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THE ANNOTATED MUNICIPAL ACT
Second Edition
Auerback and Mascarin
Release No. 6, June 2022

Publisher's Special Release Note 2022

The pages in this work were reissued in March 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the March 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

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The Annotated Municipal Act, Second Edition, helps you navigate this complex piece of legislation and is your single most important resource in municipal law. This publication includes analysis of each section of the *Ontario Municipal Act, 2001* and includes a concordance to the former Act.

This release features updates to the case law and commentary comprising the annotations of the *Municipal Act, 2001*, and the *City of Toronto Act, 2006*.

Highlights

***Municipal Act, 2001* — Part XIV Enforcement — General Enforcement Powers — Power to restrain — Section 440 — Action by Taxpayer —** The applicant owner and tenant were authorized under the federal *Cannabis Regulations* to grow their own cannabis for medical use at the subject property. After an inspection of renovations undertaken without proper building permits, the township issued a notice of contravention of the zoning by-law as the industrial zone did not permit agricultural use. The township passed an interim control by-law prohibiting cannabis production for one year, with exceptions for personal use, but no exceptions for medical production. The applicants brought a motion for an interim injunction restraining the township from enforcing the by-laws against them. The motion was granted. The court ruled that the "clean hands" doctrine did not apply and that a serious issue existed to be tried. The applicants would suffer irreparable harm without an injunction because they would be denied reasonable access to doctor-prescribed medicine. It would be cost-prohibitive for them to obtain sufficient quantities through the private market. The balance of convenience favoured the applicants. Financial losses would be significant if the owner and tenant were forced to move, as the plants could not be moved during their growing cycle and the applicants could not claim damages against the township as a public body acting in good faith. The court also found that the current non-residential zoning favoured the applicants, the timing of the interim control by-law was questionable, and that no concrete harm would flow to the township from granting an injunction: *Laska et al v. Wellington North* (2021), 2021 ONSC 8236, 2021 CarswellOnt 19078 (Ont. S.C.J.).

***Municipal Act, 2001* — Part XV Municipal Liability — Immunity — Section 448 — Liability for Torts —** The plaintiffs were a newspaper and its owners who brought an action against the township and its elected officials for defamation and misfeasance in public office. The claims related to derogatory remarks made by councillors about one of the plaintiffs; statements about that plaintiff in an opinion letter of the municipality's lawyer; and the adoption of a by-law directing that future correspondence from the plaintiff be forwarded to council for vetting. The defendant township moved to dismiss the action, as a proceeding that limits freedom of expression on a matter of public interest. The motion was dismissed. The court ruled that the defamation action had a prospect of success. The impugned statements were "expressions" related to a matter of public interest and the public had a genuine stake in knowing about matters pertaining to council and its discussions and decisions. However, words in the opinion letter could be considered defamatory because the public could infer from the letter that the plaintiff was not a lawyer as he represented himself to be and that he was a nuisance, having sent voluminous correspondence to the township. Although the letter was not published nor read aloud, the essence was discussed at a public meeting and discussions and the resulting resolution and by-law could tend to lower the plaintiff's reputation in the eyes of a reason-

able person. Council had waived solicitor-client privilege respecting the opinion letter and a trier of fact could reasonably reject a qualified privilege defence on the ground that the impugned statements exceeded the limits of the township's duty or interest. The misfeasance action also had a prospect of success, as evidence of animus toward the plaintiffs could establish that the defendants intended to act beyond their powers and abuse their authority. The immunity defence was grounded in good faith, but there was evidence that the plaintiffs were targeted by the defendants and the by-law could be considered an act to muzzle plaintiffs: *Paul v. The Corporation of the Township of Madawaska Valley* (2021), 2021 ONSC 4996, 2021 CarswellOnt 11312, 22 M.P.L.R. (6th) 17 (Ont. S.C.J.).

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