

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN: )  
)  
WILLIAM HULET ) Eric K. Gillespie, for the Solicitors for  
) the Applicant (Responding Party)  
)  
Applicant )  
- and - )  
)  
THE CORPORATION OF THE CITY ) Josephine Matera, for the  
OF GUELPH ) Respondent (Responding Party)  
)  
Respondent )  
- and - )  
)  
6&7 DEVELOPMENTS LIMITED ) Benjamin Zarnett and Tom Friedland  
) for the Proposed Intervenor (Moving  
) Party)  
Proposed Intervenor )  
)  
) HEARD: March 21, 2006

REASONS FOR JUDGMENT

Sproat J.

[1] In this proceeding the applicant seeks to quash a site specific zoning by-law of the respondent City which applies only to lands owned by the moving party 6&7 Developments Limited ("6&7").

[2] The position of the applicant is that the zoning by-law is "illegal and should be quashed" in that;

- (a) the Ignatius Jesuit Centre, a 600 acre religious centre and spiritual retreat (as well as a Catholic and public cemetery) is located in close proximity to the 6&7 site governed by the by-law;
- (b) individuals make use of these lands for a variety of religious and spiritual purposes; and
- (c) by permitting significant interference with religious and spiritual beliefs and practices the zoning by-law violates the freedom of conscience and religion protected by the *Charter of Rights and Freedoms*. ("the Charter").

[3] 6&7 moves for leave to intervene as an added party and the respondent City supports its request. For the reasons that follow, I am satisfied that it is appropriate to grant leave.

[4] Rule 13.01 provides that a party may move for leave to intervene if they claim an interest in the subject matter of the proceeding or that they may be adversely affected by a judgment in the proceeding.

[5] The evidence is clear that both these criteria are met. In this regard:

- (a) 6&7 initiated steps in 1995 to obtain a site-specific by-law to permit commercial development and there were nine public

meetings, 17 pre-hearing conferences and an eight day Ontario Municipal Board ("OMB") hearing.

- (b) The zoning by-law in question was approved by the OMB after the City refused to pass it.
- (c) 6&7 successfully defended legal challenges to the by-law in the Divisional Court and the Court of Appeal denied leave to appeal.
- (d) The relief sought by the applicant would preclude the proposed development of the site.

[6] In argument counsel for the applicant fairly conceded that 6&7 has an interest in the subject matter of the proceeding and that 6&7 would be adversely affected by the judgment sought.

[7] The applicant, however, argued that 6&7 should not be permitted to intervene. The principal submission was to the effect that the *Charter* does not protect economic interests and that since this is a *Charter* application it is not open to 6&7 to participate to defend its economic interests.

[8] In this regard the applicant states in his factum:

The subject lands are owned by 6&7 Developments Limited ("6&7"). 6&7 holds property and economic rights in these lands. As a corporation, it has no religious knowledge or beliefs. It seeks to be added in order to protect its "commercial development rights". However, under the Charter, economic property rights were intentionally excluded. Economic and property rights were intentionally granted no protection. As a result, it is clear that 6&7 has no ability to seek standing to defend its private property and economic interests in a Charter case.

[9] I do not accept this argument. Party status allows a person to participate directly in a legal proceeding by presenting evidence and argument. Rule 13

provides a mechanism whereby persons who strictly speaking may not be "necessary" parties under Rule 5.08 may intervene as parties if they have an interest in the proceeding or could be adversely affected by a judgment. It is only common sense and fairness that a party be able to seek party status to represent its interests.

[10] The fact that the *Charter* does not protect economic interests misses the point. The *Charter* litigation will necessarily be concerned with defining the scope of freedom of religion and the extent to which it may be asserted to deprive others of property rights. Put differently, the fact that the *Charter* does not protect property rights does not alter the fact that 6&7 has property rights that hang in the balance in this application. There is no principle that in determining the nature and extent of a right granted by the *Charter* the Court must be oblivious to the context and the extent to which property rights are affected.

[11] The fact that as a corporation 6&7 "has no religious knowledge or beliefs" also misses the point. Cases are decided on the basis of evidence and argument and 6&7 is in a position to present both. In this regard the provisions of the *Lord's Day Act* were invalidated based upon a constitutional challenge initiated by Big M Drug Mart Ltd. after it was charged under the Act. (*R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295.)

[12] The secondary submission by the applicant was that even if the Rule 13.01 criteria are met 6&7 has little or nothing to add so that its position is adequately

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represented by the City and, as a matter of discretion, leave should not be granted.

[13] In *Peel (Regional Municipality) v. Great Atlantic and Pacific Co. of Canada Ltd.* (1990), 74 O.R. (2d) 164 (O.C.A.) a not for profit corporation, People for Sunday Association of Canada, was granted leave to intervene in *Charter* litigation as to the constitutionality of the *Retail Business Holidays Act*. The intervention was opposed by the major retailers mounting the constitutional challenge who argued the Attorney General's position protected their interests and the Attorney General could present evidence from the Association and its members.

[14] Chief Justice Dubin rejected this argument and granted leave to intervene stating:

However, in my opinion, that is not a sufficient reason in this case to deny leave to intervene. The role of counsel for the Attorney General for Ontario is to support the constitutionality of the province's legislation. Although the argument may overlap, the applicant represents a very large number of individuals who have a direct interest in the outcome, has a special knowledge and expertise of the subject-matter and is in a position to place the issues in a slightly different perspective than that of the Attorney General.

[...]

Although much has been written as to the proper matters to be considered in determining whether an application for intervention should be granted, in the end, in my opinion, the matters to be considered are the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties. (at p. 167).

[15] In our case 6&7 certainly has special knowledge and expertise as to the particulars of the proposed site and building and the steps taken to address City and resident concerns. In argument the City agreed it had a different perspective

than 6&7. The City perspective is a general concern as to whether and to what extent the *Charter* right will affect the planning-regulatory process while 6&7 has a pressing commercial interest in the particular land subject to the by-law.

[16] For the sake of illustration, a party in the position of the City might decide to place primary reliance on the position that the *Charter* claim is not tenable in law and not cross-examine at length or call extensive evidence on the site-specific issues. This might be reasonable from the perspective of the City given its assessment of the law and the time and expense involved calling site-specific evidence. It would, however, mean that no one was in court with the perspective and interest of 6&7.

[17] *Re Starr v. Township of Puslinch* (1976), 12 O.R. (2d) 40 (H.C.J. – Div. Ct.) is analogous to this case. In that case landowners who planned gravel pit operations sought to intervene in a judicial review application which alleged that the Official Plan and amending by-law which permitted a gravel pit use had been obtained as a result of fraud and misrepresentation in contravention of the *Planning Act* and so should be quashed.

[18] The landowners were ordered added as parties to the proceeding. After reviewing a number of cases Justice Grange stated:

I can only conclude from these cases that there is no absolute rule that for a party to be added he must have a direct interest in the very issue to be determined. It is, I think, sufficient in the words of Lord Denning, *supra*, that the "determination of that dispute will directly affect a third person in his legal rights or in his pocket". I also believe that it is clear from the cases that even when the applicant satisfies that condition it is entirely discretionary in the Court whether he will be allowed to intervene or not, and the Court may always decline the application where it considers that the interest of the applicant is already adequately represented. I think we should adopt the caveat of Lieff, J., *supra*,

and lay down no fixed rule, but I do believe that in this instance, where the very enterprise of the applicants will be in danger of prohibition and where both applicants appear to have acted in reliance on the official plan that is now attacked, they should be permitted to intervene. (at p. 46)

[19] To paraphrase Justice Grange, 6&7 has a clear and compelling case that it will be affected in its legal rights and pocket and its proposed enterprise on the land is in danger of prohibition.

[20] In summary 6&7 clearly meets the criteria in Rule 13.01. The caselaw cited and simple fairness favour it being granted leave to intervene.

[21] Rule 13.01(2) also provides that on a motion to intervene the court shall consider whether "the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceedings." There is no evidence or reasonable argument to suggest that the intervention of 6&7 will unduly delay the proceedings.

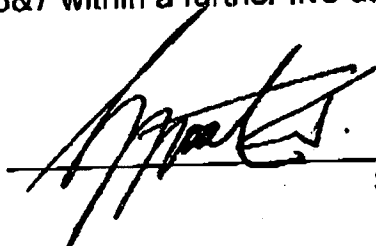
[22] The City agreed that 6&7 would play the lead role in presenting the case before the OMB, the Divisional Court and Court of Appeal. On this motion 6&7 presented argument the and City adopted the submissions of 6&7 and in a few minutes added a couple of helpful points pertaining to the City's procedural by-law and instructions. A stronger argument exists that to proceed without the direct participation of 6&7 could delay matters because the City, no doubt at significant expense, would have to duplicate much of the work by 6&7 to be in a position to present the evidence and argument previously presented.

[23] The applicant does have a reasonable concern that his exposure to costs is increased if 6&7 is added. I certainly do not accept that, as submitted, the costs exposure would double. Given the division of labour to date between the City and 6&7, which counsel indicate will continue, the costs of the City should be significantly less than 6&7.

[24] I would also add that costs are an integral part of our litigation system and designed to dissuade claims lacking merit, promote settlement and provide compensation to parties who have meritorious claims. The exposure to costs imposes a necessary discipline on litigants and how they conduct the process.

[25] In any event, while I consider the fact that there will be some increased exposure to costs by granting leave to 6&7, the factors previously discussed overwhelmingly favour granting party status. 6&7 is granted leave to intervene as an added party. The judge determining the application will be in a position to ensure that duplicative and unreasonable costs are not awarded.

[26] If the parties cannot agree on costs then 6&7 and the City shall make written submissions as to costs within 10 days; the applicant shall respond within a further 10 days; reply, if any, by the City and 6&7 within a further five days.

  
Sproat J.

**COURT FILE NO.: 98/06**  
**DATE: 20060404**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**WILLIAM HULET**

**Applicant (Moving Party)**

**- and -**

**THE CORPORATION OF THE CITY OF  
GUELPH**

**Respondent**

**- and -**

**6&7 DEVELOPMENTS LIMITED**  
**Proposed Intervenor (Moving Party)**

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**REASONS FOR JUDGMENT**

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**Sproat J.**

**Released: April 4, 2006**

ONTARIO



Superior Court of Justice  
Justices' Office  
Central West Region

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FROM: Bonnie Russell  
The Superior Court of Justice  
Brampton, ON Fax No. (905) 456-4834

DATE: Wednesday, 05 April 2006

RE: Court File No. 98/06  
Hulet v. The Corporation of the City of Guelph

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**COMMENTS:** Attached please find Justice J.R. Sproat's Reasons for Judgment in the above matter.

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