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## Municipal By-laws: What's Reasonable?

By John Stefaniuk



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Catalyst Paper operated a large paper mill in the District of North Cowichan on the south-eastern shore of Vancouver Island. The Catalyst mill was one of the only games in town in terms of major industrial development in the District. Many local residents worked at the mill.

The District was a victim of its own scenic charm and mild climate. Population grew, and new subdivisions were developed. With that came demand for increased services. Residential property values went through the roof. The value of the Catalyst mill, however, stayed about the same, reflecting the downhill slide in the forestry industry.

By 2007, residential properties made up almost 90% of the District's assessment base. Home values had almost tripled since 1992. Reluctant to put a significant tax increase on residential property owners, especially long-term residents and those on fixed incomes, the District increased the differential tax rate applied to industrial properties. At the end of the day, Catalyst's industrial tax rate was just over 20 times higher than the rate applied to residential properties. Up until 1984, British Columbia municipalities could not impose a tax rate on industrial properties that was more than 3.4 times higher than the rate applicable to residential properties, but that regulation had been repealed.

Catalyst complained repeatedly to the District. The high tax rate was making its operations uncompetitive, and the mill was losing money. To add insult to injury, the mill received very few municipal services, having its own sewer and water system. The District began to take some steps to address the inequity, but Catalyst was still paying 37% of the total property taxes collected by the District.

Catalyst had enough. It applied to the BC courts for relief, claiming that the bylaw that set the differential rate was unreasonable. The BC courts supported the District's position. Catalyst took its case to the Supreme Court of Canada. In its January 2012 decision, the Court began by stating some fundamental principles. First, any government powers, including municipal powers, must be exercised in accordance with the law. The courts can always be called upon to review whether any level of government has acted outside of the law.

Second, the Court reiterated the principle that municipalities only have the powers that are delegated to them by the provincial legislatures. Municipalities may only act within those limits imposed upon them by legislation and may only exercise those powers that are granted to them by legislation. Any exercise of powers outside of this jurisdiction may be set aside on judicial review. The actions of a municipality may also be set aside if its procedures were unfair or if it did not follow the procedures required by legislation.

In looking at whether a municipality's actions can be set aside on the basis that they are unreasonable, the Court had to look at what was meant by unreasonableness. For a municipal action to be shown as being unreasonable, the Court said that it must fall outside of a range of possible outcomes that were contemplated by the legislature when delegating the power. The council decision must conform to the rationale of the legislative scheme. The Court found that a bylaw will only be held to be unreasonable if the decision is one that no fully informed council could have taken.

The Court also reiterated that there are other circumstances in which a municipal council's decision may be considered to be illegal and therefore, in that sense, "unreasonable". Those would include: enacting bylaws that discriminate between different classes (unless the legislation authorized the discrimination); if the decision is "manifestly unjust"; and, if the decision was made in bad faith (i.e., for an improper purpose unrelated to the best interests of the municipality). In each of these circumstances, municipal decisions, including bylaws, may be set aside.

The Supreme Court also made it clear that when enacting bylaws, a municipality is exercising its legislative or law-making powers. In exercising those powers, municipal councils are accorded broad discretion. Those decisions involve the consideration of social, economic, political and other factors. As stated by Chief Justice McLachlin, "...reasonableness means courts must respect the responsibility of elected representatives to serve the people who elected them and to whom they are ultimately accountable."

She was also quick to point out, however, that the consideration of the range of reasonable outcomes will vary depending on the nature of council's decision-making process. For instance, when a municipal council or other municipal body exercises powers that are considered to be "quasi-judicial", such as in hearings, in some circumstances formal reasons for decision may even be required. Those comments may come as a surprise to some councils and planning district boards.

At the end of the day, the Court agreed that the bylaw was discriminatory; however, it was not illegal. The legislation allowed for separate classes of taxation. The Court also recognized that the bylaw favoured the owners of residential properties, but it found that the extent to which it did so was not unreasonable.

The lesson learned is that the courts will be slow to interfere with a municipality's bylaw-making, so long as the outcome falls within a range of possible outcomes that could have been contemplated by the legislature. The council may still be offside if it acts improperly by stepping outside of its legislative jurisdiction, by making decisions that are discriminatory in a manner not permitted by law, by acting in bad faith, by showing unlawful bias in its decision-making, and by failing to follow proper procedures. Where council is exercising its powers as a decision-maker in the context of a hearing, there is less room for discretion.

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John Stefaniuk engages in a broad practice with emphasis on environmental law, real estate and development law, natural resources and energy, commercial law and municipal law matters. He has particular experience in relation to contaminated sites, mining and mine rehabilitation, wind power development, natural resource development, environmental approvals and licensing, commercial real estate, leasing, financing and development, municipal approvals, taxation and assessment and business acquisitions. He appears regularly before government licensing bodies and administrative tribunals including the Manitoba Clean Environment Commission and Municipal Board, municipal councils, provincial legislative committees and in all levels of court in Manitoba and in the Federal Court in connection with environmental, resource, regulatory municipal, and property issues.