

TOWN OF HARTLAND

BY-LAW

A-11

A BY-LAW RESPECING THE ESTABLISHING OF A
RESIDENCY POLICY FOR THE EMPLOYEES OF THE
TOWN OF HARTLAND

READINGS BEFORE COUNCIL

FIRST READING JULY 17, 1991

SECOND READING JULY 17, 1991

THIRD READING JULY 19, 1991

ENACTED BY MOTION OF COUNCIL
OF THE TOWN OF HARTLAND THIS
19TH DAY OF JULY, 1991.

SIGNED: David W. [Signature]
MAYOR

SIGNED: Judy [Signature]
CLERK

TOWN OF HARTLAND

BY-LAW A-11

A BY-LAW RESPECTING THE ESTABLISHING OF A RESIDENCY POLICY
FOR THE EMPLOYEES OF THE TOWN OF HARTLAND

BE IT ENACTED by the Town Council of the Town of Hartland as follows:

1.
 - (a) All permanent and full-time employees of the Town of Hartland are expected to take up residence within the Town, on completion of a probationary period.
 - (b) The probationary period for all Town employees who are engaged for permanent and full-time jobs or positions shall be a six (6) month period.
 - (c) During this probationary period any employee may be dismissed without cause.
 - (d) Employees engaged before this residency policy came into effect are not required to change their place of residence.

STEPHEN L. WILSON

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September 20, 2005

Town of Hartland
VIA FACSIMILE 375-8265

Attention: Judy Dee

Re: Town of Hartland By-Law A-11 – Residency Policy

Dear Judy:

I confirm receipt of your request for an opinion respecting the above. I apologize for the delay.

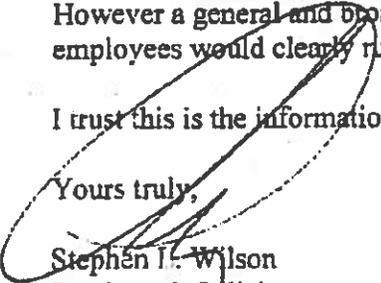
The Canadian Charter of Rights and Freedoms and its application to municipal residency by-laws has been interpreted by our most authoritative Court being the Supreme Court of Canada.

One relevant Charter provision is section 7 which confirms the "Legal Rights" of all Canadians in dealing with governmental bodies, and the right to life and liberty and security of the person and the right not to be deprived of same except in accordance with principles of fundamental justice.

In considering section 7 of the Charter, the Supreme Court in the 1997 case of Longueuil vs. Godbout, confirmed that in certain cases a municipality might well be justified in imposing a residence requirement on employees occupying certain essential positions such as emergency workers where close proximity to employment was important. However a general and broad condition of residence applicable to all municipal employees would clearly run contrary to the Charter.

I trust this is the information you require for now.

Yours truly,


Stephen L. Wilson
Barrister & Solicitor

VII.7.f

MUNICIPAL LAW

[1144]

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1144. (VII.7.f) Municipal officers and employees - Termination of service - Charter of Rights and Freedoms - Municipality passed resolution requiring all new permanent employees to reside in municipality for duration of employment with municipality - Employee dismissed for breach of residence requirement included in employment contract - Choice of where to establish one's home coming within scope of right to liberty under s. 7 of Charter - Residence requirement violating employee's rights under s. 5 of Quebec Charter - Canadian Charter of Rights and Freedoms, s. 7 - Charter of Human Rights and Freedoms, R.S.Q., c. C-12, ss. 5, 9.1. The municipality passed a resolution which required all new permanent municipal employees to live within its territorial limits. As a condition of obtaining permanent employment as a radio operator for the local police, the employee signed a declaration promising to establish her ordinary residence in the municipality, and to continue to live there so long as she was employed by the municipality. When she later moved out of the municipality and refused to move back, she was dismissed in accordance with the declaration which provided for termination in such circumstances. The employee sued for reinstatement and damages, claiming that the residence requirement violated her rights under s. 7 of the Canadian Charter of Rights and Freedoms and s. 5 of the Quebec Charter of Human Rights and Freedoms. The action was dismissed, and the employee appealed. A majority of the Court of Appeal rejected arguments based on both Charters, but allowed the appeal on the basis that the requirement was unreasonable and contrary to public order. The municipality appealed. Held, the appeal was dismissed. Per Major J. (Lamer C.J.C. and Sopinka J. concurring): The appeal should be dismissed on the basis that the residence requirement infringed the employee's right to privacy under s. 5 of the Quebec Charter, and was not justified under s. 9.1. It was unnecessary and perhaps imprudent to consider the Canadian Charter issues in the absence of submissions from interested parties. Section 9.1 of the Quebec Charter is to be interpreted and applied in the same manner as s. 1 of the Canadian Charter. A municipality seeking to uphold a residence requirement that infringes s. 5 under s. 9.1 must show that the requirement is imposed to advance a legitimate and substantial objective, and that the requirement is proportional to that objective, in that it is both rationally connected to the objective and constitutes a minimal impairment of the protected right. It was incorrect to say that any of the particular objectives relied on here, i.e., improving the quality of services by fostering greater loyalty, supporting the local economy, or ensuring that employees providing essential services were readily available, might never be sufficiently compelling to justify a s. 5 in-

fringement. In this case, however, there was insufficient evidence to show that any of those objectives was sufficiently compelling to justify the infringement. Per La Forest J. (L'Heureux-Dubé and McLachlin J. concurring): The residence requirement was subject to Canadian Charter scrutiny, inasmuch as the municipality was governmental in nature, and subject in all its activities to Charter review. Choosing where to establish one's home comes within the scope of the right to liberty protected by s. 7 of the Charter. The employee had not waived her right by choosing to sign the declaration. To be effective, a waiver must be freely expressed. The employee had no alternative but to accept the requirement if she wanted to assume permanent employment. Having had no opportunity to negotiate that term, she could not in any meaningful sense be taken to have freely given up her right. Moreover, her failure to move back to the city when the municipality gave her that option did not amount to a valid waiver. The deprivation by the state of an individual's right to life, liberty, or security of the person will not violate the Charter unless it contravenes the principles of fundamental justice. Three "public interests" were cited as justification for the requirement: (1) the maintenance of a high standard of municipal services; (2) the stimulation of local business and municipal tax revenue, and (3) ensuring that workers performing essential public services are physically proximate to their place of work. With respect to first two, it was by no means clear that the the requirement would have the intended effect, and neither provided a sufficiently compelling basis upon which to override the guarantee in issue. The general premise underlying the third was sound, in certain cases, a municipality might well be justified in imposing a residence requirement on employees occupying certain essential positions. The fact that the requirement in issue applied to all permanent employees hired after a specified date, however, rendered it too broad to be justified on that basis. Moreover, even if the requirement were restricted to emergency workers, the employee would not fall within that class. The requirement therefore violated the employee's right to liberty in a manner inconsistent with the principles of fundamental justice, and thus violated s. 7 of the Charter. It was unnecessary to proceed with a s.1 analysis, as all relevant considerations had been addressed in dealing with fundamental justice. The right to be free from unjustified interference in taking a decision as to where to establish and maintain one's home falls squarely within the guarantee of respect for private life in s. 5 of the Quebec Charter. Since the residence requirement precluded the employee from making that choice freely, it violated s. 5. While s. 5 privacy rights might be waived in some circumstances, such circumstances did not exist here for the reasons given in the discussion of waiver under s. 7 of

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MUNICIPAL CONTRACTS

VIII.1

ever, there was w that any of tly compelling r La Forest J. (lin JJ. concu- ant was subject nas much as the l in nature, and l Charter review. one's home right to liberty Charter. The ight by choos- be effective, a pressed. The t to accept the assume per- had no oppor- e could not in e to have free- her failure to : municipality unt to a valid e state of an or security of Charter unless fundamental were cited as em: (1) the of municipal oca business (3) ensuring il public ser- o their place ro, it was by requirement and neither g basis upon n issue. The : third was pality might eidence re- ying certain the require- permanent ified date, he justified the require- y workers, n that class. olated the nner incon- mental jus- Charter. It ith a s.1 ations had indamental unjustified s to where home falls respect for c Charter. eluded the : freely, it ghts might such cir- re reasons der s. 7 of

the Canadian Charter. Section 9.1 of the Quebec Charter allows for the possibility that the fundamental freedoms and rights enshrined therein may be subject to limits fixed by law. It should be interpreted and applied in the same manner as s. 1 of the Canadian Charter. The first two objectives offered by the municipality in support of the residence requirement were not sufficiently pressing or substantial to justifying the employee's s. 5 right. With respect to the third, it could not be said that the very broad residence requirement was either rationally connected to the end sought, or that it was proportional to it. The infringement, therefore, was not justified under s. 9.1. Per Cory J. (Gauthier and Iacobucci JJ. concurring): The infringement of s. 5 of the Quebec Charter, for the reasons given in La Forest J.'s discussion thereof, provided a sufficient basis for dismissing the appeal. The application of s. 7 of the Charter need not be considered.

Godbout c. Longueuil (Ville) (1997), 152 D.L.R. (4th) 577, 219 N.R. 1, (sub nom. *Godbout v. Longueuil (City)*) 47 C.R.R. (2d) 1, 43 M.P.L.R. (2d) 1, (sub nom. *Longueuil (City) v. Godbout*) 97 C.L.L.C. 210-031, [1997] 3 S.C.R. 844 (S.C.C.), affirming on other grounds [1995] R.J.Q. 2551, 31 M.P.L.R. (2d) 130 (Que. C.A.), reversing 48 M.P.L.R. 307, 12 C.H.R.R. D/141, [1989] R.J.Q. 1511 (Que. S.C.).

B. Miscellaneous issues

1145. (VII.8)
Municipal officers and employees - Miscellaneous issues - Accommodation for county attorney and clerk of peace - Municipal Institutions Act, S. Prov. C. 1866, c. 51, s. 419. Where a county attorney and clerk of the peace was not provided by the county municipality with the necessary and proper accommodation for carrying on his duties as such officer, as required by s. 419 of the Act, held, he was entitled to recover, by way of damage for breach of duty on the part of the municipality, the amount of rent he had paid to secure necessary accommodation.

Lees v. Carleton (County) (1873), 33 U.C.Q.B. 409 (Ont.)

VIII. MUNICIPAL CONTRACTS

1. General

1146. (VIII.1)
Municipal contracts - General - Applicants were tenants of municipal property - Municipality advised tenants of opportunity to purchase property - Municipality provided form of offer and specified terms - Tenants signed agreement of purchase and sale - Tenants discovered driveway encroached upon adjoin-

ing property - Municipality accepted agreement - Transaction closed with both parties reserving rights in respect of easement - Tenants applied for grant of easement - Easement granted - Description of property by municipal address and representations by municipality to sell tenants "their property" would reasonably be taken to include disputed part of driveway - Municipality could have negatived intention to convey easement in agreement but did not - Easement implied - Since agreement impliedly granted easement, and deed silent on easement, municipality taken to have conveyed easement by delivery of deed.

Fine v. Metropolitan Toronto (Municipality) (September 2, 1998), Doc. 97-CV-1766-46 (Ont. Gen. Div.).

1147. (VIII.1)
Municipal contracts - General - City constructed transit system affecting access to parkade - City contracted with parkade to use "best efforts" to enforce by-law relating to laneway access - Parkade complained of blockage in laneway because of parking, loading, construction and garbage containers - City paved laneway, placed signs, and contacted police and waste removal departments - Parkade brought action for damages for loss of access - Action dismissed - "Best efforts" required city, in good faith, to take all reasonable steps to enforce by-law but not to point of interfering with public interest duty - City took action when possible and used best efforts.

Wentworth Developments Inc. v. Calgary (City) (1998), 45 M.P.L.R. (2d) 134, 39 Alta. L.R. (3d) 265, [1998] 7 W.W.R. 516, 218 A.R. 1 (Alta. Q.B.).

1148. (VIII.1)
Municipal contracts - General - Plaintiff company entered into agreement with municipality - Agreement gave company licence to enter municipal roads for purpose of servicing its waterworks - Agreement provided municipality with right of first refusal over shares of company - Waterworks covered certain lands, including unsubdivided lands - Municipality passed by-law concerning development of unsubdivided lands covered by agreement - By-law provided that municipality would supply water to development - Company brought action for declaration that agreement gave it exclusive right to supply water to development - Trial judge held that agreement only granted company licence to enter municipal lands, and that company did not have any exclusive rights - Trial judge made no error of fact or law - Any accrued right in agreement concerning water supply was not exclusive right to supply water to future development.