

**ENGLISH SUMMARY OF THE CASAVANT/MERCIER LEGAL OPINION
(REQUESTED BY RBL) CONCERNING VLB'S OWN LEGAL OPINION
ABOUT THE LEGALITY OF THE COLIBRIS DOCK FILE**

RBL is pleased to offer this English summary of the Casavant/Mercier law firm's interpretation (of the town's legal opinion) to its English speaking members.

COVERING LETTER

Dear Mr. Beaudoin

As requested by Renaissance Brome Lake, we hereby offer our legal opinion related to the validity of the two permits issued by the municipal inspector for the docks for the residences located at the following civic addresses: 6 and 8 Colibris, Ville de Lac-Brome.

For the purposes of this opinion, we examined the content of VLB's zoning regulation 353 (referred to as The By-law). We also examined the pertinent doctrine and jurisprudence. And, finally, we examined the copy of the legal opinion issued on May 25, 2010 by the town's lawyers.

For the reasons which follow, we are of the opinion that the docks for the above-mentioned residences are not in compliance with the municipal by-laws and that the permits which were issued are in contravention of the zoning regulations.

For the reasons which follow, we are also of the opinion that VLB and any other interested party can request that these docks be removed on the basis that they contravene the dispositions of The By-law, by a request for the cessation of a non-conforming use by virtue of article 227 of Quebec's Land Use Planning and Development Act. This request could be presented to the Quebec superior court.

We will now deal with each of these points separately.

**1. NON CONFORMITY OF THE DOCKS IN QUESTION IN RELATION TO
VILLE DE LAC BROME'S ZONING BY-LAWS**

Section 4 of Chapter 4 of The By-law deals with environmental protection.¹
(¹ Articles 77 to 93 inclusively)

Article 79 of The By-law states that *any and all constructions, work projects and works with the exception of the following constructions, work projects and works are prohibited on the littoral:*

1. (...)

Private docks or floating platforms (rafts)

a) Surface area and dimensions

No private dock shall exceed 15 metres in length, measured from the shoreline. When the depth during the summer dryness period at the end of the dock is inferior to 1.2 m, it is possible to extend the length, without exceeding 30 m in length.

(Underlining by Casavant Mercier)

It is clear from the preceding text that the maximum length of a dock is calculated from the shoreline. As a result, the dock must be attached to the shoreline.

The definition of the words “private dock” which we find in article 9 of The Regulation and which we will cite hereafter, does not change the rule set out by article 79, that the length of any private dock is calculated “starting at the shoreline”.

Private dock: a structure on the shoreline and littoral, or on the littoral. Including a maximum of two moorings (boat slips, tie-ups), intended to allow the embarking or disembarking of persons and merchandise on a boat or other embarkation.

The definition contained in a Regulation cannot have as an effect to prevent the application of a disposition of The By-law which establishes the applicable rule. In other words, a definition is a definition and a rule is a rule.

Professor Pierre-André Côté, in his legal work entitled, *Interprétation des lois*² mentions the following on page 286 of his work:

*(² Pierre-André Côté, *Interprétation des lois*, (2009, Éditions Thémis)*

Judge Gonthier provided a “just” expression of the principle which we are debating today when he wrote, “when the legislator sets out a general rule and provides certain exceptions to it, the latter should be considered as exhaustive and therefore interpreted in a strict fashion.

In conclusion regarding this point, we are of the opinion that the docks in question do not meet the standards set by the zoning by-laws of Ville de Lac-Brome.

2. THE POWER OF THE TOWN TO REVOKE THE PERMIT ISSUED IN CONTRAVENTION OF ITS OWN REGULATIONS

The courts have mentioned on many occasions that the authorization obtained from a municipal civil servant does not permit the violation of a municipal regulation. Thus, way the issuing of a permit by a municipal functionary in contravention of a regulation in force is not valid and cannot be binding on the town in question.

In the judgement of Montréal vs Morgan, (1920) 60 R.C.S. 393, the Supreme Court of Canada notably mentioned that no municipal authority can acquiesce in a violation of a regulation in force and that the acts of municipal officers are not valid unless they conform with the law.

The decisions rendered in the Lemoyne vs Notre Dame du Portage (1974) C.S.46 and Dame St-Pierre vs Villeneuve, (1969) S.C. 544 affairs were made in the same sense.

Permits which are issued in contravention of The By-law are not valid and, as a result, can be revoked by the town which cannot be bound by a permit issued by one of its functionaries which contravenes The By-law.

3. RECOURSE SET OUT IN ARTICLE 227 OF THE LAND USE PLANNING AND DEVELOPMENT ACT (LAU)

Article 227 of the Land Use Planning and Development Act reads as follows:

The Superior Court may, on a request from the attorney general, from the organization in question, from the municipality or any other interested party, order the cessation of:

- 1. a use of land or a structure which is incompatible with:
a) a zoning, sub-division or building by-law;*

As set out in the preceding, the municipality or any other interested party may address itself to the Superior Court under the LAU to halt a construction which is incompatible with a provision of the municipality's zoning regulations.

The Superior Court may also order the execution of the work required to remove the docks which contravene The By-law, by virtue of article 227 of the LAU, at the expense of the owner.

We hope that the present responds to your expectations and remain at your disposal to provide any supplemental information which could be useful in these circumstances.

Please accept our cordial best wishes, Mr. Beaudoin.

Signed: Joel Mercier

Casavant Mercier

Litigants
Negotiators
Counsellors