

Envision Edmonton Opportunities Society and Charles Allard (appellants/applicants) v. The
City of Edmonton (respondent/respondent)
(1103-0123-AC; 2012 ABCA 188)

Indexed As: Envision Edmonton Opportunities Society et al. v. Edmonton (City)

Alberta Court of Appeal
Hunt, Bielby and O'Ferrall, JJ.A.
June 20, 2012.

Summary:

The City of Edmonton closed an airport. Envision Edmonton Opportunities Society circulated a petition demanding that the city keep the airport open and presented the petition to the city. The city clerk rejected the petition because it was filed outside the time limit in s. 233(2) of the Municipal Government Act and it was not signed by the required number of electors. Envision applied for judicial review (mandamus), raising two distinct issues (i.e., the limitations issue (the first question) and the petition issue (second question)). The city applied to have the first question severed and heard first.

The Alberta Court of Queen's Bench, in a decision reported 507 A.R. 275, allowed the city's application to sever the issues, ordering that the first question be dealt with first. The judicial review on the first question proceeded.

The Alberta Court of Queen's Bench, in a decision reported 507 A.R. 298, determined that Envision was required to submit its petition within 60 days as required by s. 233(2) of the Municipal Government Act and was thus statute barred. Therefore the court dismissed the judicial review application. Envision appealed.

The Alberta Court of Appeal dismissed the appeal.

Administrative Law - Topic 3202

Judicial review - General - Scope or standard of review - [See first **Municipal Law - Topic 7428**].

Municipal Law - Topic 408

Councils - Resolutions - Amendment or withdrawal of - [See all **Municipal Law - Topic 7428**].

Municipal Law - Topic 1682

Powers of municipalities - Judicial review of exercise of powers - Scope of powers of judicial review - [See first **Municipal Law - Topic 7428**].

Municipal Law - Topic 7428

Plebiscites and referendums - Petition - Limitation period - A petitioner sought judicial review of the Edmonton city clerk's rejection of the petition because it was statute barred (Municipal Government Act (MGA), s. 233(2)) - The petitioner applied for judicial review

- At issue was whether the limitation period in s. 233(2) applied - The applications judge held that the standard of review was reasonableness and, in any event, the clerk's decision was correct as a matter of law - The petitioner appealed - The Alberta Court of Appeal dismissed the appeal - While the interpretation of the limitation period was a question of law, the city clerk's decision was entitled to deference as the MGA was her home statute - Therefore, the applications judge was correct in applying the reasonableness standard - See paragraphs 5 to 12.

Municipal Law - Topic 7428

Plebiscites and referendums - Petition - Limitation period - Section 233(2) of the Municipal Government Act provided that "A Petition under section 232 requesting an amendment or repeal of a bylaw or resolution is not sufficient unless it is filed with the chief administrative officer within 60 days after the day on which that bylaw or resolution was passed" - The Alberta Court of Appeal interpreted s. 233(2) - See paragraphs 14 to 34 and 44 to 60.

Municipal Law - Topic 7428

Plebiscites and referendums - Petition - Limitation period - A petitioner sought judicial review of the Edmonton city clerk's rejection of the petition because it was statute barred (Municipal Government Act (MGA), s. 233(2)) - Section 233(2) provided that "A Petition under section 232 requesting an amendment or repeal of a bylaw or resolution is not sufficient unless it is filed ... within 60 days after the day on which that bylaw or resolution was passed" - The petitioner sought judicial review, claiming that the limitation period was inapplicable because the petition sought a new bylaw, as opposed to an amendment or repeal of a bylaw or resolution - An applications judge, held that the limitation period applied - The Alberta Court of Appeal dismissed an appeal - The clerk's interpretation of s. 233(2) and her decision were reasonable - See paragraphs 14 to 35.

Limitation of Actions - Topic 8

General principles - Interpretation of limitation provisions - The Alberta Court of Appeal noted that the modern approach to statutory interpretation applied to limitations statutes - See paragraphs 19 and 33.

Statutes - Topic 2601

Interpretation - Interpretation of words and phrases - Modern rule (incl. interpretation by context) - General principles - [See **Limitation of Actions - Topic 8**].

Cases Noticed:

Dr. Q., Re, [2003] 1 S.C.R. 226; 302 N.R. 34; 179 B.C.A.C. 170; 295 W.A.C. 170; 2003 SCC 19, reld to. [para. 5].

Alberta Teachers' Association v. Information and Privacy Commissioner (Alta.) et al. (2011), 424 N.R. 70; 519 A.R. 1; 539 W.A.C. 1; 2011 SCC 61, reld to. [paras. 6, 63].

Alliance Pipeline Ltd. v. Smith, [2011] 1 S.C.R. 160; 412 N.R. 66; 2011 SCC 7, reld to. [para. 12].

Alberta Union of Provincial Employees et al. v. Lethbridge Community College, [2004] 1 S.C.R. 727; 319 N.R. 201; 348 A.R. 1; 321 W.A.C. 1; 2004 SCC 28, reld to. [para.

18].

Bowes v. Edmonton (City) et al. (2007), 425 A.R. 123; 418 W.A.C. 123; 86 Alta. L.R.(4th) 47; 2007 ABCA 347, reld to. [para. 19].

Claresholm (Town) v. Green (2003), 351 A.R. 96; 2003 ABQB 873, reld to. [para. 29].

Berardinelli v. Ontario Housing Corp. et al., [1979] 1 S.C.R. 275; 23 N.R. 298, reld to. [para. 33].

New Brunswick (Board of Management) v. Dunsmuir, [2008] 1 S.C.R. 190; 372 N.R. 1; 329 N.B.R.(2d) 1; 844 A.P.R. 1; 2008 SCC 9, reld to. [para. 62].

Reference Re Provincial Electoral Boundaries (Sask.), [1992] 2 S.C.R. 158; 172 N.R. 1; 94 Sask.R. 161; 81 D.L.R.(4th) 16, reld to. [para. 64].

Ward v. Rock Against Racism (1989), 491 U.S. 781; 109 S. Ct. 2746, reld to. [para. 65].

Statutes Noticed:

Municipal Government Act, R.S.A. 2000, c. M-26, sect. 233(2) [para. 14].

Authors and Works Noticed:

Sullivan, Ruth, Sullivan on the Construction of Statutes (5th Ed. 2008), p. 216 [para. 28].

Counsel:

J.A. Agrios, Q.C., for the appellants/applicants;

K.D. Fallis-Howell, for the respondent/respondent.

This appeal was heard on January 13, 2012, before Hunt, Bielby and O'Ferrall, JJ.A., of the Alberta Court of Appeal. The decision of the court was filed in Edmonton, Alberta, on June 20, 2012, including the following opinions:

Bielby, J.A. (Hunt, J.A., concurring) - see paragraphs 1 to 35;

O'Ferrall, J.A., concurring in the result - see paragraphs 36 to 78.

Appeal dismissed.

Editor: Elizabeth M.A. Turgeon