

JANUARY 20, 2012

CLIENT BULLETIN

SUPREME COURT OF CANADA UPHOLDS NORTH COWICHAN TAX RATES BYLAW

On January 20, 2012, the Supreme Court of Canada delivered unanimous Reasons for Judgment in [*Catalyst Paper Corp. v. North Cowichan \(District\)*](#), finally bringing an end to Catalyst's challenge to North Cowichan's property taxation policies.

In 2009, Catalyst brought proceedings in the Supreme Court of British Columbia for judicial review on reasonableness grounds of the 2009 Tax Rates Bylaws enacted by each of the municipalities in which Catalyst operated pulp and paper plants (i.e., North Cowichan, Port Alberni, Campbell River and Powell River). The Honourable Mr. Justice Voith upheld the Tax Rates Bylaws, noting that, while all local government decisions are subject to judicial review on unreasonableness grounds, with respect to taxation decisions, courts should defer to the policy judgment of the elected officials so long as there is evidence that the decision was "intelligible, transparent and rational."

Catalyst appealed to the British Columbia Court of Appeal in relation to North Cowichan's 2009 Tax Rates Bylaw alone. In its Reasons for Judgment dismissing Catalyst's appeal, the BCCA went further in deferring to the decision of North Cowichan's Council than Justice Voith did. The BCCA held that, in order to be reasonable, a decision of a local government elected body does not have to be founded on a particular set of objective criteria or "even a demonstrably 'rational' policy", and that, as Justice Voith observed, a local government has virtually unfettered discretion to consider whatever information it deems relevant, and to allocate the tax burden among the property classes as it sees fit. The BCCA expressed the view that such principles accord with the obviously political functions of local government elected officials, who are elected to act in what they believe are the best interests of the local government rather than to play an independent role in adjudicating between specific interests, and who bring certain views – on the basis of which they are elected – to bear on local government decisions, which views may be different between elected officials.

Catalyst subsequently sought and was granted leave to appeal to the Supreme Court of Canada.

In unanimous Reasons for Judgment, the SCC dismissed Catalyst's appeal, and upheld North Cowichan's 2009 Tax Rates Bylaw.

On the issue of the standard of review to be applied by the courts to local government legislative decision-making, the SCC held that the standard of review is reasonableness, which must be assessed in the context of the particular type of decision-making involved, and all relevant factors. The SCC noted that context arises from the specific legislative provisions being considered, and

from the existing case law which suggests that review of local government bylaws must reflect the broad discretion provincial legislators have traditionally accorded to local governments engaged in delegated legislation, that local government elected officials passing bylaws fulfill a task that affects their community as a whole and is legislative rather than adjudicative in nature, and that local government bylaws involve an array of social, economic, political and other non-legal considerations. In this context, the SCC held that “reasonableness means courts must respect the responsibility of elected representatives to serve the people who elected them and to whom they are ultimately accountable”. On that standard, courts reviewing bylaws for reasonableness should intervene “only if the bylaw is one no reasonable body informed by [the wide variety of factors that local government elected officials may legitimately consider in enacting bylaws (including objective factors bearing directly on the matter as well as broader social, economic, political, and other non-legal factors)] could have taken.” The SCC does caution though that the wide deference owed to local government elected bodies does not mean that they have carte blanche.

In its Reasons, the SCC commented that another set of limitations on local governments passing bylaws flows from the need for reasonable processes. In determining whether a particular bylaw falls within the scope of the legislative scheme, factors such as failure to adhere to required processes and improper motives are relevant; local government elected officials must adhere to appropriate processes and cannot act for improper purposes. Requirements of process vary with the context and nature of the decision-making process at issue. On the issue of the reasons for a local government bylaw, the SCC stated that the reasons are traditionally deduced from the debate, deliberations and the statements of policy that give rise to them, and that local government is not required to formally explain the basis of a bylaw. Local government elected officials have extensive latitude in what factors they may consider in passing a bylaw; they may consider objective factors bearing directly on the matter, but they may also consider broader social, economic and political factors that are relevant to the electorate. As such, it is not always possible to give reasons or explain the basis of a bylaw. That being said, formal reasons may be required for decisions that involve quasi-judicial adjudication by a local government. In its comments relating to process, the SCC affirms the requirement for local governments to adhere to the procedural requirements for local government decision-making expressly set out in the enabling legislation, but also appears through its reference to “reasonable” processes to be alluding to the continuation and possible extension of its trend over the recent years to require local governments to act in accordance with the common law rules of procedural fairness.

In all, the comments of the SCC affirm the legislative role of local governments in today’s society as being largely independent of judicial oversight on grounds of unreasonableness. However, the SCC’s comments also highlight the need to ensure that local government decision-making is transparent, with the factors being considered in the decision-making process discernable from the informational record (in the form of staff reports or otherwise) before the elected officials.

Sukhbir Manhas