



Fleury, Comery LLP
Barristers & Solicitors

WHAT IS CREATIVITY FOR LAWYERS?

Most of us are proud of creative things we have done in our jobs, when we have done something new, unexpected and beneficial. Creativity for lawyers means finding solutions to legal problems that are outside the bounds of conventional legal thinking. Here is an example of such creativity by one of our senior partners, **Ed Fleury**.

THE PROBLEM

Our client built an expensive addition to the back of her home. She was herself creative with the plans supplied by her architect, and a very important part of the addition became a large window on the side of the addition. Without that window, there was simply not enough light in the new extension.

Unknown to our client were the requirements of the Ontario Building Code. The wall of the addition was built 4 feet from the lot line, which was by itself acceptable. You cannot, however, have 'unprotected' windows closer than 6 feet to the lot line. To 'protect' a window means essentially to make it a non-window, with special mesh glass and an inability to open the window. There is good reason for the requirement. If the neighbouring house were similarly close to the lot line the Code requirements would leave at least 12 feet of air to dissipate heat and retard the progress of any fire from one house to the other. An unprotected window closer than that would be like an invitation for the fire to come into the house before the fire department could respond to an alarm and take appropriate protective measures. Of course, you can build closer if you put in no windows or 'protect' any that you install.

CONVENTIONAL SOLUTIONS

Our client thought her error could be corrected with a minor variance application to the City. The City officials made it clear to her that a breach of the Building Code was a lot more serious than she'd thought, and would not be forgiven by the local Committee of Adjustments. Her choices seemed to be to 'protect' the window, or to brick it up altogether. Either solution resulted in a serious loss of aesthetic value to the addition. Her architect would have to be called to design some expensive renovations to the existing structure.

CREATIVE SOLUTIONS

To this point our client's thinking had involved only her

addition and her own property. When she consulted Ed Fleury he put his mind to the Building Code and the reasons for the requirements as outlined above. Perhaps you can guess where his thinking lead him...next door. On the adjacent property the house was further than 6 feet from the lot line, and in fact the addition extended beyond the rear of the neighbouring house. There was no existing fire hazard, but the neighbour would remain within his rights to build his own addition that would create such a hazard. Could the requirement be satisfied by some kind of arrangement with the neighbour?

Ed's first suggestion was very simple: ask the neighbour to sell 2 feet from front to rear of the lot, effectively moving the lot line over the requisite distance. The neighbour was not interested.

Ed's second suggestion was more complicated, but it had the merit of interesting the neighbour and turned out to be the solution. The neighbour agreed - in exchange for \$1,000.00 cash - to accept a registered restrictive covenant against his property that he (and any subsequent owner) would never build a dwelling closer than 8 feet from the lot line. Ed took this proposal to the Committee of Adjustments and persuaded them to grant the variance.

SOME REMARKS ON CREATIVITY

Of course inspiration is 99% perspiration, and Ed would not have come up with this idea so easily or naturally in the absence of his extensive experience with real estate and municipal law issues. Fleury, Comery is a name known to the Scarborough Committee of Adjustments and at the Ontario Municipal Board, in good part because of Ed Fleury's experience before these tribunals. We can assist in all types of variance applications, minor and not-so-minor. If you have this kind of problem, do not hesitate to call us for a free consultation.

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