

ISSUE DATE:

May 14, 2009



PL090181

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Kuldip Singh
Subject: Minor Variance
Variance from By-law No.: 0225-2007
Property Address/Description: 1453 Astrella Crescent
Municipality: City of Mississauga
OMB Case No.: PL090181
OMB File No.: PL090181
Municipal No. A031/09

APPEARANCES:

Parties

Counsel*/Agent

Kuldip Singh

G. Dell

City of Mississauga

A. Wilson-Peebles*

**MEMORANDUM OF ORAL DECISION DELIVERED BY SUSAN de AVELLAR
SCHILLER ON MAY 11, 2009 AND ORDER OF THE BOARD**

At the outset of these proceedings, the City of Mississauga brought a motion to exclude Mr. Gregory Dell as an agent in this matter. The City cites as its grounds that Mr. Dell is not licensed to practice law or provide legal services in Ontario nor has he met the requirements of By-law 4 of the Law Society of Upper Canada which specifies the conditions under which legal services may be provided without a licence.

Section 26.1(1) of the *Law Society Act* states:

"...no person, other than a licensee whose licence is not suspended, shall practise law in Ontario or provide legal services in Ontario..."

At section 1(5), the *Act* states:

"...a person provides legal services if the person engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person..."

At section 1(6), the *Act* states:

“Without limiting the generality of subsection (5), a person provides legal services if the person does any of the following ...

3. Represents a person in a proceeding before an adjudicative body...”

By-law 4 of the Law Society of Upper Canada establishes a Class P1 licence that is designed for paralegals. The By-law also identifies nine circumstances, with specific requirements for each, where legal services that would normally require a Class P1 licence may be provided without such a licence. The categories are: in-house legal services provider; legal clinics; student legal aid societies; student *pro bono* programs; not-for-profit organizations; acting for family, friend or neighbour; constituency assistants; other profession or occupation; and individuals intending to apply or who have applied for a Class P1 licence.

The two categories most commonly seen at the Board are: “acting for family, friend or neighbour” and “other profession or occupation”.

At section 30(1)(5), the By-law sets out the requirements for “acting for family, friend or neighbour”:

“5. An individual,

- i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
- ii. who provides the legal services only occasionally,
- iii. who provides the legal services only for and on behalf of a related person, within the meaning of the *Income Tax Act* (Canada), a friend or a neighbour, and
- iv. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.”

At section 30(1)(7), the By-law sets out the requirements for “other profession or occupation”:

“7. An individual,

- i. whose profession or occupation is not the provision of legal services or the practice of law,
- ii. who provides legal services only occasionally,
- iii. who provides the legal services as ancillary to the carrying on of her or his profession or occupation, and
- iv. who is a member of,
 - A. the Human Resources Professional Association of Ontario,
 - B. the Ontario Professional Planners Institute,
 - C. the Board of Canadian Registered Safety Professionals,
 - D. the Appraisal Institute of Canada, or
 - E. the Canadian Society of Professional in Disability Management.”

In response to the motion, Mr. Dell acknowledged that he is not licensed to practice law or provide legal services in Ontario and does not hold a Class P1 licence to practice as a paralegal. Of the various circumstances that might qualify an individual to provide legal services without benefit of a licence, Mr. Dell acknowledges that the only category that might apply to him in this matter is that of “other profession or occupation”. In this category, By-law 4 lists members of the Ontario Professional Planners Institute [OPPI] as qualifying to practice without a licence, subject to the other restrictions the By-law sets out in section 30(1)(7). However, Mr. Dell advised the Board that while he held provisional membership in OPPI previously, he did not pursue full membership and has abandoned that status. He is not a member of any of the other professional bodies listed in this section of the By-law. As such, the exemption under “other profession or occupation” does not apply to Mr. Dell.

Mr. Dell submits that he has had more than 20 years of experience in representing clients before the Ontario Municipal Board and is both competent and capable of continuing to do so. He referred to the Board’s Rules, particularly Rule 8 which deals with the Board’s requirement that:

“...Representatives who are not legal counsel must file written confirmation of authorization to act for the party or participant...”

He filed with the Board, as Exhibit 1 in these proceedings, a signed authorization naming him as agent for Mr. Singh.

Mr. Dell also asked the Board to consider the following Board Rules:

3. Interpretation of the Rules These Rules shall be liberally interpreted to secure the just, most expeditious and cost-effective determination of every proceeding on its merits.

4. Matters Not Dealt With in the Rules The Board may at any time in a proceeding make orders with respect to the procedure and practices that apply in the proceeding. If these Rules do not provide for a matter of procedure, the Board may do whatever is necessary and permitted by law to enable it to adjudicate effectively and completely on any matter before it. The Board may follow the *Rules of Civil Procedure*, where appropriate, or may exercise any of its powers under the *Ontario Municipal Board Act* or applicable legislation.

6. Board May Exempt From Rules The Board may grant all necessary exceptions from these Rules or from a procedural order, or grant other relief as it considers appropriate, to ensure that the real questions in issue are determined in a just, most expeditious and cost-effective manner.

Mr. Dell placed before the Board a February 26, 2008 decision of a panel of this Board, differently constituted, that dealt with a similar motion brought by the City against Mr. Dell in the matter of certain appeals against the then proposed Official Plan Amendment 25 to the City of Mississauga Official Plan. In that decision, the Board dismissed the City’s motion and did not bar Mr. Dell from representing the appellants.

The Board’s Rules have changed since the earlier decision of the Board. At that time, the Board’s Rules defined “representative” as:

“...legal counsel, or an agent who is authorized in writing to represent a person in the proceedings...”

As of August 11, 2008 the Board’s Rules defined “representative” as:

“...a person authorized under the *Law Society Act*, R.S.O. 1990, c. L.8 or its By-Laws to represent a person in the proceeding before the Board, and this includes legal counsel or the individuals that are authorized to provide legal services...”

This change is significant in that it brings the Board's Rules squarely in line with the *Law Society Act* and the Law Society's By-law 4. The Board's earlier, and more permissive, definition of "representative" no longer applies.

By-law 4 already provides several possible categories for exemption from the requirement to hold a licence to provide legal services. Mr. Dell acknowledges that he does not meet the requirements of any of these categories.

The motion to bar Mr. Dell as an agent in these proceedings was brought in a timely fashion at the outset of the proceeding. No case had been called and no evidence presented on the merits.

The Board finds that there is nothing unique, unusual or extenuating in the circumstances now before the Board that warrants consideration of any relaxation of the Board's Rules, particularly a relaxation that may have the effect of placing the Board's decision at odds with the *Law Society Act* and the Law Society By-law 4. The Board finds that Rules 3, 4, and 6 are not appropriate to apply to the question of whether Mr. Dell should be permitted to continue to act as agent for Mr. Singh in these proceedings.

The motion by the City of Mississauga to bar Mr. Dell from acting as the representative of Mr. Singh in these proceedings is granted and Mr. Dell is so barred.

Mr. Singh, with the consent of the City, then sought an adjournment of the hearing of the merits to permit him an opportunity to secure other representation.

The hearing of the merits into Mr. Singh's appeal of the decision of the City of Mississauga Committee of Adjustment regarding 1453 Astrella Crescent is set down for one day, commencing at 10:00 a.m. on Tuesday, June 16, in the Municipal Hearing Room, 2nd floor, of the offices of the City of Mississauga.

No further Notice is required.

Since this Member heard no evidence or submissions on the merits of Mr. Singh's application for minor variance, this Member of the Board is not seized.

So Orders the Board.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
MEMBER