

Court of Appeal Upholds North Cowichan Tax Rates Bylaw

On April 22, 2010, the British Columbia Court of Appeal delivered Reasons for Judgment in *Catalyst Paper Corporation v. North Cowichan (District)*.

In 2009, Catalyst brought proceedings in the Supreme Court of British Columbia for judicial review of the Tax Rates Bylaws enacted by each of the municipalities in which Catalyst operates pulp and paper operations (i.e., North Cowichan, Port Alberni, Campbell River and Powell River). The Honourable Mr. Justice Voith heard all four judicial review proceedings, with the proceedings in respect of North Cowichan's Tax Rates Bylaw being held and decided by Justice Voith first.

Justice Voith upheld North Cowichan's Tax Rates Bylaw as not being unreasonable. Justice Voith noted that, while in the absence of an appropriately worded statutory privilege clause, all municipal 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." In this regard, Justice Voith noted that, in the realm of municipal taxation decisions, judicial interference is justified only if the decision is "overwhelming" or is one which "no reasonable body could come to."

In Reasons for Judgment of the Honourable Madam Justice Newbury, the British Columbia Court of Appeal held that there was no error made by Justice Voith in considering Catalyst's judicial review proceedings, and dismissed Catalyst's appeal. Indeed, on a close review of Justice Newbury's Reasons for Judgment, it appears that the Court of Appeal went further in deferring to the decision of North Cowichan's Council than Justice Voith did. Justice Newbury, on behalf of the Court of Appeal, stated that in order to be reasonable, a decision of a municipal council 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 municipality 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 Court of Appeal expressed the view that such principles accord with the obviously political functions of municipal councils, whose members are elected to act in what they believe are the best interests of the municipality rather than to play an independent role in adjudicating between specific interests, and whose members bring certain views – on the basis of which they are elected – to bear on municipal decisions, which views may be different between members of council. As Justice Newbury put it, "it is a central principle of democratic government that elected decision-makers must be given the highest degree of deference by courts of law, provided those decision-makers remain within constitutional and statutory boundaries." Applying this standard of review, the British Columbia Court of Appeal held that North Cowichan's Tax Rates Bylaw was not unreasonable.