



North Cowichan Wins Battle Over Catalyst Tax Bill

Municipalities can breathe a sigh of relief with the release on Friday, October 16, 2009 of the Supreme Court of British Columbia's decision in *Catalyst Paper Corporation v. District of North Cowichan*.

Catalyst, the largest specialty paper and newsprint producer in North America, operates pulp and paper operations in North Cowichan, Port Alberni, Campbell River and Powell River. In 2009, Catalyst challenged the property tax rates bylaws of each of those municipalities on the grounds that the rates were unreasonable. The North Cowichan decision is the first decision to be released.

In 2009, Catalyst paid to the District of North Cowichan only \$1.5 million of the approximately \$6.8 million in taxes it owed under the District's tax bylaw. Catalyst brought proceedings challenging the bylaw, arguing that the Class 4 rate was unreasonable, given in particular that the rate was 20 times the Class 1 Residential rate and the amount of tax payable by Catalyst would far exceed the value of municipal services it receives.

The Court upheld North Cowichan's bylaw. The Court noted that, in the absence of an appropriately worded statutory privilege clause, any municipal decision, including a decision regarding tax rates, may be set aside on unreasonableness grounds. However, the Court held that with respect to taxation decisions which are at the far end of the policy spectrum, the courts should defer to the council's policy judgment so long as there is evidence that the decision was "intelligible, transparent and rational." The Court noted that in the realm of municipal property tax decisions, judicial interference is justified only if the unreasonableness of the decision is "overwhelming" or the decision is one which "no reasonable body could come to." The Court observed that the North Cowichan Council had considered many diverse factors in setting its tax rates, including material provided by Catalyst, and concluded that Council's decision was reasonable.

Perhaps the one area of concern arising from this judgment is the Court's conclusion that while there is no formal requirement that a municipality provide reasons for a tax rate decision, a court's judgment whether the decision is reasonable may depend on whether the material considered by the council reveals a rational basis for the decision. Given that some municipal decisions are made in the absence of significant background material, this apparent requirement for an evidentiary record that reveals the reasonableness of the decision could prove problematic in some cases.

Gregg Cocrill