

ENVIRONMENTAL PROTECTION: AN ESSENTIAL CONSIDERATION FOR ANY MINOR EXEMPTION

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The Québec Court of Appeal recently reiterated^[1] that a minor municipal exemption cannot be granted if it has the effect of adversely affecting the quality of the environment.

In this matter, the appellant citizen sought to quash a resolution of the Dunham Municipal Council granting the application for a minor exemption by another citizen residing near the appellant. The appellant resides across a lake and has access to it.

The application for a minor exemption was intended to allow the owner of the lot concerned to subdivide the lot while maintaining a frontage less than the distance required under the municipality's Subdivision By-law.

As part of the process that followed the filing of the application for a minor exemption, the appellant submitted her written observations to the municipality. In particular, she expressed environmental concerns about the health of the lake in question and the preservation of wetlands. Despite this, the Municipal Council granted the application for an exemption at that meeting.

When asked to review the decision of the Municipal Council, the Court of Appeal sided with the appellant.

It pointed out that, even though the Municipal Council has broad discretion in analyzing an application for a minor exemption and deciding whether to grant it, "since the *Act respecting land use planning and development* explicitly specifies, in sections 145.2 and 145.4, the criteria on which the council must rely, the council must take them into account and apply them scrupulously, failing which the Court must be justified in intervening and quashing the resolution granting an exemption.^[2] "

Of these criteria, which are cumulative, paragraph 2 of section 145.4 of the *Act respecting land use planning and development* explicitly states that the application for a minor exemption may not be granted if it has the effect of adversely affecting the quality of the environment.

Yet, there was no evidence that the members of the Planning Advisory Board (which is responsible for rendering an opinion on the application for exemption to the Municipal Council) or of the Municipal Council considered whether the quality of the environment could be adversely affected by the requested exemption. In

particular, the Court found insufficient that the appellant's written observations were brought to the attention of the Municipal Council members during a workshop. Accordingly, the Court quashed the resolution granting the application for an exemption.

This Court of Appeal decision highlights one of the criteria that must be taken into account by a municipal council to which an application for a minor exemption is made, namely that the exemption will not adversely affect the environment. This is an example of the role of municipalities in environmental matters. Any owner wishing to submit an application for a minor exemption should therefore include in the application evidence of the absence of such an adverse effect.

[1] *Tobin Municipalité de Dunham* 2024 QCCA 69 [In French only]

[2] *Municipalité de Saint-Elzéar Bolduc*, para. 28 [In French only], cited by the Court at para. 24.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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