CITATION: Fodor v. North Bay (City), 2018 ONSC 3722
DIVISIONAL COURT FILE NO.: 431/15
DATE: 20180619

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

C. HORKINS, THORBURN, AND POMERANCE JJ.

BETWEEN:	)	
DIANA FODOR Applicant	)	*Andrew Lokan*, for the Applicant
– and –	)	
THE CORPORATION OF THE CITY OF NORTH BAY Respondent	)	*Jeffrey Lanctot and Catharine Blastorah*, for the Respondent
	)	**HEARD at Toronto:** May 17, 2018

POMERANCE J.

I. INTRODUCTION

[1] Diana Fodor is a landlord in North Bay. She owns buildings in the vicinity of Nippissing University and Canadore College and rents to students. In 2012, the City of North Bay ("the City") enacted a by-law that imposes special licencing requirements on rental properties with multiple, economically independent tenants. The applicant has been charged with operating a rental unit without a valid licence as required by the by-law. She seeks judicial review of the by-law and a declaration that it is invalid. The parties have agreed to postpone the applicant's trial pending determination of the judicial review.

[2] The applicant raises two central arguments. First, she alleges that the enactment is discriminatory, contrary to the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19 ("the *Code*"), and ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms*. She says that, by targeting students, the by-law effectively discriminates on the basis of age,

marital status, and family status. Second, she argues that the by-law is invalid because it conflicts with the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 ("*RTA*").

[3] The City resists the challenge. It says that there is no evidence of discrimination and that, in any event, students are not an enumerated or analogous ground under the *Code* or the *Charter*. The City argues that the by-law is operationally consistent with the *RTA*.

[4] On the record before us, there is no basis for a declaration of invalidity:

a. The applicant has failed to establish that the law targets a protected group under the *Charter*. Student status is not an enumerated ground of protection; nor is it a proxy for age, marital, or family status;

b. The applicant has failed to establish discrimination under the *Code*. The by-law was enacted for legitimate purposes. There is no proof of adverse effects discrimination. It follows that there is no violation of ss. 7 or 15 of the *Charter*; as those claims have been framed by the applicant.

c. Properly interpreted, the by-law does not operate in a manner contrary to the *RTA*.

[5] These conclusions will be discussed below. I will begin by summarizing the background of the dispute. I will then address issues of jurisdiction and standing, before turning to the merits of the claims. On the issue of discrimination, I will focus the analysis on the Human Rights Code because it overlaps with, and is dispositive of, the *Charter* claims. I will then turn to the application of the *RTA*.

II. BACKGROUND

[6] In 2010, the City of North Bay struck a committee to review health and safety issues in residential housing, and to reduce nuisance issues in residential areas. On November 30, 2010, City representatives met with residents from the community. As a result of the meeting, City staff recommended to council that a residential by-law be prepared to license rental units and help ensure safe living accommodations. The impetus was to move away from a complaints-based property standards system, toward a more proactive system supported by licensing requirements and inspections.

[7] The initial by-law was enacted in 2011. In June 2011, the Ontario Human Rights Commission ("OHRC") wrote to the City to advise that the OHRC had been monitoring and reviewing housing licence by-laws in various municipalities. The OHRC recommended at that time that the by-law apply on a city-wide basis. It was said that limiting the by-law to areas populated by student housing suggested that the by-law was directed towards certain groups of people. The OHRC also addressed the bedroom cap and the fact that the by-law required landlords to ask intrusive questions of tenants.

[8] The 2011 by-law was repealed and replaced by By-Law No. 2012-55 ("the by-law"). The City determined that, while the by-law would initially apply in the northwest section of the City (which had the largest number of residential housing units), it would then be

expanded to include the entire city. As of January 2016, the by-law applied to all of North Bay.

[9] The new by-law also exempted the following rental units from the licencing requirement:

a. a rental unit that is occupied by one tenant, in which no more than one other bedroom is occupied by a tenant; and

b. a rental unit that is occupied by the owner of the rental unit as their sole residence and in which no more than two bedrooms are occupied by tenants.

[10] The by-law defines a tenant as a person who pays rent, or who provides services in lieu of paying rent, in return for the right to occupy a rental unit.

[11] In March 2012, the OHRC announced its intention to conduct an inquiry into the by-law under s. 29 of the *Code*. The OHRC issued its report with recommendations on May 9, 2013. It found that the by-law was discriminatory because of the rental unit exemption, which favoured traditional family units over other persons who live together but pay rent separately, "such as single people protected by the Code ground of marital status, or students who may be proxy for Code grounds such as age, marital status or receipt of public assistance". The City declined to amend the by-law in accordance with the recommendations in the 2013 report.

[12] The OHRC wrote another letter to the City in March 2015, prompted by a complaint received by the OHRC from a landlord. The landlord was "concerned that the exemption is being applied in a way that privileges families…over student households who have all signed same lease". While the landlord was not named in the letter, the applicant has since acknowledged that she was the person who lodged the complaint with the OHRC.

III. ANALYSIS

A. Preliminary Matters

1. Jurisdiction

[13] The by-law was enacted by the City under the authority of the *Municipal Act, 2001*, S.O. 2001, c. 25. Pursuant to s. 2(1) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1, ("*JRPA*"), this court has jurisdiction to review the exercise of a statutory power, including the power conferred by statute to make any regulation, rule, by-law, or order. The issues raised by the applicant could have been addressed in the Superior Court of Justice by way of an originating action or application. However, styled as an application for judicial review, the matter is properly heard in the Divisional Court. The parties have agreed that the Divisional Court is their venue of choice.

2. Standard of Review

[14] The onus falls on the applicant to establish *prima facie* discrimination under the *Code*, and a violation of the *Charter* on the balance of probabilities. If the by-law is found to violate the *Code* or the *Charter*, it must be declared invalid to the extent of the inconsistency, pursuant to s. 52(1) of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.

[15] On the alleged conflict with the *RTA*, the question is whether the by-law is a reasonable exercise of the power delegated to the City under the *Municipal Act*. This involves questions of statutory interpretation tempered by deference, as recently affirmed by the Supreme Court of Canada in *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 ("*West Fraser*"), at para.23:

> It is true that this Court, in *Dunsmuir*, referred to prior jurisprudence to indicate that true questions of jurisdiction, which some suggest the present matter raises, are subject to review on a standard of correctness — noting, however, the importance of taking a robust view of jurisdiction. Post-*Dunsmuir*, it has been suggested that such cases will be rare: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at para. 33. We need not delve into this debate in the present appeal. *Where the statute confers a broad power on a board to determine what regulations are necessary or advisable to accomplish the statute's goals, the question the court must answer is not one of vires in the traditional sense, but whether the regulation at issue represents a reasonable exercise of the delegated power, having regard to those goals, as we explained in Catalyst and Green, two recent post-Dunsmuir decisions of this Court where the Court unanimously identified the applicable standard of review in this regard to be reasonableness.* [Emphasis added.]

3. Standing

[16] At the outset of the hearing, we received submissions on whether the applicant has standing to argue that the law is discriminatory. The alleged discrimination focusses on the rights of tenants, not landlords. Landlords pay licencing fees and may need to repair buildings to meet specifications, but those economic burdens are not protected by the *Code* or the *Charter*. The crux of the applicant's position is that the law discriminates against student tenants. Can a landlord invoke the rights of tenants if she is not a member of the group?

[17] Standing is not an impediment in the circumstances of this case. The applicant has been charged under the by-law. The pending prosecution gives her a direct interest in the validity of the law, as it relates to her or others within its ambit. As a person charged, the

applicant has the right to argue that the law is invalid because it infringes the rights of others. This flows from the principle that no one should be prosecuted under a law that is unconstitutional. McLachlin C.J.C. explained this principle in *R. v. Nur*, 2015 SCC 15, [2015] 1 S.C.R. 773, at para. 51:

> [As] I wrote in *Ferguson*, "[a] claimant who otherwise has standing can generally seek a declaration of invalidity under s. 52 on the grounds that a law has unconstitutional effects either in his own case or on third parties": para. 59. This is because "[i]t is the nature of the law, not the status of the accused, that is in issue": *Big M*, at p. 314, per Dickson J. Section 52 of the *Constitution Act, 1982* entrenches not only the supremacy of the Constitution but also commands that "any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect". If the only way to challenge an unconstitutional law were on the basis of the precise facts before the court, bad laws might remain on the books indefinitely. This violates the rule of law. No one should be subjected to an unconstitutional law: *Big M*, at p. 313. This reflects the principle that the Constitution belongs to all citizens, who share a right to the constitutional application of the laws of Canada.

[18] Given the applicant's standing to challenge the law under which she is charged, it is not necessary to consider whether the applicant can satisfy the test for public interest standing.

B. The Importance of the Evidentiary Record

[19] Constitutional and human rights issues must not be decided in a factual vacuum. Such determinations must be based on evidence. As Cory J. put it in *Mackay v. Manitoba*, [1989] 2 S.C.R. 357, at p. 361–62:

> The presentation of facts is not, as stated by the respondent, a mere technicality; rather, it is essential to a proper consideration of *Charter* issues. A respondent cannot, by simply consenting to dispense with the factual background, require or expect a court to deal with an issue such as this in a factual void. *Charter* decisions cannot be based upon the unsupported hypotheses of enthusiastic counsel.

[20] The applicant relies on an evidentiary record in this case. However, it consists of both sworn and unsworn assertions, punctuated by hearsay and double hearsay.

[21] The filing of hearsay evidence is not *per se* offensive on a human rights challenge. Weight depends on what the evidence is, and the purpose for which it is proffered. Some of the hearsay evidence in this case is of dubious value. For example, the applicant relies on a document purporting to be minutes of a town hall meeting on November 30, 2010. The document contains notes, taken by an unknown person, of statements made by

neighbourhood residents at the meeting. Neither the declarants nor the note taker are before the court. It is impossible to assess the reliability of this evidence if proffered for its truth. It is rife with hearsay dangers. Among other things, the assertions, cloaked in multiple layers of hearsay, are effectively immune from cross-examination.

[22] In other instances, to be discussed below, the concern is that the evidence does not support the inferences urged by the applicant. A valid inference is one that flows reasonably and logically from the evidence. Inferential gaps must be bridged by evidence, not speculation, assumptions, or creative advocacy. As was held by T. Ducharme J. in *R. v. Munoz*, 2006 CanLII 3269, 86 O.R. (3d) 134, at para. 31: "Supposition or conjecture is no substitute for evidence and cannot be relied upon as the basis for a reasonably drawn inference". Counsel for the applicant says that the gaps should be excused because the applicant has limited resources. This factor does not alter the standard of proof, or justify evidentiary shortcuts. Findings are a function of the evidence, not the size of the litigants' pockets.

C. Discrimination

1. The Test

[23] In order to make out a case of *prima facie* discrimination, the applicant must demonstrate that:

a. The subject of the alleged discrimination has a characteristic protected by discrimination under the *Code*;

b. The subject of the alleged discrimination experienced an adverse impact with respect to occupancy of accommodation; and

c. The protected characteristic was a factor in the adverse impact.

[24] It is only where a *prima facie* case is made out that the government is required to offer a justification for the enactment: see *Stewart v. Elk Valley Coal Corp.*, 2017 SCC 30, [2017] 1 S.C.R. 591, at para. 24.

2. Students Are Not A Protected Group

[25] Section 2 of the *Code* provides that:

> 2(1) 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, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance.

[26] Student status is not a protected ground under the *Code*.

[27] The applicant argues that, while student status is not enumerated, it is analogous to the *Code* grounds. The applicant says that student status is a proxy for age, marital status and family status because students tend to be young, single, non-parents. On this basis, she argues that discrimination against students is discrimination on the basis of age, as well as marital and family status. The OHRC has endorsed this position, but it has yet to be adopted by the courts. This position was rejected in *London Property Management Association v. City of London*, 2011 ONSC 4710, at para. 93. Similarly, I find in this case that the applicant's argument does not withstand scrutiny.

[28] The applicant relies on statistics to draw a link between students and age. She defines young persons as being 30 years of age or under, and points to Statistics Canada data indicating that, in 2014, approximately 90 percent of full-time, post-secondary students in Ontario were aged 30 or younger. The applicant argues that because the majority of students are young, student status is a proxy for age. However, the question is not merely how many students are young. There must also be consideration of how many young persons are students. Using the applicant's own statistics, only 29 percent of persons under the age of 30 are enrolled in post-secondary institutions. If less than 30 percent of young persons are students, this would suggest that the concordance between the two factors is actually quite low.

[29] There are no statistics linking students to a particular marital or family status. Here, the applicant asks the court to take judicial notice of the proposition that most students are at a stage in life where they are unlikely to be married and or in parental roles. There is likely some correlation between these factors. It may well be that many students are unmarried and/or without children. However, there is no evidence comparing the average age of students to that of married couples and parents. Youth is not exclusive to the student population.

[30] The applicant asks the court to take judicial notice of the fact that students are usually in an early stage of the life cycle, and are therefore more likely to be single than non-students. I do not see this as a proper subject of judicial notice. It is not so notorious or generally accepted as not to be the subject of debate among reasonable persons. Nor is it capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy: see *R. v. Spence*, 2005 SCC 71, [2005] 3 S.C.R. 458. People marry and/or have children at many stages of life. It is conceivable that, just as many people go to university in their 20s, many people marry and start families before they turn 30. Absent evidence, I cannot conclude that there is a significant age difference between married parents and unmarried students.

[31] One can add to the mix the inherent malleability of statistics, a reality captured in the colloquialism "lies, damn lies, and statistics". The size of the group can be made larger or smaller depending on the parameters. The applicant defined young persons as being 30 years of age or younger. As pointed out by the respondent, if young persons were defined as being 24 years of age or younger, the size of the group drops by about 12 percent. As the age cap shifts so too does the size of the group said to be affected by the

by-law. Given the ease of manipulation, the size of the group is not a stable or helpful measure for assessing discrimination.

[32] This was recognized by the Supreme Court of Canada in *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3. Speaking about the size of the group as it distinguishes between direct and adverse effects discrimination, McLachlin J. (as she then was) said, at para. 34:

> Second, the size of the "group affected" is easily manipulable: see Day and Brodsky, *supra*, at p. 453. For example, in *Toronto-Dominion Bank*, *supra*, the Bank instituted a policy of having returning employees submit to drug tests. Was the affected group the small minority of returning employees who were drug-dependent, leading to a characterization of the policy as adverse effect discrimination? Or was the affected group all returning employees who were required to submit to invasive drug-testing on the assumption that some of them were drug-dependent, lending itself to a characterization of the policy as direct discrimination? "*It is possible for a policy to be characterized as direct discrimination, or adverse effect discrimination, or both, depending on how 'neutrality' and the group affected are defined by the adjudicator": Day and Brodsky, supra, at p. 453. Because the size of the affected group is so manipulable, it is difficult to justify using it as the foundation of the entire analysis.* [Emphasis added.]

[33] Finally, there are other policy reasons for rejecting the notion that students are protected under the *Code*. Student status does not bear the hallmarks of other characteristics that attract human rights protection. Grounds enumerated in the *Code* and under s. 15 of the *Charter* tend to relate to features that are either immutable, or changeable only at unacceptable cost to personal identity. As the majority put it in *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203, at para. 13: "[Section] 15 targets the denial of equal treatment on grounds that are actually immutable, like race, or constructively immutable, like religion." Student status is neither immutable nor constructively immutable. It is a temporary and transitional status – "a transient non-physical state": see *Allen v. Canada (Canada Human Rights Commission)*, [1992] F.C.J. No. 934.

[34] For all of these reasons, the applicant has failed to demonstrate that student status is protected – directly or indirectly – under the *Code* or the *Charter*. It follows that there can be no finding of legal discrimination. Even if students were protected, the evidence falls far short of proving either direct or adverse effects discrimination. I will turn to that issue next.

3. No Direct Discrimination

[35] While the applicant's primary position is that the by-law results in adverse effects discrimination, her counsel did argue that the by-law had a discriminatory purpose, aimed

at shutting down "student ghettos" in certain areas of North Bay. Here, the applicant relies on evidence of homeowners' complaints, as expressed at town hall meetings, a document authored by the Canadian Association of Chiefs of Police, which was posted on the City's website, and a statement made by a municipal politician who was elected after the by-law came into effect.

[36] None of these statements are properly attributed to City officials involved in the enactment of the by-law. Complaints made by neighborhood residents were recorded by the City staff but that is hardly a basis for attributing those views to the City itself. The same can be said for the police document posted on the website. One can surmise that the City posted this document because it might assist prospective landlords. Documents from outside organizations may be posted on a website, just as, in the non-digital world, they might be tacked onto a bulletin board. Offering the literature to consumers does not imply wholesale adoption of its content. Finally, little weight attaches to a statement made by a city official who had no involvement in the by-law and who may not have been privy to the underlying considerations.

[37] The City received complaints from residents in the Thibeault Terrace area, and was aware of conflict between student and non-student residents. This is reflected in the Report to Council, dated February 28, 2011. However, this was not the sole, or even the primary impetus for the by-law. That same report asserts that the concern of City staff was to "ensure safe living accommodations and also balance the character, enjoyment and amenities of existing residential neighborhoods." Perhaps the best evidence is found in the preamble to the by-law, which identifies the following objectives:

1. Protect the health and safety of persons in rental premises by ensuring compliance with certain regulations;

2. Require that certain essentials such as plumbing, heating, and water were provided;

3. Ensure that residential rental premises did not create a nuisance to surrounding properties and neighbourhoods; and

4. Protect the residential amenity, character, and stability of residential areas.

[38] These are important objectives, driven by legitimate concerns. They are non-discriminatory.

4. No Adverse Effects Discrimination

[39] The applicant argues that the by-law results in adverse effects discrimination because it increases the cost of student rentals and reduces the amount of housing that is available to student renters. There is no evidence from students to indicate that they have experienced rent increases or shortages in rental units. The applicant says that such evidence is unnecessary, and relies on the evidence set out below.

[40] First, in one of its communications, the OHRC perceived that the by-law might have the effect of reducing student housing. In its letter of March 20, 2015, the OHRC cautioned the City that the by-law "may have an impact on students who are trying to rent housing as a single housekeeping unit – landlords may not rent to them because their property would then be subject to licencing." This does not prove the applicant's assertion. Contemplation that the law *may* have an impact is not evidence that it *has* had an impact.

[41] Similarly, the applicant argues that the City knew the by-law might reduce available rental properties. She refers to a Report to Council dated May 31, 2013, authored by Beverley Hillier, the Manager of Planning Services. In the report, Ms. Hillier defended the exemption for units rented to "traditional families", stating that:

> The implications of removing this exemption include a complete loss of flexibility in implementing the by-law for those property owners who choose to rent to one or two renters, income support opportunities for home owners and likely a loss of available rental accommodations.

[42] Ms. Hillier was not speaking about the by-law itself; she was referring to potential loss of rental units if the family exemption were removed. In any event, as noted above, concern about what might happen does not amount to proof of what has happened.

[43] The applicant relies on evidence from certain landlords. In one affidavit, Linda Wilson, a landlord who rents to students, stated that she had raised the rent on each of her houses by $300 to offset costs of new work required during the licence renewal process. Ms. Wilson further stated that she has "considered selling my properties as I am not sure the profit margins are worth the trouble and expense associated with licencing and renewal." There is no evidence to indicate that Ms. Wilson has actually sold her properties or that she has stopped renting to students because of the by-law.

[44] Another landlord, Roy Natywary, while claiming opposition to the by-law, stated in his affidavit that he continues to rent to students. So, too, does the applicant. She herself testified in cross-examination that, despite the by-law, she continues to rent to students because she is "familiar with students." This evidence is purely anecdotal and, in any event, fails to establish a reduction in, or shortage of, student housing. It would appear that landlords continue to rent to students despite the impact of the by-law.

[45] The applicant relies on the affidavit of Peter Taylor, a property manager and real estate agent in the City of North Bay. In his affidavit, he said:

> In my capacity as a real estate agent I have also been frustrated with the effect that the by-law is having on market conditions. Since not all home owners are required to obtain a licence, this creates unfair market conditions, and is at least partly attributable to the poor housing prices in the Thiebault Terrace area of the City. As numerous landlords who were renting to students try to get out of the business and sell their rental

> properties, this crowds the market. In turn, there is less of a demand to buy rental properties because of the By-law.

[46] I do not attach any meaningful weight to Mr Taylor's evidence. His bald statements about the real estate market are unsubstantiated. He failed to identify the information he relied upon, or the analysis that he employed. To the extent that he is offering opinion evidence, there is no indication of his qualifications to do so. Nor is he entirely uninterested in the issues, having once been a student landlord himself.

[47] Finally, the applicant points to the results of an FOI request, indicating that a number of by-law licences have not been renewed. As she put it in her affidavit:

> Based on the information I received from the City, there have been 147 licences issued by the City since the By-law came into effect. Of those, 70 have expired, which is a very high number of non-renewals.

[48] The applicant asks the court to infer that the drop in licence renewals is attributable to the by-law and that it has resulted in a housing shortage. Neither inference flows from the evidence. Correlation is not causation. There could be any number of reasons for non-renewal. Nor does the reduction in renewals prove a housing shortage. It may be that new licences are being issued, or that there is non-compliance with the renewal process. Whatever the operative factor, it is an inferential leap to conclude that the by-law is responsible for student housing being unavailable or too expensive.

[49] The applicant argues that the inference is supported, if not by a single item of evidence, then by the cumulative effect of the evidence before the court. I do not agree. Speculative inferences do not gain strength in numbers. In this instance, the whole is not more than the sum of its parts.

[50] The applicant further argues that there is nothing to suggest that the drop in licences is not attributable to the by-law. This, however, misapplies the onus of proof. It is not for the respondent to prove that the law is not *prima facie* discriminatory; it is for the applicant to prove that it is.

[51] In sum, there is no basis for a finding of adverse effects discrimination.

[52] The applicant's argument fails to account for the extent to which the by-law may benefit student tenants. The by-law is designed to increase inspection of student housing and to proactively address health and safety concerns. There is evidence confirming the salutatory effects of the law. For example, the June 2013 Report to Council authored by Ms. Hillier, summarized the results of inspections of rental units subject to the by-law. Many buildings were found to have deficiencies in one or more of 23 specified areas, such as "unsafe stairs/deck", "smoke alarm missing/expired", "handrail missing/broken/unsafe", and "carbon monoxide detector missing/expired", to name but a few. Ms. Hillier observed, in the Report, that the inspections had resulted in "the correction of numerous items that would otherwise not have been identified."

[53] The applicant contends that the court should view the evidence of inspection results with skepticism because the litigation had already commenced. As I understand it, the suggestion is that the City might have altered its reporting of safety infractions because the by-law had been challenged. There is no foundation for this claim and I am not prepared to make such a finding. I note that much of the applicant's evidence was collected after the litigation was contemplated or commenced.

5. Conclusion on Discrimination

[54] There is no basis for a finding of *prima facie* discrimination. It follows that there is no violation of the Ontario *Human Rights Code*. This finding, in turn, dictates that there is no violation of ss. 7 or 15 of the *Charter* as framed by the applicant. The application for judicial review on this basis is dismissed.

D. No Conflict With The *RTA*

[55] The applicant argues that the by-law is invalid because it conflicts with the provisions of the *RTA*.

[56] Section 14 of the *Municipal Act* provides that a by-law is without effect to the extent of any conflict with,

> (a) a provincial or federal Act or a regulation made under such an Act; or
>
> (b) an instrument of a legislative nature, including an order, licence or approval, made or issued under a provincial or federal Act or regulation.

[57] The *RTA* also addresses statutory conflict, providing in s. 3(4) that, "[i]f a provision of this Act conflicts with a provision of another Act, other than the *Human Rights Code*, the provision of this Act applies.

[58] As a matter of statutory interpretation, courts should attempt to interpret two potentially conflicting pieces of legislation in a way that avoids a conflict. If the two provisions can be reconciled with one another, that is the interpretation that must govern. As was recently held in *West Fraser*, at para. 12:

> The reviewing court must determine if the regulation is "inconsistent with the objective of the enabling statute or the scope of the statutory mandate" to the point, for example, of being "'irrelevant', 'extraneous' or 'completely unrelated'": *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810, at paras. 24 and 28.

> To do this, the Court should turn its mind to the typical purposive approach to statutory interpretation and seek an "interpretative approach that reconciles the regulation with its enabling statute": *Katz,* at para. 25.

[59] The applicant argues that the by-law is inconsistent with the *RTA* because a landlord may lose his or her licence under the by-law, yet be unable to evict tenants under the *RTA*. It is said that this creates an impossible situation for a landlord who is, on the one hand, not authorized to rent to tenants, and on the other hand, unable to evict tenants.

[60] This is something of a false dichotomy. The enactments do not conflict. They are concerned with different rights and different relationships. The *RTA* is concerned with the

rights of tenants and the regulation of relationships between tenants and landlords. It provides in s. 1 of the *RTA* that its purposes are to:

> [P]rovide 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.

[61] By way of contrast, the by-law is concerned with the rights and responsibilities of landlords, and their relationship with the City. Licencing under the by-law is designed to ensure that the buildings rented to tenants meet certain minimum specifications. If a licence is withheld, the building is not lawfully available for rental purposes. Were an eviction to be challenged in these circumstances, the loss of the licence might offer the landlord a full defence. I note that s. 50 of the *RTA* expressly contemplates eviction where necessary to undertake repairs to a rental property and will therefore apply in many of the situations in which a licence is not renewed.

[62] Alternatively, it could be said that the by-law does not authorize eviction and is therefore not inconsistent with the *RTA*. Failure to comply with the by-law may simply result in a landlord being fined, found in contempt, or ordered to correct the contravention in the manner and time period that the court considers appropriate.

[63] It is not for this court to determine precisely how a court or tribunal might resolve the alleged conflict in a given case. This issue should not be determined on a hypothetical basis, but rather should await a case in which the conflict arises on the facts. For present purposes, it is enough to observe that the by-law can be interpreted in a manner consistent with the *RTA*. To this extent, there is no conflict that invalidates the enactment: see *London Property Management Association*, *supra*, at paras. 38-58.

E. Conclusion

[64] For the reasons set out above, the application for judicial review is dismissed.

[65] If the parties cannot agree on costs, they shall agree on a timetable for exchange of cost submissions and file them with the court by July 6, 2018.

Pomerance J.

I agree

C. Horkins J.

I agree

Thorburn J.

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REASONS FOR JUDGMENT

POMERANCE J.

Date of Release: June 19, 2018