COURT OF APPEAL FOR ONTARIO

RE: The Corporation of the City of Niagara Falls, Applicant

-and-

486664 Ontario Limited., Respondent

BEFORE: Justice Trotter

COUNSEL: *Kenneth L. Beaman,* for the Applicant

Scott G. Lemke, for the Respondent

HEARD: August 17, 2017

ENDORSEMENT

[1] The respondent was convicted by a Justice of Peace under the Fire Protection and Prevention Act. It appealed to a judge of the Ontario Court of Justice, who set aside the conviction and ordered a new trial. The appeal judge held that, even though the conviction was not wrongful and that guilt was clearly established, the trial was unfair and amounted to a miscarriage of justice. The City seeks leave to appeal this decision pursuant to the Provincial Offences Act.

[2] The application is dismissed. The questions of law set out in the materials do not realistically arise from the facts of this case. To the extent that they might, they do not transcend the facts of this case and the dispute between the parties. As such, it cannot be said that leave to appeal is necessary in the public interest or for the due administration of justice.

[3] The City's main contention is that that appeal judge found a miscarriage of justice even

though guilt was established. However, as the appeal judge recognized, a miscarriage of justice may be caused by the appearance of an unfair trial. He was on firm ground: R. v. Nichols (2001), 1480.A.C. 344 (C.A.), at para.23.

[4] The appeal judge gave thorough reasons for his conclusion that the trial was unsatisfactory and amounted to a miscarriage of justice. I do not disagree with his assessment.

[5] The respondent seeks its costs on this application and requested time to make written submissions. I acceded to this request and each side will have 10 days to file written submissions no longer that 5 pages in length. However, in accordance with the City's position, I ask counsel for the respondent to consider previous authority from this court that holds that there is no jurisdiction to order costs on a leave application such as this: R. v. Laundry (1996), 93 OAL 100 (C.A. [In Chambers]) and R. v. Rankin (2007), 86 O.R.(3d) 399 (C.A. [In Chambers]).

Gary T. Trotter, J.A.

HEARD: Dec. 4, 2017

[1] Despite the able written submissions of Mr. Lemke for the respondent, I am not persuaded that Laundry or Rankin were wrongly decided. They both apply to this case. There will be no order as to costs.

Gary T. Trotter, J.A.