



CASE COMMENT

Catalyst Paper Corporation v. North Cowichan (District) 2010 BCCA 199

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The British Columbia Court of Appeal (“BCCA”) has, in its decision of April 22, 2010, affirmed the findings of the Supreme Court in upholding the District’s tax rate bylaw, which was challenged by Catalyst Paper Corporation (“Catalyst”) as being illegal, unreasonable and *ultra vires*.

Briefly, the facts of the case are that Catalyst operates a pulp and paper products mill in the District of North Cowichan, and like other players in the industry, has been experiencing severe economic difficulties. Residential properties in the District represent 90% of total property values in the District, but pay only about 40% of the total taxes collected by the municipality. Approximately 50% of the taxes are paid by Catalyst as a “Major Industry” property owner, whilst Catalyst properties consume roughly 6% of municipal services. Catalyst lobbied the Province and the District for a reduction in its property taxes, including seeking an empirical assessment of property taxes based on consumption of municipal services. Despite these efforts, the District’s subsequent May 2009 Tax Rates Bylaw perpetuated the very high tax rate ratio between Residential and Major Industry classes. Catalyst challenged the Bylaw in the Supreme Court and, being unsuccessful, appealed to the BCCA.

The BCCA in a unanimous judgement confirmed the following matters, all of which are important for a local government to keep in mind when exercising legislative power in passing bylaws:

- Subject to the s.165 financial plan, s.197 of the *Community Charter* confers an unfettered discretion in terms of the factors a local government can consider in fixing property tax rates;
- The tax rate ratio between Residential and Major Industry properties is only regulated for regional districts (for whom it must be no greater than 1:3.4);
- Local government bylaws are subject to judicial review, in order to ensure the legality, reasonableness and fairness of the administrative process and its outcomes;
- In judicial review, reasonableness is concerned with (a) the existence of justification, transparency and intelligibility within the decision-making process, and (b) whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law;
- Where a bylaw is the product of an exercise of legislative power, there is no obligation to provide any reasons in the formal sense, but there must be sufficient evidence available to facilitate understanding of how and on what basis decisions are made;
- The legal case authorities make it clear that municipal decisions, in particular those that lie at the legislative and policy-driven end of the spectrum, must be given particular deference; and
- Barring something aberrant, “overwhelming” or a decision “no reasonable body could come to”, a court will not revisit the outcomes determined by elected officials to be appropriate.