SUPREME COURT OF NOVA SCOTIA

Citation: *Doucette v. Halifax (Regional Municipality)*, 2015 NSSC 151

Date: 20150521
Docket: Hfx No. 434595
Registry: Halifax

Between:

Richard Doucette

Applicant

v.

Halifax Regional Municipality

Respondent

Decision

Judge:	The Honourable Justice Gerald R. P. Moir
Heard:	April 9, 2015, in Halifax, Nova Scotia
Counsel:	Richard W. Norman, for the Applicant Randolph Kinghorne and Tara Gough, for the Respondent

Moir J.:

Introduction

[1] Mr. Doucette holds a building permit authorizing extensive renovations to the inside and outside of his home on Crichton Avenue in Dartmouth. It does not expire until next September. Nevertheless, the municipality made an unsightly premises order against Mr. Doucette and his wife to repair "the exterior finish of the building" while it was under the permitted renovation.

[2] Mr. Doucette appealed the unsightly premises order to the municipality's Appeals Standing Committee. The committee voted four to two against allowing the appeal. Mr. Doucette sought judicial review.

[3] In addition to the question of the standard at which the committee's decision is to be reviewed, Mr. Doucette raises these issues:

> Did the municipality have jurisdiction to make the unsightly premises order?
> If so, was the property unsightly?
> Was the appeal hearing procedurally unfair?

[4] In my opinion, there was no jurisdictional impediment to the unsightly premises order. However, the quagmire of "true question of jurisdiction" is

avoided because this is a situation in which the appeal committee had to rightly interpret the unsightly premises legislation, and it applied a wrong interpretation. The order is to be annulled as if the appeal had been allowed. See, Rule 7.11.

[5] I hold the opinion alternatively that the committee failed to afford Mr. Doucette procedural fairness. Alternatively, the appeal decision is to be set aside and the order stayed.

[6] I propose to set out the facts going to the first two issues, and give my reasons on them before delving into the facts that go to the plea of procedural unfairness.

Facts Re. Jurisdiction and Interpretation

[7] Mr. Doucette submitted an application for a building permit, including architectural and engineering documents, for a very substantial renovation of the Doucette family home at 92 Crichton Avenue in Dartmouth, including the addition of a second story. The permit was issued in September, 2013. It was good until September, 2015.

[8] As of May, 2014, much of the renovation was complete, but new exterior cladding had not been installed for all of it. Structural elements, studs, and some

insulation were exposed to view. Apparently, the cladding materials were on site, ready to be installed when the renovation reached that stage.

[9] In that month of May, 2014, the municipality received an e-mail that was later described by a compliance office as an "Initial Complaint". It was dated May 5, 2014 and read in part:

> Have you seen the property at 92 Crichton Avenue recently. Would you like to have this in your neighbourhood or worse still next door? This is a total disgrace and has been going on for years with nothing happening to clean up the disgraceful look of it.

Compliance took this as a "service request" and investigated.

[10] Within an hour and a half of the e-mail complaint being delivered to Mr. James Donovan, the "Manager, Municipal Compliance", he instructed others to investigate. He wrote, "I need feedback on this …". Two days later, the "Supervisor, Regional Compliance" reported to Mr. Donovan by e-mail:

> An officer attended today and found two men on site working, they have an active permit, the property is clean, they have material to complete the siding of the structure, the material is stacked neatly. From our position they are doing what is required of them.

[11] Despite this advice, a compliance officer conducted another inspection and left a "Notice of Violation" for "you, the Owner". It was dated May 8, 2014. It

alleged the owner was in violation of "HRM Charter, Part XV Respecting Dangerous or Unsightly Premises". Under "Details of violation", it said:

> the dwelling is in a state of disrepair including, but not limited to the exterior cladding being deteriorated … [indecipherable word] … as in a state of disrepair such that it is unsightly in relation to neighbouring properties.

[12] The May 8, 2014 notice required the "Owner" to "repair the above noted violations". It threatened,

> Failure to comply with this Notice may result in the Halifax Regional Municipality Ordering you to comply, remedying the violation at your expense and/or issuing a Summary Offence Ticket.

[13] The property was re-inspected on May 22, 2014, and an "Order to Remedy Dangerous or Unsightly Premises" was issued the next day.

[14] Mr. Doucette appealed the order. The appeal was heard on July 10, 2014. The appeal committee had before it an extensive report signed by Mr. Donovan and a series of photographs. Present were eight committee members, Mr. Doucette, Ms. Tanya Phillips, "Manager, By-law Standards", Ms. Karen MacDonald, municipal solicitor, and Ms. Krista Vining, "Legislative Assistant".

[15] "Ms. Phillips advised that staff's recommendation is to uphold the Order to Remedy issued May 23, 2014 …". The appeal was dismissed. Mr. Doucette was given thirty days to comply with the unsightly premises order.

[16] Mr. Doucette sought judicial review. For reasons unknown to him at the time, it is now obvious that the court would have set aside the appeal decision and stayed the order because of a gross violation of Mr. Doucette's right to procedural fairness. I will discuss that later.

[17] The municipality conceded. It vacated the unsightly premises order with a view to "a fresh investigation of the current state of the property". Mr. Doucette discontinued the judicial review proceeding.

[18] On October 9, 2014, a compliance officer inspected 92 Crichton Avenue again. On October 20, 2014, an "Order to Remedy Dangerous or Unsightly Premises" was issued again. Again, Mr. Doucette appealed. Mr. Donovan signed a staff report again. He recommended:

> The property owner has had ample time to complete the work to bring the building into compliance. The property is not in compliance with community standards and the exterior of the building should be completed.

[19] Mr. Norman represented Mr. Doucette. He provided a brief and copies of authorities. Mr. Doucette spoke, although the clerk curtailed him. Mr. Norman spoke. (They were subject to a ten-minute limit.)

[20] Others at the appeal hearing were six of the eight committee members, Ms. Phillips, Mr. Randolph Kinghorne, municipal solicitor, Ms. Sherryll Murphy, "Deputy Clerk", and Ms. Vining.

[21] The staff report for the second appeal included an extensive legal justification of the municipality's position. It referred committee members to s. 354 of the municipal charter, and to s. 3(q)(ix) of the various definitions of "dangerous and unsightly": "that is unsightly in relation to neighbouring properties because the exterior finish of the building or structure or the landscaping is not maintained".

[22] The report argues:

> While a building permit issued by the municipality may authorize the property owner to engage in construction and renovations, the property owner is obligated to perform and complete the authorized work in a manner which keeps the property in compliance with the legislation so as not to be dangerous or unsightly.
>
> Clearly work on the exterior finish of a structure may result in the appearance not being of comparable appearance in relation to neighbouring properties for a period of time. Engagement in such work however does not provide a blanket defence to the obligations under the HRM Charter section 354. Administrative authorization provided by HRM, such as by the issuance of a building permit,

> cannot be interpreted or have the effect of permitting the recipient to breach requirements imposed under a provincial statute.
>
> The property owner has had ample time to complete the work to bring the property into compliance. The property is not in keeping with community standards and the exterior of the building should be completed.

The report says that the municipal orders were "to finish the exterior cladding on the dwelling".

[23] A comparison of the municipality's photos from May, 2014 and October, 2014 shows significant progress. Just for two examples: where tar paper showed in May on basement walls, sheeting was installed by October; in May, an east wing at the front was cladded on the first floor, in October it appeared finished including with the roof overhang. A building of pleasing complexity and balance seems to be emerging. However, it is unsightly for the time being.

[24] Two of the committee members voted to allow the appeal. Four voted against. Therefore, the appeal was dismissed.

Standard of Review

[25] Both parties submit that correctness is the applicable standard. However, Mr. Norman's submission is based on a characterization of the decision as jurisdictional where Mr. Kinghorne's submission suggests that the issue is one of

statutory interpretation involving legislation that both the administrative decision-maker and the courts apply.

[26] I agree that the compliance officer and the appeal committee had to correctly decide the question of the relationship between the statutory authority to right unsightly premises and the statutory authority to control construction through a building permit. However, the bases for that conclusion will have an impact on my assessment of the interpretation given by the officer and the committee, and upon my own interpretation. Therefore, I will dwell on the question in some detail.

[27] Mr. Norman refers to *Sydney Precision Machining Ltd. v. Cape Breton (Regional Municipality)*, 2003 NSSC 222 and *Wells v. Amherst (Town)*, 2014 NSSC 378. *Sydney Precision* was decided before *Dunsmuir v. New Brunswick*, 2008 SCC 9, which dominates the modern approach to standard of review. *Wells* was decided without assistance from counsel on the issue of the review standard and without direct reference to recent case law that cautions us on "jurisdiction" as a correctness trigger.

[28] *Dunsmuir*, at paras. 57 to 62, required that the standard be determined first by examination of existing case law to see if the question confronting the decision-

maker fell within a category determined by jurisprudence to attract a correctness or a reasonableness standard. If not, one goes to the "standard of review analysis".

[29] One category for the correctness standard was true jurisdictional questions. The categorical approach was subject to vigorous discussion in a series of decisions by the Supreme Court of Canada, which may have narrowed the category of true jurisdictional questions. The series is: *Smith v. Alliance Pipeline Ltd.*, [2011] S.C.J. 7; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61; *Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 35; *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67; *Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40; and *Canadian Artists' Representation v. National Gallery of Canada*, [2014] S.C.J. 101.

[30] In *McLean v. British Columbia (Securities Commission)* at para. 25, Justice Moldaver referred to *Alberta Teachers' Association* and said "…the Court expressed serious reservations about whether [jurisdictional] questions can be distinguished as a separate category of questions of law, but ultimately left the door open to the possibility". In *Rogers Communications Inc.*, upon which Mr.

Kinghorne's submission rests, Justice Rothstein found a narrow exception to the treatment of jurisdictional issues as interpretations of the home statute commanding deference. In *Canadian National Railway Co. v. Canada (Attorney General)*, at para. 55, he referred to "the exceptional category of true questions of jurisdiction". And, in the *National Gallery* case, at para. 13, he referred to "this Court's caution to interpret this category of questions narrowly when a tribunal is interpreting its home statute or statutes closely connected to its function". He cited *Alberta Teachers' Association*.

[31] Our Court of Appeal has provided some precision to the Supreme Court's note of caution. In *Coates v. Nova Scotia (Review Officer of Labour Board)*, 2013 NSCA 52 at para. 43, Justice Fichaud wrote "In *Dunsmuir* (para 59) and *Alberta Teachers' Association*, the Supreme Court of Canada rejected decisional jurisdiction - *i.e.* the notion that a judicially perceived 'incorrect' ruling early in the chain of reasoning necessarily deprives the tribunal of 'jurisdiction' to move to the next analytical link." This is repeated at para. 20 of *Delport Realty Ltd. v. Nova Scotia (Service and Municipal Relations)*, 2014 NSCA 35. I think this allows for the correctness standard where reasonable misinterpretation by a tribunal would expand or contract the authority given to the tribunal by the legislature: *Millett v. Nova Scotia (Minister of Agriculture)*, 2015 NSSC 21.

[32] The core authorizing provisions on unsightly premises and on building permits rest upon statutory imperatives that apply to all properties or all persons. For unsightly premises, the imperative is in s. 354 of *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39: "Every property in the in the Municipality must be maintained so as not to be dangerous or unsightly." For building permits, it is in s. 8 of the *Building Code Act*, R.S.N.S. 1989, c. 46 as amended by S.N.S. 2005, c. 47: "No person shall … construct … a building to which this act applies … unless a permit has been issued by [a] building official and the permit is in force." "Construct" is given a broad definition in s. 2(f), so that it extends to substantial renovations.

[33] Various schemes were enacted to enforce these imperatives. We will have to consider some of these elsewhere, but, for now, we are focused on a kind of scheme adopted for both regimes: municipal administration.

[34] The core authorizing provisions for municipal administration of unsightly premises are s. 356(1) of Halifax's charter, which allows council to "order the owner to remedy the [dangerous or unsightly] condition by removal, demolition or repair", s. 355(1), which allows council to delegate the power to order removal or repair to the chief administrative officer or his or her designate, and s. 356(2),

which provides that "An owner may appeal an order of the Administrator to the Council or to the committee to which the Council has delegated its authority …".

[35] The core authorizing provisions for municipal administration of building permits are s. 5(2), which requires council to appoint building inspectors "to administer and enforce this Act in the municipality", s. 9, which requires the building official to issue a permit unless the proposed construction would not comply with the Act, regulations, incorporated parts of the national building code, or a by-law, s. 8, which creates the imperative for a permit itself, and s. 12, providing powers to order compliance or revocation.

[36] Nothing in the legislation gives paramountcy to one or the other of these statutory regimes. The fact that the building permit is temporary does not exclude the operation of unsightly premises legislation. A building under construction has to be sightly and safe as buildings under construction go.

[37] Neither the unsightly premises imperative nor the building permit imperative is expressed to be subject to the other. So, the obligation to maintain sightly premises is not suspended by construction or renovation under a building permit.

[38] Therefore, the question of how these regimes limit one another is a question of statutory interpretation, not jurisdiction. At that, it is the kind of question

Professor Driedger described as, "… situations where the courts have had to deal with overlapping provisions …": Elmer A. Driedger, Q.C. *The Construction of Statutes*, 2nd ed. (Butterworths, Toronto, 1974) at p. 185.

[39] Although it was interpreting the municipality's home statute, the appeal committee had to apply a correct interpretation. Its interpretation of the unsightly premises provisions commands no deference. There are two reasons for this.

[40] As Mr. Kinghorne submits, the exercise in statutory interpretation posed by building permit legislation and unsightly premises legislation is within *Rogers Communications Inc.* The majority held that the presumption of deference when a tribunal interprets its home statute does not apply to a body that lacks exclusive primary jurisdiction under that statute, a body that shares jurisdiction concurrently with courts who must correctly interpret the same statute: para. 15.

[41] The courts share jurisdiction with the compliance officer and appeals committee on unsightly premises. By section 369 of the *Halifax Regional Municipality Charter*, it is an offence triable on summary conviction in the Provincial Court of Nova Scotia to maintain unsightly or dangerous premises in violation of s. 354. Indeed, much of the interpretation of unsightly premises legislation comes from that court.

[42] Also, the Supreme Court of Nova Scotia has jurisdiction under s. 357 to declare a property to be unsightly or dangerous, to specify what work must be done to remedy the problem, and to order the property to be vacated until the work is done.

[43] The question of the overlap between unsightly premises legislation and building permit legislation is for the courts at first instance as well as for the compliance officer and the appeal committee. Therefore, when the compliance officer or the appeal committee confront that question, their decision is reviewed for its correctness.

[44] The second reason for a correctness standard of review is the dichotomy between the building official's power to permit something that may be temporally dangerous or unsightly and the compliance officer's, and the appeal committee's, power to halt the danger or the unsightliness. This is Mr. Doucette's frustration: the municipality is saying he cannot do what the municipality says he can do.

[45] Correctness is the presumed standard for "[q]uestions regarding the jurisdictional lines between two or more competing specialized tribunals": *Dunsmuir*, para. 61. One such question is the extent to which the power to deal

with unsightliness of a renovation project is qualified by the power to permit the renovation.

[46] I conclude that the interpretation of s. 354 of the *Halifax Regional Municipality Charter* applied by the Appeals Standing Committee to a renovation being carried out under a building permit is to be reviewed for its correctness. Of course, explicit and implicit findings of fact command deference.

Unsightly Premises and Building Permits

[47] The Appeals Standing Committee is required by statute to give reasons when it allows an appeal: *Halifax Regional Municipality Charter*, s. 356(3A). There is no statutory requirement for reasons when an appeal is dismissed, and the committee in this case gave no reasons.

[48] The interpretation the committee applied can be implied, to some extent, from the result it reached. The building permit had no effect on the power to issue an unsightly premises order. The reasoning becomes quite clear when one sees the justification in the staff report, which is quoted in part at para. 22 above, and one sees in the minutes that the only committee member who spoke against the appeal adopted those words from the staff report.

[49] Respectfully, the reasoning is flawed. The building permit is not a mere "administrative authorization" trumped by "requirements imposed under a provincial statute". The building permit and the unsightly premises order are equally founded on provincial statutes.

[50] Further, unsightly premises legislation has long been interpreted by the courts in a way that precludes comparing a home under construction with neighbouring homes not under construction.

[51] Twenty years ago, Associate Chief Judge Kennedy, as he then was, decided *R. v. Aloni*, [1995] N.S.J. 297 (P.C.) in which he interpreted what was then s. 124 of the *Municipal Act*. The wording is not the same as s. 354 of the *Halifax Regional Municipality Charter*, but the subject is the same. It proscribed allowing one's property to be or become "dangerous, unsightly or unhealthy".

[52] Mr. Aloni was charged with permitting his property to become unsightly. He argued that it was not unsightly. The Associate Chief Judge found otherwise. In doing so, he employed an objective stance: "the reasonable person viewing the property in that setting at that time", para. 4. In addition to setting and time, he took into account the lawful use of the property for both residence and employment: also, para. 4.

[53] Mr. Aloni appealed. Justice MacAdam dismissed the appeal: *District of Chester (Municipality) v. Aloni*, [1995] N.S.J. 451 (S.C.). At para. 25, Justice MacAdam said that the Associate Chief Judge had correctly applied an objective test in a manner similar to the decision of Justice Grant in *Kings (County) v. Witter*, [1991] N.S.J. 34 (S.C.).

[54] Mr. Aloni appealed further. Chief Justice Clarke wrote for the Court of Appeal, who dismissed the further appeal: *Chester (District) v. Aloni*, [1996] N.S.J. 107 (C.A.). At para. 7, Chief Justice Clarke described the approach followed by the Associate Chief Judge this way:

> In his opinion, the objective test is what a reasonable person viewing the property would conclude, having regard for the nature of its use and occupancy and the standard of grooming that might reasonably be anticipated.

Noting Justice MacAdam's agreement with the objective approach (para. 10), Chief Justice Clarke described it as "reasonable" (para. 11).

[55] The *Aloni* decisions recognize that a finding of unsightliness has to be objective, but it also has to be proportionate to lawful uses. This interpretation resolves the conflict between the unsightly premises legislation and the building permit legislation without doing any violence to the wording of either.

[56] A property is not unsightly in the abstract. For the unsightly premises legislation to govern, the property must be unsightly in relation to its lawful uses. So, a junkyard in a place zoned for junkyards is not unsightly just because it is a junkyard. It has to be unsightly as junkyards go: *Colchester (County) v. Spencer*, 2004 NSSC 156 upheld on other grounds, 2005 NSCA 50.

[57] It was wrong for the appeal committee to consider the Spencer home in relation to neighbouring homes not under renovation. Mr. Spencer has a legislated right to renovate until next September. The question under the *Aloni* interpretation was whether the property was unsightly as properties under renovation go.

[58] Unlike the two unsightly premises orders and the two appeal determinations, the Supervisor of Regional Compliance followed the correct interpretation of the unsightly premises legislation and the building permit legislation when he wrote at first instance:

> An officer attended today and found two men on site working, they have an active permit, the property is clean, they have material to complete the siding of the structure, the material is stacked neatly. From our position they are doing what is required of them.

[59] In my opinion, the *Aloni* interpretation of unsightly premises legislation in relation to uses permitted by other legislation disposes of this judicial review. The compliance officers and the municipal appeals committees misinterpreted the

unsightly premises legislation by ignoring the relationship between it and building permit legislation. *Aloni* demands an assessment of unsightliness in proportion to legislatively authorized uses.

[60] The parties also provided submissions on the definition of "dangerous or unsightly" in s. 3(q) of the *Halifax Regional Municipality Charter*. While I think that the interpretation of s. 3(q) is subsumed in the *Aloni* interpretation when unsightly premises legislation competes with legislatively authorized uses, I will provide an interpretation of the specific definition. It reads:

> "dangerous or unsightly" means partly demolished, decayed, deteriorated or in a state of disrepair so as to be dangerous, unsightly or unhealthy, and includes property containing
>
> > (i) ashes, junk, cleanings of yards or other rubbish or refuse or a derelict vehicle, vessel, item of equipment or machinery, or bodies of these or parts thereof,
> >
> > (ii) an accumulation of wood shavings, paper, sawdust, dry and inflammable grass or weeds or other combustible material,
> >
> > (iia) an accumulation or collection of materials or refuse that is stockpiled, hidden or stored away and is dangerous, unsightly, unhealthy or offensive to a person, or
> >
> > (iii) any other thing that is dangerous, unsightly, unhealthy or offensive to a person, and includes property or a building or structure with or without structural deficiencies
> >
> > (iv) that is in a ruinous or dilapidated condition,
> >
> > (v) the condition of which seriously depreciates the value of land or buildings in the vicinity,

> (vi) that is in such a state of non-repair as to be no longer suitable for human habitation or business purposes,
>
> (vii) that is an allurement to children who may play there to their danger,
>
> (viii) constituting a hazard to the health or safety of the public,
>
> (ix) that is unsightly in relation to neighbouring properties because the exterior finish of the building or structure or the landscaping is not maintained,
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> (x) that is a fire hazard to itself or to surrounding lands or buildings,
>
> (xi) that has been excavated or had fill placed on it in a manner that results in a hazard, or
>
> (xii) that is in a poor state of hygiene or cleanliness;

[61] Mr. Doucette relies on *R. v. A.N. Koskolos Realty Ltd.* (1995), 146 N.S.R. (2d) 387 (S.C.). Halifax City Council refused the owner's application to replace a series of early twentieth century houses on Robie Street with a high density apartment building. The owner protested by painting the houses "in a haphazard and multi-coloured fashion" (para. 2). "They are an eye-sore" (also, para. 2).

[62] Section 365 of the *Halifax City Charter* dealt with unsightly premises. Instead of a definition, it provided a series of prohibitions. Subsection 365(6) is a predecessor of s. 3(q)(ix). It read:

> No person shall permit a building owned by that person to become unsightly in relation to the neighbouring properties by reason of the failure to maintain the exterior finish of the building.

[63] J. M. MacDonald J. now, C.J.N.S., wrote:

> 19 The appellant quite properly concedes that subsection 6 has no application to the case at bar. Although dealing with the exterior finishes of buildings, it is confined to unsightliness caused by a failure to maintain. It requires an element of dilapidation or neglect. In the case at bar the appellant alleges that the unsightliness was caused by the owner's overt actions.
>
> 20 I conclude that when the legislators turned their minds to the unsightliness of buildings, they drafted subsection 6. They restricted this offence to unsightliness caused only by neglect.
>
> 21 It is interesting to note that subsection 363(3) is a recent amendment to the *Halifax City Charter*. The references to unsightly in that subsection cannot be considered in isolation. When one considers the references to unsightly in the context of the entire section one must conclude that *unsightly* refers to the types of things mentioned in subsection 3 including the accumulation of ashes, junk, rubbish et cetera. *Unsightly* in that subsection cannot be interpreted to include the exterior finishes of buildings because this category is already dealt with in subsection 6.

Mr. Doucette urges that I adopt a similar interpretation of s. 3(q).

[64] The interpretation of "maintained" in *A.N. Koskolos Realty Ltd.* enlightens the meaning of the word in s. 3(q) of the *Halifax Regional Municipality Charter*. In both places, the word is used in its ordinary sense and the context supplied by the statutory scheme and purposes are almost identical.

[65] The municipality argues for a different interpretation. It describes its approach as "purposeful", in contrast to the submissions for Mr. Doucette, which are said to be based on "strict construction". It relies on *Delport Realty Ltd. v.*

Halifax (Regional Municipality), 2010 NSSC 290 at paras. 24 and 25 and *R. v. Hicks*, 2013 NSCA 89 at para. 45, which it says favours "an interpretation that gives effect to the purpose of the statute rather than a strict construction". It submits that its "purposeful" approach is supported by the touchstone of statutory interpretation in Canada, *Rizzo & Rizzo Shoes Ltd.*, [1998] S.C.J. 2.

[66] Neither the interpretation argued for Mr. Doucette nor that found in *A.N. Koskolos Realty Ltd.* is "strict" or "literal". Neither the literal approach nor the purpose approach govern statutory interpretation in Canada. The latter was specifically rejected by the Supreme Court of Canada at para. 21 of *Rizzo* where Justice Iacobucci preferred Professor Driedger's formulation of the touchstone principle over the purposeful approach of Professor Sullivan. The principle of statutory interpretation in this country gives effect to the text in context. Scheme and purposes are part of the context.

[67] As the quotation at para. 21 of *Rizzo* goes, the words "are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament." The scheme and the object(s) or purpose(s) provide context for a harmonious reading. Of course there will be cases, like *Delport Realty Ltd.* and *Hicks*, in which purpose is prominent as a part of context affecting the meaning of the text. However, no

one is suggesting a return to the purpose approach over Professor Driedger's text in context.

[68] Mr. Kinghorne supports his submission on the meaning of "maintain" in s. 3(q)(ix) by referring to a *Webster's* definition: "to cause (something) to exist or continue without changing". I do not think that the ordinary sense of "maintain" is synonymous with bringing into existence. The second edition of *The Oxford English Dictionary* provides and illustrates sixteen different senses in which the word has been used. For the most part, they are about the continuation of something. This accords with the ancient Indo-European roots of "maintain": "man", man or hand, and "ten", to stretch or, in one of the Latin derivatives, to extend: Calvert Watkins ed., *The American Heritage Dictionary of Indo-European Roots*, 2ed (Boston, Houghton Mifflin Harcourt, 2000), p. 51 and p. 90.

[69] I follow the interpretation of maintain in *A.N. Koskolos Realty Ltd.*, and I conclude that the same interpretation applies to the definition now under consideration. A person applies labour or materials (man) to the exterior of a building stretching (ten) its pristine condition into the future. To fail to maintain the exterior of a building is to let it lose its pristine condition by not applying labour or materials to it.

[70] This much having been said about the meaning of "maintain" under unsightly premises legislation, s. 3(q)(ix) occupies a substantially different position grammatically and operationally in the present municipal charter than did s. 363(6) in the old *City Charter*.

[71] Paragraph 3(q)(ix) is part of a definition that is both definitive and inclusive. It is part of the inclusive side of s. 3(q). The definition reads "means partly demolished, decayed, deteriorated or in a state of disrepair so as to be dangerous, unsightly or unhealthy". These words are broad enough to include a building under renovation that has been partly demolished or put in a state of disrepair. So, it does not matter that s. 3(q)(ix) is inapplicable.

[72] After having said all of this about s. 3(q)(ix) and the defining words at the beginning of s. 3(q), I return to the main point. The courts have interpreted "unsightly" to mean unsightly in relation to lawful use. This interpretation reconciles the clash between the two statutes, the municipal charter and the *Building Code Act*. And, it precludes the interpretation impliedly adopted by the compliance officers and the appeal committees, by which one statute trumps the other.

Procedural Unfairness

[73] Mr. Doucette argues that the committee's failure to give explicit reasons gives rise to procedural unfairness. As I said, the implied reasons were clear enough to permit review. Mr. Doucette also says that the report presented to the appeal committee, and staff's presentation during the appeal hearing, showed bias by staff against him. He had the opportunity to challenge staff's information. However, his third reason for challenging the December 2014 hearing compels intervention.

[74] The initial complaint was responded to quickly by municipal staff. The initial complaint said:

> Have you seen the property at 92 Crichton Avenue recently? Would you like to have this in your neighbourhood or worse still next door? This is a total disgrace and has been going on for years with nothing to clean up this disgraceful look of it.

[75] Staff issued an unsightly premises order less than a month after receiving the initial complaint, although they had been advised by the Supervisor of Regional Compliance that

> An officer attended today and found two men onsite working, they have an active permit, the property is clean, they have material to complete the siding of the structure, the material is stacked neatly. From our position they are doing what is required of them.

[76] Mr. Doucette appealed the unsightly premises order to the Standing Appeals Committee. The appeal was heard about two months after the initial complaint. Members of staff were present. Mr. Doucette was present. All eight members of the appeal committee were present, including Councillor Gloria McCluskey.

[77] A staff report was presented to the appeal committee. It quoted from the initial complaint.

[78] Mr. Doucette requested an adjournment because of the lateness of documents delivered to him. The members of the committee, including Councillor McCluskey, turned him down.

[79] Two councillors made a motion to defer the appeal until the end of the year. It was defeated. Councillor McCluskey spoke against the appeal. She caused it to be brought forward for determination. She and the other councillors dismissed the appeal.

[80] Staff knew. Councillor McCluskey certainly knew. Perhaps other members of the appeal committee knew. Mr. Doucette did not know that the complaint had been lodged by Councillor Gloria McCluskey, who sat in judgment of her own complaint.

[81] When Councillor McCluskey's improper participation became known to Mr. Doucette, the municipality conceded on his judicial review proceeding. A new unsightly premises order was issued. Another appeal was made.

[82] The municipality did not appoint new councillors to the Standing Appeal Committee. The appeal was heard on December 11, 2014 by six of the eight members who had dismissed Mr. Doucette's appeal five months before. (Councillor McCluskey sent her regrets.)

[83] The staff report for the December appeal contained the following:

> This appeal relates to a property that was previously on an appeal before the Appeals Standing Committee on July 10, 2014, which decision was subject to court challenge. Given the nature of the procedural issues being raised in the litigation, the Administrator withdrew the Order to Remedy in favour of a fresh investigation of the current state of the property. This expectation is that members of the Appeals Standing Committee will decide the current appeal on the basis of only the information provided at this appeal hearing and not take into account any different or additional information heard at the July 10, 2014 appeal hearing or obtained elsewhere. If any member of the Appeals Standing Committee does not believe that they can treat this matter as a fresh appeal without consideration of any such prior received information or their prior conclusions as reflected in the July 10, 2014 decision, then the member should recuse him/herself from hearing this appeal.

No doubt that was sound advice, assuming substitutes could not be appointed. The problem is that this advice was used at the appeal hearing to stop Mr. Doucette's submission on bias.

[84] Mr. Doucette tried to say something about the way he had been treated in July. A member raised "a point of order". The chairperson "asked Mr. Doucette to keep his comments focused to the current appeal case before the Standing Committee and not discuss previous appeal cases."

[85] The caution was for the members of the appeal committee who were going to rule on an appeal tied to the facts of the July appeal they had dismissed. There was no point of order.

[86] Mr. Doucette had every right to refer to the impropriety of the July hearing and to challenge the December appeal committee members, who had heard and determined the July appeal, to closely examine their own consciences for bias.

[87] As I said, I would have set aside the appeal decision and stayed the unsightly premises order for procedural unfairness, had that been necessary.

Conclusion

[88] The decision of the Standing Appeals Committee to dismiss Mr. Doucette's appeal on December 11, 2014 had to be reviewed for correctness in interpreting the unsightly premises legislation. It interpreted the legislation incorrectly. Had it

applied a correct interpretation, it would have been compelled on the facts before it to allow the appeal.

[89] I will sign an order annulling the unsightly premises order of October 20, 2014.

[90] Had it not been for that determination, I would have set aside the decision and stayed the order for procedural unfairness. Mr. Doucette had a right to make submissions about the improper participation of Councillor McCluskey at the first appeal, the knowledge of that impropriety on the part of staff who participated in the hearing, and the danger that the members at the December appeal hearing were themselves really or apparently biased. The chairperson stopped him from making any submissions in that regard.

[91] The parties may address costs in writing.

Moir J.