

Court File No. M36002
C48262

COURT OF APPEAL FOR ONTARIO

BETWEEN:

VANN MEDIA INC.

Appellant/
Respondent in Appeal

- and -

**THE CORPORATION OF THE TOWN OF OAKVILLE
and SHELLEY SWITZER**

Respondents/
Appellants

NOTICE OF MOTION

THE APPELLANTS will make a motion to a judge of the Court of Appeal on Wednesday, February 13, 2008 at 10:00 a.m., or as soon after that time as the motion can be heard, at Osgoode Hall, 130 Queen Street West, Toronto.

PROPOSED METHOD OF HEARING: the motion is to be heard orally.

THE MOTION IS FOR:

1. An Order granting a stay of the Judgment of Gray J. dated January 18, 2008. pending the hearing and final disposition of this appeal;
2. An Order that the hearing of this appeal be expedited;
3. Costs of this motion, if opposed; and
4. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION are as follows:

1. Rule 63.02(1)(b) of the *Rules of Civil Procedure*;
2. Section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
3. Pursuant to Reasons for Judgment released January 18, 2008, Mr. Justice D.K. Gray of the Superior Court of Justice granted in part an application made by Vann Media Inc. ("Vann") in respect of By-law No. 2006-005 (the "**Sign By-law**") of the Town of Oakville (the "Town"). The Town has since appealed the Judgment of Gray J. to this Court and is in the process of perfecting that appeal;
4. The specific relief ordered by Gray J. includes an order quashing the Sign By-law in its entirety, subject to a suspension of that order for a period of six months, notwithstanding the fact that Vann applied to quash only certain locational criteria contained in section 39 of the Sign By-law. In addition, Gray J. ordered the Town to approve all of Vann's applications for sign permits that met only one of the various locational criteria prescribed by the Sign By-law;
5. There are serious issues raised on the Town's appeal. In particular, it is the Town's position that:
 - (a) Gray J. erred in law in finding that the Sign By-law amounts to a complete ban on billboard advertising within the Town;
 - (b) Gray J. erred in law in finding that, although the objectives of the Sign By-law are pressing and substantial, the means chosen by the Town to implement those objectives are not rationally connected to the objectives and do not minimally impair Vann's right to freedom of expression under section 2(b) of the *Canadian Charter of Rights and Freedoms* (the "**Charter**"), so as to satisfy the requirements of section 1 of the *Charter*:

- (c) Gray J. erred in law in failing to grant the appropriate level of deference to the policy decisions made by the Town's elected municipal council, as mandated by this Court and the Supreme Court of Canada;
- (d) Gray J. erred in law in ordering the Sign By-law quashed in its entirety, in circumstances where: (i) Vann only challenged certain locational criteria contained in one specific provision of the Sign By-law; (ii) none of the other provisions of the Sign By-law had any demonstrable impact on Vann's rights under section 2(b) of the *Charter*; and (iii) the remaining provisions of the Sign By-law address many different categories of signs other than billboard advertising signs, and contain procedural requirements of general application to all regulated categories of signs;
- (e) Gray J. erred in law in failing to have regard for the fact that the Supreme Court of Canada has already determined that the size limitation on billboard advertising signs which was contained in the Sign By-law is constitutionally valid, and in failing to consider how that valid size limitation impacts on the criteria for determining appropriate sign locations; and
- (f) Gray J. erred in law in ordering the Town to grant Vann permits to allow it to erect advertising signs at 11 specific locations for which it had made applications. In singling out one of a number of locational criteria contained in the Sign By-law and using it as the sole basis for determining the appropriate remedy, the learned applications judge was effectively engaging in a form of judicial legislation;

6. The Town, and the public interest it represents, would suffer irreparable harm if a stay of the Judgment of Gray J. were not granted. In particular:

- (a) The relief granted by Gray J. obliges the Town to commence and complete, within a period of six months from January 18, 2008, a new comprehensive sign by-law review, likely at a public expense of over

\$100,000, in circumstances in which no party was even taking issue with the validity of the current Sign By-law other than Vann's challenge respecting certain locational criteria. If the Town's appeal in respect of such relief is successful, the substantial public expenditure associated with this cumbersome and time-consuming process would be unrecoverable;

(b) The Town would be faced with the prospect of 11 billboard signs at prominent locations within the Town. These signs would be contrary to the intent and effect of the Sign By-law, which is otherwise still in effect by virtue of the suspension which was granted by Gray J. himself. Moreover, if the appeal is successful there is a serious risk that such signs would effectively be "grandfathered" indefinitely in respect of any new billboard sign regulations - notwithstanding the fact that they comply with only one locational criterion approved by the Town following an extensive public process;

7. The balance of convenience and the public interest favour retaining the status quo during the relatively brief period pending the final disposition of the Town's appeal by this Court, and a sufficient period following that final disposition to allow the Town time to implement the public process required to consider and enact a new sign by-law in the event the appeal is unsuccessful; and

8. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1. The Judgment and Reasons for Judgment of Gray J., dated January 18, 2008;
- 2. The Affidavit of Phillip Bouillon to be sworn, and all exhibits annexed thereto;
- 3. Such further and other materials as counsel may advise and this Honourable Court permit.