CITATION: The Corporation of the Town of Oakville v. Clublink Corporation ULC et al., 2020 ONSC 887
COURT FILE NO.: CV-19-631561 & CV-19-631562
DATE: 2020-02-10

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: THE CORPORATION OF THE TOWN OF OAKVILLE, Applicant

AND:

CLUBLINK CORPORATION ULC and CLUBLINK HOLDINGS LIMITED, Respondents

BEFORE: Schabas J.

COUNSEL: E. Cherniak, Q.C., M. Flowers, C. Kuehl and L. Woods, Counsel for the Applicant

T. Curry, S. Rollwagen, D. Knoke and N. Chandra, Counsel for the Respondents

HEARD: January 23, 2020

REASONS FOR DECISION

Introduction

[1] The Respondents ClubLink Corporation ULC and ClubLink Holdings Limited ("ClubLink") move to strike out these two applications brought by the Applicant, the Corporation of the Town of Oakville ("the Town" and "the Town Applications") on the basis that the applications do not raise legal or justiciable issues for the Court or, in the alternative, are an abuse of process.

[2] The Town seeks declarations that By-laws it passed in 2018 are legal and valid. I agree that the Town Applications should be struck. As laws are presumed to be valid and there is no court challenge to the By-laws, the Court should not entertain these applications. Unlike provincial and federal governments, municipalities cannot refer questions as to the validity of their laws to the Court by way of a Reference, and the applications do not involve the determination of rights based on interpretations of the By-laws as contemplated by Rule 14.03(d). Further, the application and validity of the By-laws is the subject of proceedings before the Local Planning Appeal Tribunal ("LPAT"), where all matters between the parties can be addressed in a factual context. In light of these conclusions, while it is not strictly necessary, I also find that the Town Applications should be struck as an abuse of process.

Background

[3] The Town Applications are part of an ongoing legal battle between ClubLink and the Town over the future of Glen Abbey, one of Canada's most famous golf courses, designed by golfing great Jack Nicklaus. Glen Abbey has hosted the Canadian Open golf tournament 30 times. ClubLink wishes to redevelop the lands for residential and commercial use. On November 10, 2016, pursuant to the *Planning Act*, it brought applications to the Town for this purpose, seeking amendments to the Official Plan and Zoning By-laws and the approval of a plan of subdivision which proposed construction of 3,222 residential units and 121,309 square feet of office and retail space (the "Redevelopment Applications").[1]

[4] The Town rejected the Redevelopment Applications, and ClubLink has appealed those decisions to the LPAT. As discussed below, those appeals have not yet been heard.

[5] Meanwhile, the Town took steps to preserve Glen Abbey, which it regards as a landmark property and a significant cultural heritage landscape. On August 24, 2017, the Town issued a Notice of Intention to Designate Glen Abbey and an adjacent property also owned by ClubLink (the "Greeneagle property") as properties of cultural heritage value or interest under s. 29 of the *Ontario Heritage Act* (the "*OHA*").[2]

[6] Although ClubLink had the right to object to the designation, it did not do so. Instead, ClubLink applied to the Town under s. 34 of the *OHA,* for permission to demolish and/or remove the Glen Abbey golf course (the "Section 34 *OHA* Application"). The Town refused to process that request, and in November 2017 issued a Notice of Application in this Court to determine the Town's right to reject the Section 34 *OHA* Application based on its interpretation of s. 33 and s. 34 of the *OHA*. ClubLink then commenced its own separate application to compel the Town to process the Section 34 *OHA* Application to demolish Glen Abbey (collectively, the "s. 34 court applications"). Unlike the applications in issue on these motions, both s. 34 court applications sought a determination of the respective applicant's rights based on an interpretation of the *OHA,* which is permitted under Rule 14.05(3)(d) of the *Rules of Civil Procedure*.[3]

[7] On December 20, 2017, Town Council passed By-law 2017-138 (the "Heritage By-law") formally designating Glen Abbey and the Greeneagle property as properties of cultural heritage value or interest under s. 29 of the *OHA*.

[8] Following discussion between the parties, the Town considered and refused ClubLink's Section 34 *OHA* Application without prejudice to its position on the s. 34 court applications. ClubLink appealed the Town's refusal to the Ontario Municipal Board ("OMB"), now replaced by the LPAT (the "Demolition Appeal"), but that appeal was, by agreement, held in abeyance pending the final determination of the s. 34 court applications.

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[1] R.S.O. 1990, c. P. 13.
[2] R.S.O. 1990, c. O.18.
[3] R.R.O. 1990, Reg. 194.

[9] In February 2018, ClubLink also applied to quash By-laws implementing the Heritage designation and the Town's Conservation Plan for Glen Abbey on the grounds, *inter alia*, that they were *ultra vires* the Town's jurisdiction, but ClubLink did not apply to quash the Heritage By-law itself.

[10] In the Superior Court, on October 25, 2018, Justice Morgan found in favour of ClubLink's position on the s. 34 court applications, ordering the Town to process the applications for demolition.[4] Subsequently, on December 11, 2018, Justice Morgan quashed the implementation By-laws and Conservation Plan.[5]

[11] The Town appealed to the Court of Appeal which, on October 23, 2019, confirmed the validity of the Section 34 OHA Application, and the quashing of the Conservation Plan, but overturned the quashing of the implementation By-laws.[6] On December 2, 2019, Town Council decided not to seek leave to appeal to the Supreme Court of Canada.

[12] As a result, the LPAT can now hear the Demolition Appeal. Until recently, that appeal and the appeals from the Redevelopment Applications were scheduled to commence on July 6, 2020 and to continue for 20 weeks.

[13] To further complicate matters, however, in the face of the appeal from Justice Morgan's decision and a concern over the expiration of limitation periods, in December 2018 and January 2019, ClubLink issued an Application to quash the Heritage By-law and a separate Application seeking to quash an Official Plan Amendment ("OPA") and a Zoning By-law passed in 2018 restricting the construction of new buildings on the Glen Abbey and Gleneagle properties (collectively, the "ClubLink Applications"). These applications were brought pursuant to provisions in the *Municipal Act, 2001,* which provide that a party can seek to quash a By-law in an application to the Superior Court.[7] ClubLink has also appealed the validity of the Zoning By-law and OPA to the LPAT.

[14] I am the case management judge for the ClubLink applications, which were scheduled to be heard by me in April 2020. However, the ClubLink applications have now been abandoned and are no longer before this Court. Instead, ClubLink wishes to move ahead with its appeals before the LPAT, which will include consideration of the application and validity of the By-Laws and OPA that were the subject of the ClubLink applications, as well as the Redevelopment Applications and the Demolition Appeal.

[15] ClubLink's decision to abandon the ClubLink Applications followed events before the LPAT in October and early November, 2019. In October, 2019, the Town had objected to ClubLink pursuing the same relief found in the ClubLink Applications before the LPAT. ClubLink then offered to abandon its court applications, but the Town argued that those court applications

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[4] *Town of Oakville v. ClubLink*, 2018 ONSC 6386, 298 A.C.W.S. (3d) 186.
[5] *ClubLink v Town of Oakville*, 2018 ONSC 7395, 143 O.R. (3d) 738.
[6] *Oakville (Town) v. ClubLink Corporation ULC*, 2019 ONCA 826, 310 A.C.W.S. (3d) 867 [*Clublink* ONCA #1]; *ClubLink Corporation ULC v. Oakville (Town)*, 2019 ONCA 827, 311 A.C.W.S. (3d) 637 [*ClubLink* ONCA #2].
[7] S.O. 2001, c. 25, s. 273(1).

should proceed first. The Town sought an order from the LPAT forcing ClubLink to withdraw any issues before it that were duplicative of the grounds in the ClubLink Applications. The LPAT dismissed the Town's argument on November 1, 2019, providing additional reasons on January 9, 2020, noting that "[m]atters of bad faith and impropriety are not matters exclusive to the Courts or exclusive to issues relating to the invalidity of municipal by-laws."[8]

[16] Following the decision of the LPAT, the Town Applications were commenced on November 22, 2019. ClubLink then advised the LPAT and the Town on December 10, 2019, that it would be formally abandoning the ClubLink Applications, and did so on December 13, 2019.

[17] The parties differ over whether the LPAT expressed a view on whether it is desirable for the Court to consider and decide the Town Applications prior to the LPAT proceedings. In my view, having read the excerpts from the LPAT proceedings on November 1, 2019, and December 10-11, 2019, the LPAT's view is best summarized in its recent decision of January 16, 2020, where it stated that "*to the extent that any one or more of those court applications remain live*, what the Tribunal is indicating is simply that the Tribunal recognizes the jurisdiction of the court to consider and dispose of matters concerning the legality of municipal instruments."[9] To the extent that the LPAT has otherwise said it is preferable or "in the interests of justice" to have the Town Applications resolved first by the Court, in my view that is simply because those applications are currently pending before the Court. In the absence of the court applications the LPAT would be moving forward with the ClubLink appeals, and the LPAT would address all matters that arise from those appeals.

[18] The Town Applications are mirrors of the now-abandoned ClubLink Applications. The Town seeks a declaration that the Heritage By-law is legal and valid, and a declaration that the Official Plan Amendment and the Zoning By-law passed in 2018, are legal and valid. Neither application seeks an interpretation of those laws, or a declaration of rights or interests.

[19] Following the Town's confirmation that it intended to proceed with the Town Applications in this court, the LPAT adjourned the hearing set to commence on July 6, 2020 until the Town Applications are determined. As a result, ClubLink's appeals of the Town's rejection of the Redevelopment Applications, the Demolition Appeal (which involves consideration of the Heritage By-law), and the appeals to the LPAT regarding the validity of the Official Plan Amendment and Zoning By-law, are delayed pending a decision, at least, of this Court on the Town Applications.

[20] Immediately after the decision of the LPAT to adjourn the hearing set for July 2020, on December 12, 2019, counsel on the ClubLink and Town Applications met with me, as case management judge, and advised me of the Town Applications and of ClubLink's intention to abandon its applications. There was agreement that the Town Applications should be heard on the previously scheduled dates in April 2020; however, ClubLink advised me that it intended to bring motions to quash the Town Applications and requested that they be heard expeditiously, and before

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[8] *ClubLink Corporation ULC et al. v Oakville (Town)*, 2020 CanLII 1417 (ON LPAT) (9 Jan 2020).
[9] *ClubLink Corporation UCL v Oakville (Town)*, 2020 CanLII 3211, at para. 65 (ON LPAT) (16 Jan 2020) [emphasis added].

additional materials had to be exchanged on the Town Applications. The Town objected, suggesting that the ClubLink motions be heard at the hearing of the applications in April. Following receipt of the ClubLink notices of motion, I directed that the ClubLink motions be heard by me on January 23, 2020.

Legal Issues

[21] In ClubLink's view, the sole issue on this motion is whether the Town Applications should be struck on the basis that (i) they are not properly brought under Rule 14 and raise no justiciable issues for adjudication; (ii) they amount to an abuse of process; and (iii) in any event, the LPAT is the appropriate forum for the determination of the issues.

[22] The Town frames the issues slightly differently. The Town submits that there are four issues before the Court: (i) ClubLink failed to meet the appropriate test for a motion to strike under Rules 21 and 25.11; (ii) the Town Applications raise justiciable issues; (iii) the Town Applications are not an abuse of process; and (iv) this Court should in any event exercise its discretion to hear the Town Applications.

[23] In my view the main issues are as follows:

1) Are the Town Applications properly brought under Rule 14 of the *Rules of Civil Procedure*?;

2) If they are not, should this Court nevertheless exercise its discretion to hear the Town Applications?; and

3) Should the Town Applications be quashed as an abuse of process under Rules 21 or 25?

Analysis

Rule 14

[24] The Town brings its applications pursuant to Rules 14 and 38 of the *Rules of Civil Procedure*. It does not specify the particular provision(s) of Rule 14 upon which it relies. ClubLink submits that the only provision under Rule 14 that might apply to the Town Applications is Rule 14.05(3)(d). The Town argues that Rule 14.05(3)(d) and (h) apply.

[25] Under Rule 14.05(3)(d), an application may be brought where the relief claimed is the determination of rights based on "the interpretation of a statute, order-in-council, regulation, municipal by-law or resolution." Here, however, the Town is not seeking a determination of rights, unlike its s. 34 court application commenced in 2017. Rather, the Town is simply seeking declarations that certain By-laws are legal and valid. That is all. Accordingly, I conclude that the Town Applications are not properly brought under Rule 14.05(3)(d).

[26] As to Rule 14.05(3)(h), which allows an application to be brought "where it is unlikely that there will be any material facts in dispute requiring a trial," the Town has not pleaded that there

are no material facts in dispute. Given that bad faith and improper purpose are live issues in this complicated and hotly-contested battle between the Town and ClubLink, it is likely that many facts may be in dispute. Therefore I am not satisfied that the Town Applications are properly brought under Rule 14.05(3)(h).

[27] In any event, even if the Town Applications had been properly brought under Rule 14, I would strike them out through the exercise of my inherent jurisdiction or as an abuse of process, as discussed below.

The Court's Discretion to Hear the Town Applications

[28] The parties acknowledge that, independent of the limits of Rule 14, this Court, as a court of inherent general jurisdiction, has discretion to hear applications for declarations.[10] As Miller J.A. stated in *Grain Farmers of Ontario v. Ontario (Ministry of the Environment & Climate Change)*, "[a]lthough the court has broad jurisdiction to grant declaratory relief as a result of its inherent jurisdiction and pursuant to s. 97 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, the party seeking the declaration must establish that the question it raises in its application is a legal or justiciable issue."[11]

[29] While the issues raised in the Town Applications are "legal or justiciable" in the sense that the Court is asked to pronounce on the validity of the By-laws, there is no challenge to the By-laws before the Court. The By-laws are presumed to be valid, as Harvison-Young J.A. recently noted in one of the related proceedings between these parties before the Court of Appeal.[12] Indeed, the Town pleads that presumption in its Notices of Application. As was the case in *Grain Farmers*, the Town Applications raise "no practical questions of interpretation or application."[13]

[30] In *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, the Supreme Court agreed with Professor Sossin, now Sossin J., that "justiciability is about whether to decide a matter in the courts."[14] Writing for the Court, Rowe J. stated:

> There is no single set of rules delineating the scope of justiciability. Indeed, justiciability depends to some degree on context, and the proper approach to determining justiciability must be flexible. The court should ask whether it has the institutional capacity and legitimacy to adjudicate the matter: see Sossin, at p. 294. In determining this, courts should consider "that the matter before the court would be an economical and efficient investment of judicial resources to resolve, that there is a sufficient factual and evidentiary basis for the claim, that there would be an adequate adversarial

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[10] *Grain Farmers of Ontario v. Ontario (Ministry of the Environment & Climate Change)*, 2016 ONCA 283, 130 O.R. (3d) 675, at paras. 15-16 [*Grain Farmers*].
[11] *Ibid*, at para. 16.
[12] *ClubLink* ONCA #2, *supra*, at para. 31, citing *Ontario Restaurant Hotel & Motel Assn. v. Toronto (City)* (2005), 258 D.L.R. (4th) 447 (Ont. C.A.), at para. 3, leave to appeal refused, [2006] S.C.C.A. No. 45 (S.C.C.).
[13] *Grain Farmers*, *supra*, at para. 22.
[14] 2018 SCC 26, [2018] 1 S.C.R. 750, citing Lorne Sossin, *Boundaries of Judicial Review: The Law of Justiciability in Canada*, 2nd ed (Toronto: Thomson Reuters, 2012), at p. 1.

> presentation of the parties' positions and that no other administrative or political body has been given prior jurisdiction of the matter by statute."[15] [emphasis added]

[31] In *Solosky v. The Queen*, the Supreme Court of Canada also addressed the issue of when a court should exercise its inherent jurisdiction to hear applications. Dickson J., as he then was, concluded that when deciding whether to exercise its jurisdiction to hear an application, a court should consider the "utility of the remedy" requested and whether the remedy "will settle the questions at issue between the parties."[16] Additional criteria should also guide the determination: the request for declaration must address a "real and not a theoretical question" by a person with "real interest to raise it," it must be answered by a "proper contradictor," and the court must be satisfied that there is "good reason" to hear the application on a discretionary basis.[17]

[32] I decline to exercise my discretion to hear these applications. To do so would be neither appropriate or fair. First, ClubLink has abandoned its court challenges to the By-laws and wishes to proceed with its existing appeals before the LPAT, which is the appropriate forum with the jurisdiction and expertise to address all issues of fact and law between the parties.[18]

[33] Second, the Town is seeking no remedy against ClubLink. ClubLink is not, therefore, a "proper contradictor" of the claims, nor is it a willing one. Rather, the Town is attempting to drag ClubLink into a dispute before the courts and is even seeking costs against it in its applications. As the English Court of Appeal observed in *Messier-Dowty*, which involved an analogous context of a party seeking a negative declaration, "this can result in procedural complications and potential injustice to an unwilling defendant."[19]

[34] Third, as the By-laws benefit from a presumption of validity, there is no utility to the remedy requested by the Town. Granting the declarations of validity would have "no purpose other than to repeat legislation or common law," an outcome that Justice Swinton cautioned against in *City of Toronto v. Natale*.[20]

[35] Fourth, as in *Natale*, the Town Applications do not call on the court to "interpret a statute in order to determine rights." Rather, the Town Applications are, "in effect...a reference."[21] However, unlike federal and provincial governments, municipalities have no authority to bring References.[22] By contrast, as noted, ClubLink's applications to quash the By-laws were brought validly under a specific provision of the *Municipal Act, 2001*.[23]

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[15] *Ibid* at para. 34, citing Sossin, at p. 294.
[16] [1980] 1 S.C.R. 821, at para. 16 [*Solosky*], citing Hudson, "Declaratory Judgments in Theoretical Cases: The Reality of the Dispute" (1977), 3 Dal LJ 706.
[17] *Ibid*, at paras. 12-13, quoting from Lord Dunedin in *Russian Commercial and Industrial Bank v. British Bank for Foreign Trade Ltd.*, [1921] 2 A.C. 438.
[18] *Local Planning Appeal Tribunal Act, 2017*, S.O. 2017, c. 23, Sched. 1, ss. 11(1) and 11(2) [*LPAT Act*].
[19] *Messier-Dowty Ltd. & Anor v. Sabena Sa & Ors*, [2000] EWCA Civ 48, at para. 42 [*Messier-Dowty*].
[20] 2018 ONSC 1608, 289 A.C.W.S. (3d) 844, at para. 6 [*Natale*]. *Godin v. Sabourin*, 2016 ONSC 770, at para. 16.
[21] *Natale, supra*, at para. 12.
[22] *Courts of Justice Act*, R.S.O. 1990, c. C.34, s. 8; *Supreme Court Act*, R.S.C. 1985, c. S-26, s. 53(1).
[23] S.O. 2001, c. 25, s. 273.

[36] The Town takes the position that while the LPAT has jurisdiction to consider the validity of the Official Plan Amendment and the Zoning By-law, it does not have jurisdiction to determine the validity of the Heritage By-law because ClubLink is simply appealing the refusal of the Town council to approve demolition, and there is no avenue to directly challenge the Heritage By-law before the LPAT. While ClubLink's List of Issues puts bad faith and vagueness regarding the Heritage By-law before the LPAT, the Town argues that this is an improper collateral attack on the By-law's validity, which can only be attacked in court.

[37] In my view, this does not justify permitting the Town Applications to proceed. ClubLink has chosen to address issues relating to the validity and application of the Heritage By-law before the LPAT in the Demolition Appeal. While it is clear that the LPAT, as the successor of the OMB, "does not have freestanding jurisdiction, as a court does, to determine that a by-law is valid", in *Goldlist Properties* the Court of Appeal identified a distinction between "dealing with the validity of a by-law as a freestanding issue, which [the LPAT] cannot do, and making a decision on a question of law as incidental to its administrative functions, which it can do."[24] Under the *LPAT Act*, the LPAT has "exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it by this Act or by any other general or specific Act,"[25] and it has authority to deal with all questions of law within its jurisdiction.[26]

[38] In *Re Neufer*, a case involving the refusal of a demolition permit under the *OHA*, the OMB accepted a list of issues that went "to both designation and demolition" noting that "they are, of necessity, interrelated."[27] Indeed, by operation of s. 34.3 of the *OHA*, should the LPAT allow the Demolition Appeal the Town will be required to repeal the Heritage By-law.

[39] The Court of Appeal also addressed this point in its Reasons on the s. 34 applications, observing that "[t]he Legislature has chosen to provide a property owner multiple avenues by which it may seek to deal with property subject to a designation."[28]

[40] There are also strong policy reasons for tribunals to address all the factual and legal issues that arise before them before parties resort to the courts. The LPAT is a specialized tribunal which will have all the facts before it and will make its decisions in the context of a live dispute between the parties, as opposed to a somewhat untethered freestanding court application proposed by the Town. Furthermore, courts defer to the decisions of expert tribunals and should also defer to their jurisdiction to make decisions. As MacPherson J., as he then was, stated in *Ontario Hydro*:

> It seems to me that, as a matter of logic, if deference is to be paid to the actual decision of a tribunal, then deference should also be paid to the jurisdiction of the tribunal to make that decision. If the factors of specialization, policy-making role, and limiting overlapping jurisdiction protect the

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[24] *Goldlist Properties Inc. v. Toronto (City)*, [2003] O.J. No. 3931 (C.A.), at para. 15 and para. 35.
[25] *LPAT Act*, s. 11(1).
[26] *Ibid*, s. 11(2).
[27] 2005 CarswellOnt 6365, at para. 8 (OMB).
[28] *Clublink* ONCA #1, *supra*, at para. 83.

> actual decision of a tribunal, those same factors, if present in a particular fact situation, should also protect the integrity of the jurisdiction of the tribunal to make the decision.[29]

More recently, in *Royal 7 Developments Ltd.*, Charney J. stated:

> Even if the Superior Court has concurrent jurisdiction to hear this matter, the Ontario Court of Appeal decided in *Country Pork* that the court must consider whether it should hear the applications or defer to the jurisdiction of the OMB. This is consistent with a long line of cases that hold that parties should not be permitted to circumvent the administrative process by seeking relief to the Superior Court rather than before the specialized tribunal established by the legislature to deal with the subject matter.[30]

[41] It should also be observed that allowing the Town to pursue its applications before this Court will cause further delays in resolving the underlying disputes, as the LPAT would await the outcome of the Town Applications and, probably, appeals. The LPAT's adjournment of the July 2020 hearing dates is already evidence of this consequence. There is also the concern, as Cunningham J. noted in *Minto*, that the court's involvement would "create a multiplicity of proceedings rather than providing a streamlining effect."[31] ClubLink has chosen to pursue its appeals and to raise its legal issues before the LPAT, and it is entitled to have those appeals heard in a timely way. This may include challenges to By-laws which may then be appealed to the Divisional Court,[32] where the court can then consider the issues once, and with the benefit of the LPAT's findings of fact and view of the legal issues.

[42] Returning to the words of Professor Sossin, permitting the Town Applications to proceed when there is a tribunal "given prior jurisdiction of the matter by statute" would not "be an economical or efficient investment of judicial resources." Further, as the presumption of validity applies, and there are concerns about whether there will be "an adequate adversarial presentation of the parties' positions", I conclude that it is not appropriate for the court to hear the Town Applications, and they are not, therefore, justiciable.

Procedural Issues (Rules 21 and 25.11)

[43] The Town attacks ClubLink's motions to strike on procedural grounds. First, the Town contends that the motions are not properly brought under Rule 21 because that rule applies to "pleadings in an action." Rule 14.09 disposes of this issue. It provides that an originating process that is not a pleading may be struck out or amended in the same manner as a pleading. As Nordheimer J., as he then was, concluded in *Martin v. Ontario*, a Notice of Application may be challenged under Rule 21 and Rule 25.[33]

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[29] *Ontario Hydro v. Kelly*, [1998] 39 O.R. (3d) 107 at para. 34 (Gen. Div.)
[30] *Royal 7 Developments Ltd. v. Vaughan (City)*, 2018 ONSC 488, 287 A.C.W.S. (3d) 768, at para. 59.
[31] *Ontario Regional Assessment Commissioner, Region No. 3 v. Minto Developments Inc.*, [1998] 77 A.C.W.S. (3d) 481, at para. 9 (Ont. Gen Div.) [*Minto*].
[32] *LPAT Act, supra*, s. 37(1).
[33] [2004] O.J. No. 2247, at paras. 6 - 10 (Ont. Sup. Ct.), aff'd [2005] O.J. No. 4071 (Ont. C.A.).

[44] The Town, relying on *Maurice v. Alles*, also argued that I should decline to hear the motions on the basis that an application is a summary process which should not be subject to motions.[34] However, *Maurice* only held that a summary judgment motion cannot be brought in an application proceeding.[35] Motions to strike under Rules 21 or 25 are not summary judgment motions. Rather, they are much simpler procedures, and are useful tools for weeding out improper applications.

[45] In my view, the Town Applications are an abuse of process and should be dismissed or struck under Rules 21.01(1)(d) and/or 25.11(c). The court has inherent jurisdiction to prevent an abuse of process, particularly where proceedings are unfair to the point that they are contrary to the interests of justice. In *Maynes v. Allen-Vanguard Technologies Inc.*, the Court of Appeal commented that the doctrine of abuse of process "seeks to promote judicial economy and to prevent a multiplicity of proceedings."[36] These concerns are present here. Unfairness will arise against ClubLink if it is forced to respond to the Town Applications. The Applications create an unnecessary multiplicity of proceedings. Further, the court's authority to determine the validity of laws is limited to cases in which a litigant challenges the validity of a law or, in the case of government, avails itself of a statutory reference provision. Neither applies here.

[46] In any event, I would also strike the applications under my inherent jurisdiction to control the process of the Court. As the court has inherent jurisdiction to hear an application (a point conceded by the Town), surely it also has jurisdiction to entertain a motion to quash an application.

Disposition

[47] Accordingly, the Town Applications shall be struck out. The April hearing dates, and related schedule, are vacated. The LPAT should proceed to schedule new dates for the appeals pending before it. If the parties cannot agree on costs within 21 days, ClubLink shall provide written submissions not exceeding 3 pages (not including supporting documents) within 30 days of the date of these Reasons, and the Town may file a response of the same length 14 days later.

Schabas J.

Date: 2020-02-10

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[34] 2016 ONCA 287, 130 O.R. (3d) 452.
[35] *Ibid*, at para. 2.
[36] 2011 ONCA 125, [2011] O.J. No. 644, at para. 36; *Toronto (City) v. C.U.P.E. Local 79*, [2003] 3 S.C.R. 77, at para. 37.