In the Court of Appeal of Alberta

Citation: Edmonton (City) v. Boonstra, 2025 ABCA 229

Date: 20250624
Docket: 2503-0051AC
Registry: Edmonton

Between:

The City of Edmonton

Applicant

- and -

Stanley Boonstra

Respondent

- and -

Edmonton Subdivision and Development Appeal Board

Respondent

Reasons for Decision of
The Honourable Justice Kevin Feth

Application to Strike an Application for Permission to Appeal

Reasons for Decision of
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[1] The City of Edmonton applies to strike Stanley Boonstra's application for permission to appeal a decision of the Edmonton Subdivision and Development Appeal Board ("SDAB") dated February 13, 2025. The SDAB decision upheld a Stop Order against Mr Boonstra for "Minor Industrial Use" issued November 20, 2024 by a Development Compliance Officer related to a property in a Small Scale Residential Zone.

Background

[2] The style of cause of the SDAB decision listed Mr Boonstra's corporation, SNOW Enterprises Ltd as the appellant (not Mr Boonstra), and The City of Edmonton, Development Authority as the respondent. For the purposes of this striking application, the City and the SDAB have not raised any concerns about Mr Boonstra's standing to seek permission to appeal.

[3] Mr Boonstra's application for permission to appeal was filed March 17, 2025. He named "The City of Edmonton, Development Authority" as the respondent and the Notice to the Respondent in the application identified the respondent as "The City of Edmonton, Development Authority SDAB". The City of Edmonton was not named as a respondent.

[4] Mr Boonstra informed this Court's Case Management Officer in writing that he did not intend the City to be a party to his requested appeal but rather his "arguments are against the 'SDAB' decision, and the reasoning used to make that decision ... Thus, there is no cause to serve 'CITY'", which he maintained had no standing and was acting in bad faith.

[5] The City contends that it is a necessary party to the proposed appeal because s 688 of the *Municipal Government Act***,** RSA 2000 c M-215 [*MGA*] contemplates that an application for permission to appeal from a decision of a subdivision and development appeal board must be served on the affected municipality.

[6] On April 11, 2025, the Case Management Officer added the City as a respondent and changed the name of the existing respondent from "The City of Edmonton, Development Authority" to "Edmonton Subdivision and Development Appeal Board".

[7] The City submits that it did not become aware of Mr Boonstra's application for permission to appeal until a copy was delivered to it by counsel for the SDAB on April 1, 2025, outside the 30-day time-period for service specified in the *MGA.* It contends that Mr Boonstra's failure to serve the City within the time limit is fatal to his application.

[8] The SDAB supports the City's request to strike Mr Boonstra's application for permission to appeal. Further, Michelle Freethy, Supervisor of the Edmonton SDAB deposes that the SDAB was not served with a copy of Mr Boonstra's application for permission to appeal and supporting materials until March 25, 2025 (38 days after the decision issued).

[9] On May 29, 2025, all parties agreed to adjourn Mr Boonstra's permission to appeal application to September 17, 2025. The City's application to strike proceeded before me.

Analysis

[10] Pursuant to Rules 14.37(2)(b) and (c) of the *Alberta Rules of Court*, Alta Reg 210/2010 [*Rules*], a single appeal judge may strike an appeal "for failure to comply with a mandatory rule", or if an application for permission to appeal has not been filed on time. Further, the provisions in Rule 14.37(2) are "intended to provide specific examples covered in the larger scope of authority [of single judges] under Rule 14.37(1)": ***Betser-Zilevitch v Prowse Chowne LLP***, 2022 ABCA 134 at paras 16, 19.

[11] While no specific test determines whether to strike an application for permission to appeal, the question of whether a panel of this Court would have jurisdiction to hear the appeal is a key consideration. If, for example, an appellant has failed to appeal within the time required by statute and the statute does not grant this Court the ability to extend the time to appeal, an appeal will be struck for lack of jurisdiction: see for example ***Wang v Complaints Inquiry Committee***, 2017 ABCA 305.

[12] The City submits that Mr Boonstra's failure to serve it with his application for permission to appeal within the 30 days required under s 688 of the *MGA* deprives this Court of jurisdiction to consider his application. The relevant provisions of the *MGA* state:

> **688(1)** An appeal lies to the Court of Appeal on a question of law or jurisdiction with respect to
>
> > (a) a decision of the subdivision and development appeal board ...
>
> **(2)** An application for permission to appeal *must be filed and served within 30 days after the issue of the decision* sought to be appealed, and notice of the application for permission to appeal must be given to
>
> > (a) the Municipal Government Board or the subdivision and development appeal board, as the case may be, and
> >
> > (b) any other persons that the judge directs.
>
> …

> (5) If an appeal is from a decision of a subdivision and development appeal board, *the municipality must be given notice* of the application for permission to appeal and the board and the municipality
>
> > (a) are respondents in the application and, if permission to appeal is granted, in the appeal, and
> >
> > (b) are entitled to be represented by counsel at the application and, if permission to appeal is granted, at the appeal. [Emphasis added]

[13] The City of Edmonton is the relevant municipality in this matter. Mr Boonstra clarifies in his response materials: "The parties to the proceedings [before the SDAB] were Stanley Boonstra and the City of Edmonton, Development Authority." He adds that the SDAB decision "itemized '*The City of Edmonton, Development Authority'* as the party rendering the Decision" and following the SDAB's "lead" and having "received advice", he filed his application for permission to appeal naming the SDAB as the respondent and only served the SDAB.

[14] Mr Boonstra asserts that when he received the City's application to strike, he further studied the *MGA* and became aware of the requirement that the City must be "given notice" under s 688(5). He argues that as s 688(5) does not stipulate a time limit for notice, and the City's counsel was provided with a copy of his application on April 1, 2025, this was ample time and "no prejudice arose".

[15] Section 688(2) of the *MGA* provides for a specific time-period of 30 days within which to "file and serve" an application for permission to appeal to this Court. No extension provisions are in the statute. The *MGA* also does not expressly or impliedly incorporate the *Rules* and the curative provisions to extend time found within those *Rules*. As a result, this Court lacks jurisdiction to extend the statutorily prescribed time-period for filing and service: ***Northern Sunrise (County) v De Meyer***, 2009 ABCA 205 at paras 7, 12-15, 454 AR 88 [***Northern Sunrise***].

[16] More specifically, ***Northern Sunrise*** at paragraphs 11-15 found that by reading ss 688(2) and (5) of the *MGA* in their grammatical and ordinary sense and in the context of the overall statutory scheme, "it is apparent that the Legislature mandated that the application for leave to appeal must be 'filed' and 'served' within 30 days." Further, s 688(5) expressly provides that certain parties must be given notice of the leave (permission) application. In particular, s 688(5) "reflects the mandatory parties to a leave motion are ... the municipality and the Board":

> … The Legislature would have been aware of the need for an appeal to involve sufficient parties to construct a proper framework for legal debate. It would also have been aware that the municipality is the elected body representing the public at

> large. Since s. 688 applies to appeals by both the municipality and individuals, the Legislature evidently contemplated that an appeal would be properly constituted as long as the parties required by the *MGA* to be given notice receive that proper and adequate notice within 30 days, and that any other proper respondents could be identified later by a judge on a leave motion.

[17] As to any argument that ***Northern Sunrise*** may be distinguishable because it was the municipality that brought the application for permission to appeal in that case, or that in this matter only one of the two necessary parties was not served, the reasoning in that case remains compelling. Guidance is also provided in ***The Green Company Ltd v Calgary (Subdivision and Development Appeal Board)***, 2019 ABCA 11 at paragraph 12:

> … Sections 688(2) and (5) must be read together. The phrase "filed and served", as it appears in section 688(2), is a legal term of art that should be interpreted as it is commonly used in court procedure: *Northern Sunrise* at para 10. Service means (at a minimum) service *on the parties to the application*. Section 688(5) sets out who those parties are-the SDAB and the municipality, who are the necessary parties to the leave application. Therefore, the City must be served. Section 688(2) identities the time within which that service must occur, namely, 30 days. [Emphasis in original]
>
> See also ***Lorimer v Calgary Subdivision and Development Appeal Board***, 2024 ABCA 313 at paras 11-12.

[18] Mr Boonstra did not serve the City within the required timeframe in s 688(2). Even if his reference to "The City of Edmonton, Development Authority" had been interpreted to mean the City, he still did not serve the City within the 30-day time limit.

[19] Mr Boonstra argues that the Court may recognize service retroactively through a *nunc pro tunc* order, relying on Rules 3.15, 13.5 and 14.37. However, the Court cannot "backdate" service, as Mr Boonstra suggests, when the time limit contemplated by the *MGA* has already expired and the backdating would offend the legislative intent expressed through that time limit: ***Sedgwick v Edmonton Real Estate Board Co-Operative Listing Bureau Limited (Realtors Association of Edmonton)***, 2022 ABCA 264 at paras 81-83. The time limit in s 688(2) of the *MGA* is unequivocal. The City need not demonstrate prejudice. More fundamentally, no evidence is presented of the City actually being served or even having knowledge of the application for permission to appeal during the 30-day time-period. Mr Boonstra's request to "cure" the defective service offends the legislative intent that a permission to appeal application must be served within 30 days after the issue of the decision sought to be appealed. A *nunc pro tunc* order is not available.

[20] The SDAB raises the additional concern that Mr Boonstra also failed to serve it within the 30-day time-period. However, Mr Boonstra asserts that the SDAB was served within the time

limit. As the City is not relying on a failure to serve the SDAB within time as a ground for granting its application to strike, that issue is not before me.

[21] In summary, this Court has no jurisdiction to extend the time for service and therefore no jurisdiction to hear (or grant) Mr Boonstra's permission to appeal application.

Conclusion

[22] Mr Boonstra's application for permission to appeal the February 13, 2025 decision of the SDAB is struck.

[23] The City declined to seek costs against Mr Boonstra. The parties shall bear their own costs.

[24] Rule 9.4(2)(c) is invoked.

Application heard on June 19, 2025

Reasons filed at Edmonton, Alberta
this 24th day of June, 2025

Feth J.A.

Appearances:

A. Witt
for the Applicant The City of Edmonton

Respondent S. Boonstra

K.L. Hurlburt, KC
for the Respondent Edmonton Subdivision and Development Appeal Board