

CANADA / JUDGMENT

Hildebrand v. Penticton (City)

2020 BCSC 353

COURT

Supreme Court of British Columbia

DECIDED

13 March 2020

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2020 BCSC 353 Hildebrand v. Penticton (City)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hildebrand v. Penticton (City),

2020 BCSC 353

Date: 20200313

Docket: S44802

Registry: Penticton

Between:

Dennis Axle Hildebrand

Petitioner

And

The Corporation of the City of Penticton

Respondent

Before: The Honourable Mr. Justice G.P. Weatherill

On judicial review from: An adjudication under the City of Penticton Bylaw Enforcement Bylaw, dated August 1, 2019

Reasons for Judgment

Counsel for the Petitioner:

M.F. Welsh, QC

Counsel for the Respondent:

T.J. DeSouza

Place and Date of Trial/Hearing:

Penticton, B.C.

February 27, 2020

Place and Date of Judgment:

Penticton, B.C.

March 13, 2020

Introduction

- [1] This is a judicial review of the August 1, 2019 decision of an arbitrator relating to seven bylaw offences alleged to have been committed by the petitioner between February 20, 2019 and May 21, 2019. The bylaw offences concern various vehicles owned by the petitioner that were parked on Victoria Avenue in the City of Penticton ("City") that were not displaying valid license plates.
- [2] The vehicles were ticketed and in two cases, vehicles were towed.
- [3] The petitioner disputed all seven tickets. The matter went before an arbitrator duly appointed under the Local Government Bylaw Notice Enforcement Act, ("Act") S.B.C. 2003 c. 60.
- [4] The relevant section of the City's Traffic Bylaw 94-39, s. 3.2(A)(36) ("Bylaw") reads:
- 3.2(A) Except when necessary to avoid conflicts with traffic, to comply with the law no person shall stop, stand or park a vehicle:
- (36) which does not display valid license plates
- [5] At the hearing that was conducted on August 1, 2019, the adjudicator upheld all seven tickets.
- [6] On August 30, 2019, the petitioner filed a petition seeking judicial review of the arbitrator's decisions. The reasons advanced for the judicial review are that the adjudicator:
- a) denied the petitioner a fair hearing;
 - b) violated the principles of natural justice by denying his request for an adjournment of the hearing so that he could be represented by legal counsel;
 - c) did not allow him a fair opportunity to present his case;
 - d) committed a reviewable error of law in refusing to interpret the Bylaw correctly in order to determine if the petitioner had committed the Bylaw infractions; and

e) did not provide proper reasons for her decisions.

[7] He seeks a re-hearing.

Background

[8] The petitioner owns various vehicles that were parked on the 200 block of Victoria Avenue in Penticton.

[9] On February 20, 2019, the City receive a complaint of a noxious smell emanating from one of the vehicles and investigated. The by-law officer saw a 1995 Mercedes sedan with expired plates parked at the curb. An inquiry with ICBC disclosed that it belonged to the petitioner and that its plates had expired on July 14, 2018. A By-law infraction ticket was placed on the windshield.

[10] About the same time and date, the by-law officer also saw a 2007 Nissan Quest owned, according to its inquiry with ICBC, by a Gyowon Kwak, who had the same address as the petitioner, also not displaying a valid licence plate. The licence plate that was attached to the vehicle was reversed so that the plate number could not be easily read. A By-law infraction ticket was placed on its windshield.

[11] Also about the same time and date, the by-law officer saw a utility trailer (which appears to have been constructed from the box of a Ford pick-up truck) in the same area with a trailer licence plate that had expired on February 15, 2019. The definition of "vehicle" in the By-law includes ". . . a device in, upon or by which a . . . thing . . . may be transported or drawn upon a highway . . .". Because the By-law definition of "vehicle" included trailers, it too was ticketed.

[12] Also about the same time and date, the by-law officer saw a Ford pick-up truck ("Ford Truck") parked at the curb with plates that had expired on October 27, 2017. An inquiry with ICBC disclosed that the plates were registered to a 1987 Dodge station wagon in the Petitioner's name. As it happens, the Petitioner purchased insurance for the Ford Truck the same day, February 20, 2019, he says before the ticket was issued. The petitioner explains that he had not had an opportunity of attaching the new decal to the plate by the time the ticket was issued. This new insurance/plate expired May 20, 2019.

[13] On February 21, 2019, the by-law officer returned to the area of Victoria Avenue in follow-up and noted that the Mercedes that was ticketed on February 20, 2019, was still on the street without a valid plate. It was ticketed again and the officer arranged for it to be towed to a storage compound.

- [14] On February 25, 2019, the by-law officer returned once again to Victoria Avenue. This time he ticketed a 1994 Toyota SUV registered to the petitioner that was parked on the street without displaying a valid licence plate. A subsequent inquiry with ICBC disclosed that the licence/insurance was placed on the vehicle and did not expire until March 22, 2019. It is unclear why a valid decal was not placed on the Toyota.
- [15] On May 21, 2019, the by-law officer attended again at Victoria Avenue and noted the Ford Truck with its licence plate decal expired the day before. Another ticket was issued.
- [16] All told, between February 20, 2019 and May 21, 2019, the petitioner was issued seven violation tickets for invalid license plates. The fines totalled \$385. He also incurred towing and storage charges exceeding \$2,000.
- [17] The petitioner disputed those violation tickets in the appropriate manner. In due course he was notified that a hearing would take place on June 6, 2019, at the Kelowna City Hall chambers but because of work commitments, the petitioner requested the hearings be moved to Penticton. The bylaw dispute coordinator agreed and the matter was set for hearing on August 1, 2019, at the Penticton City Hall chambers.
- [18] The petitioner was preparing for the August 1, 2019 hearing the week before. On July 31, 2019, he felt somewhat overwhelmed with the process and determined he would seek the assistance of legal counsel. He met with Mr. Welsh, Q.C., at 4:00 pm on July 31, 2019, to discuss the matter. The petitioner attempted but was unable to arrange an appointment with Mr. Welsh sooner that week because of Mr. Welsh's schedule.
- [19] Mr. Welsh agreed to represent him but was unable to clear his schedule to attend the hearing the following day. He suggested that the petitioner attend the hearing on his own, explain the dilemma and seek an adjournment.
- [20] On that advice, the petitioner attended the hearing on August 1, 2019, and requested an adjournment so that Mr. Welsh could represent him. The adjudicator refused the request stating "that's not going to happen" and that the matter would proceed that day. The petitioner then asked that his matters be stood down to allow him to call Mr. Welsh. The adjudicator agreed. The petitioner contacted Mr. Welsh who came to the hearing. Mr. Welsh explained to the adjudicator that he would be able to represent the petitioner but he had not had time to research and properly consider the issues and advise the petitioner. Nevertheless, the adjudicator declined Mr. Welsh's request that the matter be adjourned and stated it would proceed that day. Mr. Welsh left the hearing.
- [21] In due course, the petitioner's matters were called. He says he became flustered, unnerved and despite attempting to do his best to present an argument, he was unable to. He says the arbitrator accused him of being "foot loose and fancy free" with the licence plates and suggested that he should cease "abusing the system". In frustration, the petitioner left the hearing before it was complete.

[22] The adjudicator continued the hearing in the petitioner's absence and in seven short identical reasons, determined that all seven infractions were proven and were valid. These were her reasons:

The Disputant admitted that he did park the motor vehicle on the street on the date the ticket was issued. However, he states that he had insurance on the license plate on the vehicle but had not put the decal on the plate. He further admits that the plates did not match the vehicle but that this was acceptable as the plate itself was insured, therefore making any vehicle it was attached to considered to have valid insurance.

The Disputant's assertions with respect to validity and the exchange of licences plates between numerous vehicles is contrary to the Motor Vehicle Act of BC. The Cities bylaws mirrors the Motor Vehicle Act of BC and therefore the Disputant was in violation of the bylaw. The ticket will stand.

Petitioner's Position

[23] The petitioner argues that he was denied a fair hearing, denied an opportunity to be represented by counsel and was unable to present his case. The basis of the adjournment application was to prepare a legal challenge respecting the interpretation of a valid licence plate which the adjudicator conflated with a challenge to the By-law itself. She indicated that her function was simply to find the facts, that she had no jurisdiction to interpret the By-law and that is why she refused the adjournment. The petitioner argues that the adjudicator's ruling on this point was plainly wrong and she committed an error of law: *Leaf v. Langley (Township)*, 2018 BCSC 335 at paras. 72-74 and 78; *Sissett v. Central Okanagan (Regional District)*, 2019 BCSC 2091 at paras. 35-37.

[24] He also says that the adjudicator's reasons respecting all seven tickets were identical and improperly folded into one issue. She referenced the Motor Vehicle Act but did not reference which sections applied. By referring to the Motor Vehicle Act, the adjudicator was attempting to suggest that the petitioner was not permitted to transfer plates between vehicles which the petitioner says is erroneous. He relies on s. 3.08 of the Motor Vehicle Act Regulations, B.C. Reg 26/58 in support.

Respondent's Position

[25] The City relies on the "reasonableness" standard of review set out in the recent Supreme Court of Canada decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [Vavilov], and says that in all the circumstances, this Court must defer to both the arbitrator's decisions respecting her denial of Mr. Hildebrand's adjournment request and her decisions on the merits.

Discussion

[26] The key principles emerging from Vavilov are that it:

- a) affirms that reasonableness is the standard of review for judicial reviews;
- b) expands the reasonableness analysis and how it is to be applied; and
- c) permits greater deference to the decisions of administrative tribunals.

[27] The reasonableness review under Vavilov can be summarized as follows:

- a) it should give effect to the legislature's intent to leave certain decisions with administrative bodies, with judicial review restricted to ensuring the rule of law: Vavilov at para. 82;
- b) it should be focussed on the decision actually made, including both the reasoning process and the outcome of the decision. Courts should refrain from deciding the issues themselves: Vavilov at paras. 83 and 87;
- c) Whether a decision is "reasonable" depends on the full context of the decision and the underlying facts and law: Vavilov at paras. 88-90;
- d) An administrative body's decision and reasons must not be held to a standard of perfection nor a standard of "judicial justice". The reviewing court must respect and be sensitive to the fact that administrative bodies operate in an "institutional" context and bring specialized experience to bear: Vavilov at paras. 91-96;
- e) The party challenging the administrative decision bears the burden of demonstrating that the decision is unreasonable: Vavilov at paras. 91-96;
- f) Whether a decision is "unreasonable" engages two types of fundamental flaws:
 - i. Firstly, is it irrational and illogical. A reasonable decision must be able to reasonably lead the decision-maker from the evidence to the conclusion it draws. The court does not engage in a "line-by-line" "treasure hunt for error", but considers the overall thrust of the decision: Vavilov at para. 102.
 - ii. Secondly, it is not justified based on the underlying facts or law: Vavilov at paras. 105-109 and 142.

[28] The dispute process under the Act is designed to avoid formal court procedures and to accommodate the appearance of and submissions by individuals without the necessity of retaining a lawyer. While disputants are always entitled to have lawyers represent them, the process is not generally conducive to the adversarial process. There is nothing unfair about this type of process: *Yard Investment Inc. v. Langley (Township)*, 2018 BCSC 1658 at paras. 94-95. It is more of an informal inquiry.

[29] Whether or not to permit an adjournment of the hearing was a matter of the adjudicator's discretion: *Singh v. Chad*, 2018 BCSC 1860 at para. 46. She was not required to give an explanation for her decision. This is unlike the typical court system where various factors and legal principles, such as the balancing of competing interests, consideration of the elements in the case, the grounds and timeliness of the request, the potential prejudice, the

administration of justice and the history of the matter, are all at play in the consideration of whether a matter ought to be adjourned.

[30] Here, the adjudicator exercised her discretion to deny the petitioner's adjournment request. That was her decision to make in the circumstances and I cannot say that she acted unreasonably in doing so, particularly since the petitioner was tardy in seeking Mr. Welsh's assistance until the evening before the hearing. It did not amount to the level of "serious prejudice" as was discussed in *R. v. McKenzie*, (1989) 51 CCC (3d) 285 at 291 and 293 (B.C.S.C.).

[31] Respecting the adjudicator's decision on the merits, s. 21 of the Act sets the framework as follows:

21(1) The standard of proof for resolving a dispute referred to in section 14 [local government dispute adjudication system] is proof on a balance of probabilities.

(2) If, after the hearing required under section 18 [adjudication procedures] in respect of a dispute referred to in section 14 (a) [local government dispute adjudication system], the adjudicator is satisfied that the contravention alleged in the bylaw notice occurred as alleged, the adjudicator must order that the penalty set out in the notice is immediately due and payable to the local government indicated on the bylaw notice by the person to whom it was issued or deemed issued.

(3) If, after the hearing required under section 18 in respect of a dispute referred to in section 14 (a), the adjudicator is satisfied that the contravention alleged in the bylaw notice did not occur as alleged, the adjudicator must cancel the bylaw notice.

[32] The process is straightforward. The arbitrator's job was to determine whether or not the By-law infractions took place. It does not require a standard of perfection.

[33] I have reviewed the record that was before the adjudicator. It consists of the seven By-law infraction notices, screening reports prepared by a screening officer appointed under the Act, the By-law, various photographs of the vehicles taken by the by-law officer each time a ticket was issued and printouts from the ICBC licencing information system. Based on the record before her, I conclude that it was not unreasonable for the adjudicator to conclude that the petitioner was, as she commented, "footloose and fancy free" respecting the licence plates on the vehicles.

[34] The burden is on the petitioner to show that the adjudicator's decision was unreasonable. In my view, she had sufficient evidence before her to conclude that the bylaw offences occurred. Although the reasons she gave respecting all cases were identical, (the petitioner calls them a "cut and paste" job) I cannot find that, all things considered, her decisions were unreasonable. It was not irrational, illogical and was not disconnected with the facts of the matters before her. Her decisions must be shown deference.

Decision

[35] The petition is dismissed.

[36] Costs were not spoken to. Either party may address the issue of costs by making the appropriate arrangements with trial scheduling within 30 days of the date of these reasons.

"G.P. Weatherill J."

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