



Procedural fairness and the courts

By Dean Giles, Fillmore Riley LLP

While municipalities have long enjoyed a broad discretion when discharging public functions delegated to them by statute, Canadian courts have consistently recognized that the discretion is not an absolute one and that public bodies are bound by a duty of procedural fairness when making administrative decisions that affect individual rights or interests. The Supreme Court of Canada recently considered the content of this duty in the context of a municipality's repeated refusal to grant a rezoning application.


In *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, a congregation of Jehovah's Witnesses requested a zoning variance from the municipality permitting them to build a place of worship. The congregation had entered into a purchase agreement for a parcel of land located in a residential zone. The municipality denied the request and announced its decision at a public meeting where detailed reasons for the refusal were provided. Representatives of the congregation subsequently met with

the municipality's building inspector who identified for them the location of zones where the congregation could build.

The congregation was unable to find available land in these zones and expanded its search to other areas. Upon locating a suitable lot, the congregation entered into a conditional purchase agreement and filed a second request for a zoning variance. The municipality responded with a letter denying the request. No reasons were provided and it was apparent that the municipality had not undertaken any sort of evaluative process.

Following this refusal, the congregation renewed its search, but again concluded that no suitable properties were available in a regional community use zone. As a result, it submitted another rezoning application to the municipality relating to the property that had been the subject of the second request. It also provided evidence of its inability to find available land in other zones. The municipality responded with another letter summarily dismissing the application without any reasons.





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Writing for a majority of the court, **Chief Justice McLachlin** noted that the content of the duty of fairness imposed on a public body will vary based on the following five factors: (1) the nature of the decision and the decision-making process employed; (2) the nature of the statutory scheme and the precise statutory provisions under which the public body operates; (3) the importance of the decision to the individuals affected; (4) the legitimate expectations of the party challenging the deci-

sion; and (5) the deference accorded to the public body. She then went on to apply these criteria to the facts of the case.

With respect to the nature of the decision and the process employed, the court noted that a decision regarding the possible rezoning of municipal territory is one made by an

elected council accountable to its constituents and required to act in the public interest. As a general rule, because the public interest is a matter of discretion to be determined by the municipal council, a court is not to interfere in such a decision without good and sufficient reason. Such discretion is not

“ A municipality owes a duty of procedural fairness to all those affected. ”



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so broad, however, as to allow a municipal council to deny a rezoning application in an arbitrary manner. Where this happens, judicial intervention is warranted to prevent the potential for abuse of discretionary statutory authority.

As for the second factor, the court noted that the legislation granting the municipality authority to consider a rezoning application did not provide a right of appeal, meaning that enhanced procedural protections and greater attention to considerations of fairness were required.

Turning to the third factor, the court stated that the stringency of procedural

protection is directly proportional to the impact of the decision and its importance to those affected. In this case, the congregation's request for a zoning variance was closely tied to the practice of its religion and the right to gather for this purpose, freedoms that enjoy constitutional protection in Canada.

With respect to the fourth factor, the court found that the evaluative process followed in responding to the first request for a zoning variance created in the congregation a legitimate expectation that the subsequent applications also would be properly assessed and carefully considered.


This meant that an enhanced level of procedural protection was appropriate.

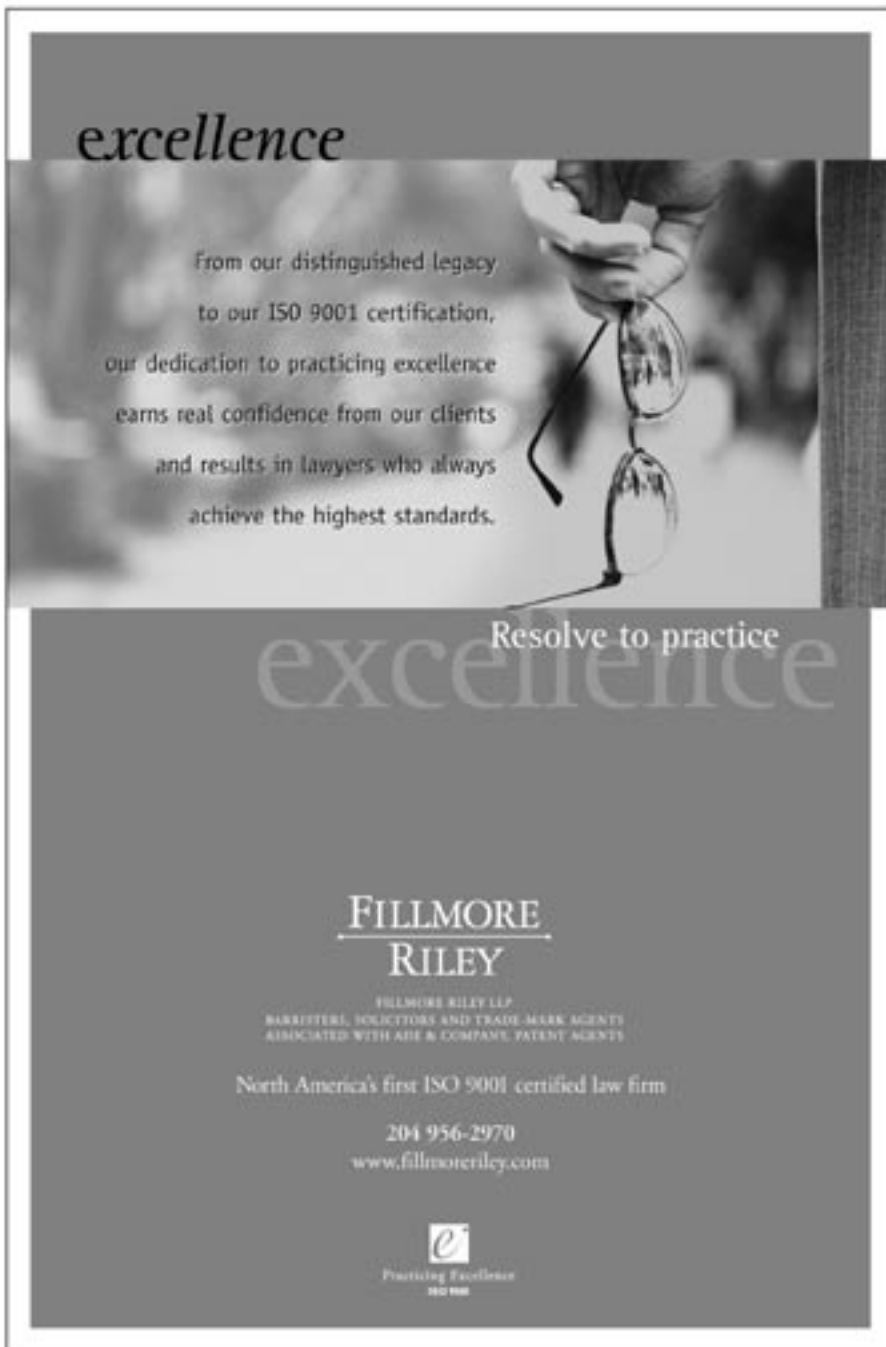
Regarding the question of deference, Chief Justice McLachlin acknowledged that a municipality's expertise in respect of zoning matters exceeds that of the judiciary. It follows that a court asked to review a decision of this sort ought to exercise considerable deference. According to the court, however, this principle should be given little weight where there is nothing to indicate that the municipality utilized its expertise when assessing the second and third applications.

Based on the above factors, the court found that the municipality had a duty to carefully evaluate the rezoning requests and to provide reasons for its refusal. In reaching this decision, the Chief Justice cited, with approval, the proposition that municipal councillors must always explain and be prepared to defend their decisions, before concluding as follows:

Giving reasons for refusing to rezone in a case such as this serves the values of fair and transparent decision making, reduces the chance of arbitrary or capricious decisions, and cultivates the confidence of citizens and public officials. Sustained by both law and policy, I conclude that the Municipality was bound to give reasons for refusing the Congregation's second and third applications for rezoning. This duty applied to the first application, and was complied with. If anything, the duty was stronger on the Congregation's second and third applications, where legitimate expectations of fair process had been established by the Municipality itself.

The municipality's refusal to justify its decision in denying the second and third rezoning requests in the face of the congregation's legitimate expectations and the importance of the decision, was held to be arbitrary and on the boundary that separates good from bad faith. As a result, the second and third rezoning refusals were set aside and the matter referred back to the municipality for a proper reconsideration.

This decision serves as a caution to municipal bodies charged with the task of making land-use and other decisions delegated to them by statute. While such decisions still will be afforded considerable deference, a municipality nevertheless owes a duty of procedural fairness to all those affected. While the nature and extent of the duty will vary depending on the particular facts of each case, ensuring transparency and providing reasons increase the likelihood that a municipal decision will withstand judicial scrutiny. 



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