



April 3, 2018

BY E-MAIL: [etcc@toronto.ca](mailto:etcc@toronto.ca)

[ruukkivi@casselsbrock.com](mailto:ruukkivi@casselsbrock.com)

Etobicoke York Community Council  
Etobicoke Civic Centre  
399 The West Mall, Main Floor  
Toronto, ON M9C 2Y2

tel: 416.860.6613

fax: 416.640.3110

Attention: Committee Administrator

Dear Sirs/Mesdames:

**Re: Etobicoke York Community Council  
Meeting April 4, 2018  
Item EY29.16 - Application for Fence Exemption  
by 33 Kingsway Crescent**

We are the lawyers for Bill and Jill Burden.

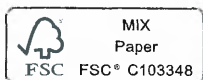
We are writing with respect to the City's consideration of an exemption from Toronto Municipal Code, Chapter 447, Fences for the property at located at 33 Kingsway Crescent ("Fence By-law").

We have serious reservations about the City's process to grant an exemption. The approach is wrong in law.

First, City staff have failed to properly evaluate the existing pillars as part of the fence. Under the Fence By-law, a fence includes any structure except a structural part of a building. The pillars are clearly structures that form part of the fence. That can be seen from the very definition of a fence, which includes any structure that marks or substantially marks the boundary of a property, as seen in the following definition of a fence from the Fence By-law:

FENCE - A barrier, including one for noise attenuation, or **any structure**, except a structural part of a building, that wholly or partially screens from view, encloses or divides a yard or other land, or **marks or substantially marks the boundary between adjoining land**, and includes any hedge or shrub that has the same effect.  
[emphasis added]

Second, the City is wrong to suggest that the pillars are somehow only governed by the property standards provisions found in Chapter 629 of the Municipal Code ("Property Standards By-law"). While we agree that the maintenance of the pillars is governed by the Property Standards By-law, as are fences, other structures and properties generally, the Property Standards By-law does not govern the size and height of the pillars. The Property Standards By-law also does not preclude regulation of fences and structures by other municipal by-laws such as the Fence By-law and the City of Toronto Harmonized Zoning By-law 569-2013 ("Zoning By-law").





Third, the Zoning By-law governs fences. In particular, 5.10.175.1 of the Zoning By-law incorporates by reference, the Fence By-law. In other words, in order to obtain an exemption from the Fence By-law, the proponent requires a minor variance from the Zoning By-law as it is changing a specific requirement of the technical land use requirements permitted under the Zoning By-law. If City were to grant an exemption without requiring a minor variance, that action could very well be a decision made without jurisdiction.

It is our view that the appropriateness of the fence height requested must be considered comprehensively and include all elements of the fence and in the context of applicable law. An adjournment is requested to allow time for discussion with the City and with the applicant so that these issues can be dealt with comprehensively. We are enclosing photographs of the pillars in question for the Committee's consideration.

We request that Bill Burden be placed on the agenda to make a presentation.

Yours truly,

Cassels Brock & Blackwell LLP

A handwritten signature in black ink, appearing to be "Raivo Uukkivi", with a long horizontal line extending to the right.

Raivo Uukkivi

RU/  
Enclosures





