of expression and peaceful assembly protected by the *Charter*. This burden is both persuasive and evidentiary. Section 1 requires that limits on rights be "demonstrably" justified, so the Respondents in this case must adduce evidence sufficient to justify any limits placed on *Charter* rights.

(i) Pressing and Substantial Objectives

20. Not all purposes underlying the Notice and by-laws will be sufficient to justify the curtailment of freedom of expression and peaceful assembly. Mere avoidance of inconvenience, unease or discomfort to some members of the public is not a pressing and substantial objective for limiting *Charter* rights. Nor is there a right for members of the public to be absolutely protected from some economic impact caused by expressive activity. Some measure of inconvenience must be accommodated in a free and democratic society in order to ensure that these constitutional rights are protected. This is particularly so where the message sought to be conveyed is unpopular. As Justice L'Heureux-Dubé noted in *Committee for the Commonwealth of Canada*, "People who find certain political expression unpleasant or disquieting in a park or

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[17] *Committee for the Commonwealth of Canada, supra,* at p. 426, per L'Heureux-Dubé J.
[18] *R. v. Behrens, supra*, at para. 36; *Deileman, supra*, pp. 329-330.

on a street can easily move elsewhere."[19] Similarly, purely aesthetic concerns or a purported need to conduct regular and non-urgent maintenance are not sufficient objectives for overriding protected *Charter* rights.

(ii) The By-laws are Overbroad and Not Minimally Impairing

21. Courts have repeatedly held municipalities to a strict standard in justifying by-laws that infringe or limit expressive freedom. Such by-laws must not only further the objective(s) they seek to accomplish, but do so in a manner that is not overly broad and does not impair freedom of expression any more than is necessary. A stringent approach to justification is required even in cases where by-laws may regulate or limit expression in a manner that is content-neutral. Indeed, regulations related to time, place and manner can easily slip into content-based restrictions where a message is deemed unpopular or has become unpopular to the majority. Moreover, unfettered discretion to grant exemptions to otherwise blanket prohibitions always create the risk that enforcement or restrictions on expression are content-driven.

22. The CCLA makes two submissions under the minimal impairment branch of the *Oakes* test. First, the by-laws at issue in this case effectively constitute an absolute ban on certain types of conduct without regard to protected expression. The only exception to the absolute nature of the ban is an undefined and unfettered discretion on the part of the City. Second, the City must establish that it has given consideration to alternatives to the eviction of the protesters which would be less restrictive of constitutionally protected expression and demonstrate that no reasonable accommodations are possible.

23. In *Ramsden v. Peterborough*, the Supreme Court of Canada struck down an absolute prohibition on postering on public property. The Court accepted that the objectives behind the by-law, which included avoiding littering, aesthetic blight and traffic hazards, were valid and that the ban was rationally connected to the objectives. However, the by-law was not a reasonable

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[19] *Committee for the Commonwealth of Canada, supra*, at p. 431; *UFCW, Local 1518 v. Kmart Canada*, [1999] 2 SCR 1083, at paras. 43, 59-60; *RWDSU, Local 558 v. Pepsi*, [2002] 1 SCR 156, at paras. 44-45, 71, 87-92.

limit on freedom of expression because there were a number of ways the by-law could have been tailored to reduce the impact on expressive rights short of a total prohibition, and it did not therefore minimally impair that right.[20]

24. The by-law regarding the time of use of parks, as well as the Notice, are similarly absolute. They preclude any form of expression from ever taking place in any public park overnight. Indeed, it is unclear what purpose the by-law serves and whether it is rationally connected to any valid objective, but it is obvious that, in its effect, it substantially hinders the public's ability to use public space for expressive activities and in particular for any ongoing expressive activities. For example, it would preclude a candle-light vigil held after midnight to mark the death of a homeless person who died on a cold winter night.

25. Even if the City's by-laws are not considered an absolute ban on certain expressive activities, this does not immunize them from s. 1 scrutiny. The Supreme Court of Canada found a sign by-law unconstitutional in *R. v. Guignard* because it was arbitrary in its attempt to achieve its objective, was not minimally impairing, and because its serious impact on freedom of expression was not outweighed by the minimal benefits it achieved for the municipality. *Guignard* goes beyond the holding in *Ramsden* to demonstrate that even by-laws that do not absolutely prohibit certain forms of expression may fail to meet the justification requirements of section 1 of the *Charter*.[21]

26. Although the City by-laws provide for the possibility that a permit may be issued to authorize being in a park between the hours of 12:01 a.m. and 5:30 a.m. or to camp or erect tents or structures, the discretion is totally undefined and unstructured. A completely undefined and unstructured discretion is not minimally intrusive.[22] Even by-laws allowing for exceptions must be carefully tailored to ensure that freedom of expression is minimally impaired. In *Vancouver*

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[20] *Ramsden v. Peterborough (City), supra.*
[21] *R. v. Guignard*, 2002 SCC 14, paras. 28-32.
[22] *Vancouver (City) v. Zhang, supra,* at para. 67; *Samur v. City of Quebec*, [1953] 2 S.C.R. 299 at 332-33; *Irwin Toy, supra,* at p. 983.

(City) v. Zhang, the B.C. Court of Appeal declared a by-law unconstitutional because of the manner in which it conferred discretion on the City's Council and the absence of clear guidelines for the application of that discretion.[23] Further, in *Victoria (City) v. Adams*, the B.C. Court of Appeal found that a by-law banning the erection of tents in public parks violated s. 7 of the *Charter* and was not saved by s. 1. The holding with respect to s. 7 and s. 1 were based on concerns about overbreadth of the by-law.[24]

27. In assessing whether the limits placed on rights constitute minimal impairment, the Court should consider alternatives that are reasonably available and would place fewer restrictions on freedom of expression. This may include allowing some parks to be used for overnight expression and/or considering location accommodations that could both facilitate peaceful protest activities and ensure that other members of the public have clear access to public spaces. The Supreme Court has recognized, in other contexts, that the duty of reasonable accommodation is helpful in understanding the burden resulting from the minimal impairment test.[25] The CCLA submits that this principle is also relevant in assessing whether a restriction on freedom of expression impairs that right no more than is necessary.

28. The City's burden under s. 1 of the *Charter* requires a showing that on the facts of this particular case, it considered measures other than eviction of the protesters which would be less restrictive of constitutionally protected expression and peaceful assembly.

29. As the guardian of public space the municipality has a duty to both protestors and others in the community. Municipalities must often consult with multiple stakeholders as part of the process of governing and, in good faith, diligently attempt to accommodate the needs of all concerned. The municipal processes of consultation, negotiation and dialogue used in other contexts should similarly be employed where expressive activity is at issue

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[23] *Vancouver (City) v. Zhang, supra,* at paras. 64-69.
[24] *Victoria (City) v. Adams*, 2009 BCCA 563, at paras. 112-116, 125-130.
[25] *Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6, at para. 53.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

November 17, 2011

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Canadian Civil Liberties Association

SCHEDULE "A"

Edmonton Journal v. Alberta (Attorney General), [1989] 2 S.C.R. 1326

Committee for the Commonwealth of Canada v. Canada (1991), 77 DLR (4th) 385 (S.C.C.)

Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component, [2009] 2 S.C.R. 295

Montréal (City) v. 2952-1366 Québec Inc., [2005] 3 S.C.R. 141

Irwin Toy Ltd. v. Quebec (Attorney General), [1989] 1 S.C.R. 927

R. v. Sharpe, [2001] 1 S.C.R. 45

Ontario (A.G.) v. Dieleman (1994), 20 O.R. (3d) 229 (Ont. Gen. Div.)

Weisfeld v. Canada, 1994 CanLII 9276 (FCA)

Vancouver (City) v. Zhang, 2010 BCCA 450

R. v. Banks, 2007 ONCA 19

RWDSU v. Dolphin Delivery Ltd. (1986), 25 C.R.R. 321 (S.C.C.)

BCGEU v. B.C. (A.G.), [1988] 2 S.C.R. 214

R. v. Drapeau (1999), 175 DLR (4th) 656 (Que.C.A.)

R. v. Keegstra, [1990] 3 S.C.R. 697

Ramsden v. Peterborough (1993), 16 C.R.R. (2d) 240 (S.C.C.)

R. v. Zundel, [1992] 2 S.C.R. 731

R. v. Behrens, 2001 Carswell Ont. 5785 (O.C.J.)

R. Stoykeweych, "Street Legal: Constitutional Protection of the Public Demonstration in Canada" (1985), 43 U. of T. Fac. L. Rev. 43

UFCW, Local 1518 v. Kmart Canada, [1999] 2 SCR 1083

RWDSU, Local 558 v. Pepsi, [2002] 1 SCR 156

Multani v. Commission scolaire Marguerite-Bourgeoys, 2006 SCC 6

R. v. Guignard, 2002 SCC 14

Samur v. City of Quebec, [1953] 2 S.C.R. 299

Victoria (City) v. Adams, 2009 BCCA 563

SCHEDULE "B"

Chapter 608

PARKS

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§ 608-5. Fireworks.

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§ 608-12. Amplifiers and loud speakers.

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ARTICLE X
Regulation and Enforcement

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§ 608-52. Exclusions and exemptions.

§ 608-53. Enforcement.

§ 608-54. Penalties.

§ 608-55. Removal of vehicles.

[HISTORY: Adopted by the Council of the City of Toronto 2004-09-30 by By-law No. 854-2004.[1] Amendments noted where applicable.]

GENERAL REFERENCES

Toronto Zoo — See Ch. 329.
Animals — See Ch. 349.
Filming — See Ch. 459.
Littering and dumping of refuse — See Ch. 548.
Noise — See Ch. 591.
Public squares — See Ch. 636.
Trees — See Ch. 813.
Footpaths, pedestrian ways, bicycle paths and bicycle lanes — See Ch. 886.
Parking on municipal property — See Ch. 915.

[1] Editor's Note: This by-law was passed under the authority of sections 8, 11, 425 and 427 of the *Municipal Act, 2001*, S.O. 2001, c. 25. This by-law repealed the following by-laws: former City of Toronto Municipal Code Chapter 255, Parks; former City of Toronto By-law No. 1996-0170, "To amend Municipal Code Ch. 255, Parks, to prohibit the feeding of Canada Geese"; former City of Etobicoke Municipal Code Chapter 190, Parks; former City of North York By-law No. 31885, "A Uniform By-law for the Use, Regulation, Protection and Government of Parks"; former City of Scarborough By-law No. 23728, "A Uniform By-law for the Use, Regulation, Protection and Government of Parks"; former City of York By-law No. 2619-92, "A Uniform By-law for the Use, Regulation, Protection and Government of Parks"; former Borough of East York By-law No. 94-92, "A Uniform By-law for the Use, Regulation, Protection and Government of Parks"; former Municipality of Metropolitan Toronto By-law No. 129-92, "A Uniform By-law for the Use, Regulation, Protection and Government of Parks"; former Municipality of Metropolitan Toronto By-law No. 130-92, "To Delegate Authority to Issue Permits and Various Other Regulatory Parks Matters"; City of Toronto By-law No. 572-2000, "A By-law to Amend Chapter 255 of the former City of Toronto Municipal Code – Clothing Optional Beach at Hanlon's Point"; City of Toronto By-law No. 434-2001, "To amend the Uniform Parks By-laws of the former Borough of East York (94-92), the Cities of Etobicoke (Ch. 190), North York (31885), Scarborough (23728), Toronto (Ch. 255), York (2619-92) and the Municipality of Metropolitan Toronto (129-92) to prohibit the feeding of dangerous wildlife"; City of Toronto By-law No. 782-2001, "To amend the Uniform Parks By-laws of the former Borough of East York, the Cities of Etobicoke, North York, Scarborough, Toronto and York, and the former Municipality of Metropolitan Toronto to allow for the recovery of costs associated with the removal of encroachments in like manner as taxes"; By-law No. 736-92 of the former City of Toronto, "To provide for the use, regulation, protection and government of parks," as amended; and By-law No. 1992-226 of the former City of Etobicoke, "To provide for the use, regulation, protection and government of parks," as amended. This by-law also provided that a by-law hereby repealed continues to apply for the purposes of any notice or order given under the by-law until the work required by the notice is completed or any enforcement proceedings have been completed; and where a person is alleged to have contravened a by-law hereby repealed before the date this by-law comes into force, the by-law continues to apply for purposes of any enforcement proceedings brought against the person until the proceedings have been concluded. This by-law came into force 30 days after the set fine order was signed by the Regional Senior Judge of the Ontario Court of Justice; the Regional Senior Justice order came into effect on 2005-02-24.

ARTICLE I.
Definitions

§ 608-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ACT — The *Highway Traffic Act.*[2]

ADVERTISING DEVICE — A temporary notice of any kind, including but not limited to a notice, sign, advertisement, bill, handbill, leaflet, flyer or placard.

BICYCLE — Includes a tricycle and unicycle but does not include a motor-assisted bicycle.[3]

COMMERCIAL DOG WALKER — A person in control of between four and six dogs while in a park. **[Added 2007-07-19 by By-law No. 790-2007[4]]**

COMMERCIAL DOG WALKER PERMIT — A permit authorizing a commercial dog walker to be in control of between four and six dogs while in a park. **[Added 2007-07-19 by By-law No. 790-2007[5]]**

COMMISSIONER — The officer appointed by Council whose duties include the management, operation and maintenance of parks, or his or her designate.

DESIGNATED AREA — An area defined or constructed for a specific use that may include posted conditions.

DISABLED PERSON — Includes a person who is blind or who has any degree of physical disability, which requires the physical reliance on a wheelchair, crutches, braces, canes or other similar remedial appliance or device.

MOTOR VEHICLE — A motor vehicle within the meaning of the *Highway Traffic Act.*[6]

MOTORIZED RECREATIONAL VEHICLE — A snowmobile, go-cart, trail bike, mini bike, all-terrain vehicle, or similar vehicle, whatever the mode of power, but does not include a scooter.

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[2] **Editor's Note: See R.S.O. 1990, c. H.8.**

[3] **Editor's Note: The former definition of "blue flag designated beach," added 2007-07-19 by By-law No. 790-2007, which immediately followed this definition, was repealed 2009-10-27 by By-law No. 1093-2009. This by-law comes into force on the day after the set fine order is issued by the Regional Senior Judge of the Ontario Court of Justice. The date of set fine approval is 2010-03-24.**

[4] **Editor's Note: This by-law comes into force on the later of 2007-09-04 and the day after the set fine order is issued by the Regional Senior Judge of the Ontario Court of Justice. The date of set fine approval is 2007-09-17.**

[5] **Editor's Note: This by-law comes into force on the later of 2007-09-04 and the day after the set fine order is issued by the Regional Senior Judge of the Ontario Court of Justice. The date of set fine approval is 2007-09-17.**

[6] **Editor's Note: See R.S.O. 1990, c. H.8.**

ORGANIZED SPORT OR ACTIVITY — A sport, game or activity pre-planned by a group or organization whether or not formally constituted and whether or not the players or members wear uniforms.

PARK — Land and land covered by water and all portions of it owned by or made available by lease, agreement, or otherwise to the City, that is or may be established, dedicated, set apart or made available for use as public open space or golf course, and that has been or may be placed under the jurisdiction of the Commissioner, including any and all buildings, structures, facilities, erections, and improvements located in or on the land, save and except where the land is governed by other by-laws of the City.

PARK or PARKING — When prohibited, means the standing of a vehicle, whether occupied or not, except when standing temporarily for the purpose of and actually engaged in loading or unloading merchandise or passengers.

PERMIT — Any written authorization of Council, a committee established by Council, or the Commissioner under delegated authority.

PERSONALLY POWERED DEVICE — Skate boards, roller blades, scooters or similar apparatus and includes a bicycle.

PICNIC — Social gatherings of between 26 and 200 people.

POST or POSTED:

A. Refers to the erection or presence of permissive, regulatory, restrictive, warning or prohibitive signs.

B. "Posted area" means an area where the signs are erected.

PROHIBITED AREAS: **[Added 2007-07-19 by By-law No. 790-2007[7]]**

A. Natural or environmentally sensitive areas (including designated ravines, wooded or savannah areas, sites of natural or scientific interest, areas which have undergone significant habitat restoration, wetlands or their buffer zones).

B. Playgrounds, splash pads or wading pools.

C. Horticultural display areas or ornamental gardens.

D. Skateboard bowls, tennis courts and other sports pads.

E. Sports fields and stadiums.

F. Artificial or natural ice rinks or toboggan hills.

G. Animal display areas.

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[7] **Editor's Note: This by-law comes into force on the later of 2007-09-04 and the day after the set fine order is issued by the Regional Senior Judge of the Ontario Court of Justice. The date of set fine approval is 2007-09-17.**

H. Campgrounds. **[Amended 2009-10-27 by By-law No. 1093-2009[8]]**

I. Areas posted to prohibit dogs from entering.

SIGN — Includes any advertising device, structure or medium that uses any colour, form, graphic, illumination, symbol or writing to convey information of any kind placed or erected in or upon a park.

SPECIAL EVENT — A picnic, walkathon, fundraiser or gathering over 200 persons or any event that requires staff support, specific permissions or the provision of materials or equipment such as, but not limited to, the use of sound amplification, acceptance of donations, installation of tents, vehicle access, electrical access or requests to borrow equipment, beyond that typically provided at the subject location.

SWIMMING BEACH — A pebbly or sandy shore on Lake Ontario maintained and supervised by the City for bathing, swimming, sun bathing and other recreational activities. **[Added 2009-10-27 by By-law No. 1093-2009[9]]**

VEHICLE — Includes a motor vehicle as defined under the *Highway Traffic Act*,[10] and any bicycle, scooter, carriage, wagon, sleigh or other vehicle or conveyance of every description, whatever the mode of power, but excludes a baby carriage or cart, child's wagon, child's stroller, child's sleigh, wheelchair or similar device (powered or otherwise) used by an individual due to a disability, or other similar conveyance.

WATERCRAFT — Any device for conveyance in or on water and includes but is not limited to boats, vessels, personal watercraft, rowboats, sailboards, canoes, kayaks, ice boats or dinghies.

WILDLIFE — Includes any coyote, fox, raccoon, bird, waterfowl, fish, goose or other animal.

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[8] **Editor's Note: This by-law comes into force on the day after the set fine order is issued by the Regional Senior Judge of the Ontario Court of Justice. The date of set fine approval is 2010-03-24.**

[9] **Editor's Note: This by-law comes into force on the day after the set fine order is issued by the Regional Senior Judge of the Ontario Court of Justice. The date of set fine approval is 2010-03-24.**

[10] **Editor's Note: See R.S.O. 1990, c. H.8.**

ARTICLE II
Conduct

§ 608-2. Restricted areas.

While in a park, no person shall enter into areas posted to prohibit or restrict admission of the public.

§ 608-3. Conduct.

A. While in a park, no person shall:

(1) Indulge in riotous, boisterous, violent, threatening, or illegal conduct or use profane or abusive language;

(2) Cast, throw or in any way propel any object in a manner that may or does endanger or cause injury or damage to a person or property;

(3) Create a nuisance by loitering, spying, accosting, frightening, annoying or otherwise disturbing other persons; or

(4) Create a nuisance or in any way interfere with the use and enjoyment of the park by other persons.

B. No person shall remove, disturb, relocate, damage or destroy protective fencing, lifesaving equipment, barriers and warning signage put in place for protection of the public.

C. No person shall release any balloons filled with lighter-than-air gases in a park.

§ 608-4. Firearms and offensive weapons.

A. While in a park, no person shall be in possession of or use a firearm, air gun, cross bow, bow and arrow, axe, paint guns or offensive weapon of any kind unless authorized by permit.

B. Despite Subsection A, bows and arrows may be used in designated areas in accordance with posted conditions.

§ 608-5. Fireworks.

While in a park, no person shall ignite, discharge or set off firecrackers, rockets or other fireworks except as a fireworks display authorized by permit.

§ 608-6. Injury and damage.

No person shall in a park:

A. Climb a building, structure or equipment, unless it is equipment designed for climbing;

B. Break, injure, deface, destroy, move or remove the whole or any part of a flower, plant material, fungus, tree or other vegetation or a building, structure, equipment or other property of the City;

C. Unless authorized by permit, climb, move or remove the whole or any part of a tree, rock, boulder, rock face or remove soil, sand or wood;

D. In any manner, disturb ground which is under repair, prepared for planting, has been newly seeded or sodded or is in an area posted to that effect;

E. Drive, park or walk in an area posted to prohibit the activity; or

F. Unless authorized by permit, place, throw, cast or otherwise deposit snow.

§ 608-7. Encroachment.

Unless authorized by permit, no person shall encroach upon or take possession of a park by any means whatsoever, including the construction, installation or maintenance of a fence or structure, the dumping or storage of materials or plantings, or planting, cultivating, grooming or landscaping.

§ 608-8. Alcohol.

While in a park, no person shall consume, serve or sell alcoholic beverages unless in designated areas, authorized by permit, and with the approval of the Liquor Licence Board of Ontario.

§ 608-8.1. Smoking.

[Added 2009-01-28 by By-law No. 87-2009[11]]

While in a park, no person shall smoke tobacco or hold lighted tobacco:

A. Within a nine-metre radius surrounding the edge of any playground safety surface or any playground equipment;

B. Within a nine-metre radius surrounding the edge of any wading pool basin or splash pad safety surface; or

C. Within any zoo or farm area.

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[11] **Editor's Note: This by-law comes into force on the day after the set fine order is issued by the Regional Senior Judge of the Ontario Court of Justice. The date of set fine approval is 2009-04-01.**

ARTICLE III
Parks Use

§ 608-9. Access.

A. Unless authorized by a parks access agreement, no person shall access or occupy a park for non-recreational uses, or to access an adjacent property.

B. Unless authorized by permit, no person shall use, enter or gather in a park between the hours of 12:01 a.m. and 5:30 a.m.

§ 608-10. Campfires and barbecues.

While in a park, no person shall:

A. Light, build or stoke an open fire or bonfire unless authorized by permit;

B. Use any portable barbeques unless authorized by permit or where posted to allow the use;

C. Use fuel other than charcoal or briquettes in permanently fixed barbeques; or

D. Leave a barbecue or campfire without extinguishing the fire and ensuring that the embers are cold.

§ 608-11. Organized gatherings, special events, festivals and picnics.

While in a park, no person shall:

A. Unless authorized by permit, hold a picnic, organized gathering or special event for more than 25 persons;

B. Interfere with a picnic, organized gathering or special event authorized by permit; or

C. Move park furniture from an area to another area to accommodate their picnic, organized gathering or special event.

§ 608-12. Amplifiers and loud speakers.

Unless authorized by permit, no person shall operate loud speakers or amplifying equipment from any source in a park.

§ 608-13. Camping and lodging.

Unless authorized by permit, no person shall dwell, camp or lodge in a park.

§ 608-14. Tents and structures.

Unless authorized by permit, no person shall place, install, attach or erect a temporary or permanent tent, structure or shelter at, in or to a park.

§ 608-15. Bathing, swimming, and sun bathing.

A. No person shall in a park:

(1) Enter a public swimming pool, except at times designated for swimming;

(2) In or adjacent to a swimming pool, fail to comply with posted signs or to obey the instructions of any lifeguard or other authorized person;

(3) Swim, bathe or wade in a fountain, pond, lake or stream, except in a designated area; or

(4) Utilize facilities without being properly attired, including appropriate swimwear or beach clothing.

B. Despite Subsection A, clothing shall be optional in the designated clothing optional beach area at Hanlan's Point Beach on Toronto Island.

§ 608-16. Use of wash and change rooms.

In a park, no person shall enter any portion of any washroom, bathhouse, change room or recreation facility set apart for the opposite sex.

ARTICLE IV
Games, Sports and Organized Activities

§ 608-17. Organized sports or activities.

While in a park, no person shall:

A. Arrange or engage in an organized sport or activity, unless authorized by permit;

B. Interfere with an organized sport or activity authorized by permit; or

C. Utilize a designated area without a permit where it is posted to prohibit or restrict such use.

§ 608-18. Golf.

A. While in a park, no person shall play or practise golf or strike a golf ball except on a golf course or in a designated area.

B. No person shall on a golf course located in a park:

BATTY et al.
Applicants

and

CITY OF TORONTO et al
Respondents

Court File No: CV-11-439487-000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

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