

# Court of Queen's Bench of Alberta

**Citation: Holowatiuk v. Beaver County, 2008 ABQB 290**

**Date:** 20080516  
**Docket:** 0703 00471  
**Registry:** Edmonton

Between:

**William Holowatiuk**

Applicant

- and -

**Beaver County**

Respondent

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**Reasons for Judgment  
of the  
Honourable Mr. Justice J.L. Foster**

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[1] The Respondent, Beaver County, billed the Applicant for fire fighting costs pertaining to a fire on a parcel of land owned by the Applicant. Although the applicant and his wife jointly owned the land where the fire occurred, there is no evidence they caused the fire. They refused to pay the bill and subsequently sold the land where the fire had occurred. The County added the bill and late penalties to the property taxes for a different parcel of land owned by the Applicant.

[2] The Applicant's originating notice seeks "a declaration that Bylaw 04-870 of the County of Beaver is invalid, pursuant to s.536 of the *Municipal Government Act* R.S.A. 2000, c.M-26, because "the Bylaw unreasonably imposes fire fighting fees on the Applicant's Tax Roll when the Applicant did not cause the emergency and thus is patently unreasonable". The Applicant's brief describes the application as being "to have Bylaw 04-870 passed by Beaver County, or portions thereof, declared invalid".

**Facts**

[3] NW 17-49-17-W4th ("NW 17") is located in Beaver County. In April 2005 it was owned by the Applicant and Janet Holowatiuk as joint tenants.

[4] A fire occurred at NW 17 in April 2005. The Applicant did not call the fire department and does not know who called them. The fire departments for the Villages of Tofield, Ryley and Holden were dispatched to the fire and after several hours the fire was extinguished, although approximately 3/4 of NW 17 was burned and two quarters of land immediately adjacent to NW 17 also suffered fire damage before the fire was extinguished.

[5] The Respondent billed the Applicant and Janet Holowatiuk \$1,570 for the fire services that were provided (the "Fire Services Bill").

[6] The Applicant has sworn that he does not know where the fire originated or how it started.

[7] NW 17 is "bare land", with no buildings on it. In his Affidavit, the Applicant deposes that although it had previously been used for grain farming, NW 17 had no grain on it when the fire occurred and it was not being leased to anyone. Further, no work was being done at NW 17 at that time and the last time there would have been work conducted on it was combining before winter 2004. The Applicant also swears that he has never burned anything on this quarter of land.

[8] The County has filed an Affidavit sworn by Reg Regehr, the Fire Chief of Beaver County. Mr. Regehr deposes that he is a Safety Codes Officer qualified to conduct investigations in accordance with the Alberta Fire Code respecting the cause and origins of a fire. Mr. Regehr's Affidavit states that he determined that the fire originated in the northeast corner of NW 17. However, the cause of the fire was not determined.

[9] Mr. Regehr deposes that the cost of responding to the April 23, 2005 fire totalled \$3,875. The Applicant was billed \$1,570.

[10] The Respondent has filed an affidavit sworn by Margaret Jones, the Chief Administrator Officer for Beaver County, deposing that the Fire Services Bill was sent to the Applicant on May 31, 2005.

[11] The Applicant's Affidavit states that he sold NW 17 to his son and daughter-in-law on or about June 22, 2005.

[12] It is not disputed that the Fire Services Bill has not been paid. Penalties have been added to the May 31, 2005 Fire Services Bill of \$1,570 and as of November 15, 2006 records from the County list the outstanding balance as being \$2,048.

[13] The Affidavit of Margaret Jones, the Chief Administrative officer for Beaver County, states that since the Applicant had sold NW 17, the balance owing for the Fire Services Bill was added to the tax roll for a different parcel of land owned by the Applicant, NW 20-48-17-W4th ("NW 20") on May 26, 2006.

[14] The Originating Notice commencing this action was filed January 11, 2007.

### **Scope of the Application**

[15] The Originating Notice filed by the Applicant seeks only a declaration that Bylaw 04-870 is invalid. Likewise, the written brief of the applicant states that the only relief requested, is an order declaring Bylaw 04-870, or portions thereof invalid. It is important to clarify that, since this is the only relief requested, this judgment does not address the actions taken by the municipality in adding the fire service invoice to a parcel of land other than the lands where the fire occurred.

[16] Although it was addressed in argument, the Applicant's pleadings do not ask the court to set aside the Respondent's decision to add the charges for fighting a fire on one parcel of land to the tax roll of another parcel of land.

[17] The Respondent argues that had the Applicant sought review of such decision, this would, in essence, be an application for judicial review that would be time-barred, having not been brought within the six month limitation period set out in the *Alberta Rules of Court*, Rule 753.11.

[18] Counsel for the Applicant did not address the Respondent's arguments regarding the application of Rule 753.11 or the limitations issue raised by the Respondent. The relief requested by the Applicant has been and remains only that the court declare Bylaw 04-870 invalid.

[19] Accordingly, no ruling is made on the application of Rule 753.11 and whether the applicant would be time-barred had he sought an order to set aside the decision of the Respondent or its delegate to add the fire service charges to NW 20. At the same time, this judgment should not be regarded as permitting the Respondent to add the charges for suppression of a fire on NW 17 to the tax roll of NW 20. This matter is simply not raised by the pleadings.

### **Issue**

[20] The only issue before the court and therefore addressed in this decision is whether Bylaw 04-870 should be declared invalid on the ground that it allows the County to recover the costs of firefighting against an owner of land in the absence of evidence of the owner's responsibility for the fire.

[21] This raises the following sub-issues:

1. What does the Fire Services Bylaw permit?
2. Is this intra vires the County under the Municipal Government Act?
3. Is the Fire Services Bylaw prohibited by the *Fire Prevention (Metropolis) Act 1774* ?
4. Is the Fire Services Bylaw prohibited by the *Forest and Prairie Protection Act*, RSA 2000, c.F-19?

### **Beaver County Fire Services Bylaw**

[22] Bylaw No. 04-870 (the “Fire Services Bylaw”) was enacted in 2004.

[23] Section 12 of the Fire Services Bylaw states [I have added the italics and underlining]:

#### Section 12 - Recovery of Costs

- 12.1 *Where the Fire Department has taken any action whatsoever for the purpose of extinguishing a fire, or responding to an Incident within or outside the County, or for the purpose of preserving life or property from injury, or destruction by fire or other threat on land or property within or outside the County, including any such action take by the Fire Department on a false alarm, the Council may, in respect of any costs incurred by the Department in taking such action, charge any costs so incurred by the Department to the person who caused the fire or to the owner or occupant of the land or property in respect of which the action was taken.*
- 12.2 The Fire Chief may charge fees for certain services provided by the Fire Department as may be approved by Council from time to time. The schedule of fees will be as stated in Schedule “A” of Fee for Services Bylaw 03-866.
- 12.3 With respect to the recovery of costs of fees imposed as described in Sections 12.1 and 12.2:
  - a. The County may recover such cost or fee as a debt due and owing to the County, or
  - b. In the case of action taken by the Fire Department in respect to land within the County, where the cost or fee is not paid upon demand by the County, then in default of payment, such cost or fee may be charged against the land as taxes due and owing in respect of that land.

[24] Beaver County Bylaw 03-866 (the “Fee for Service Bylaw”) states that fees, rates and charges applicable to municipal services provided by Beaver County are represented by an attached Schedule “A”. It includes the following under the heading “Fire Protection Services”:

(at page 3) Responses to structure fires, wild land fires on private property within the boundaries of Beaver County:

- \$350 per hour (5 man) Pumper Unit
- \$250 per hour (3 man) Pumper Unit
- \$250 per hour Rescue Unit
- \$200 per hour per Tanker
- \$150 per hour per Mini Pumper
- Minimum charge shall be \$600.

(at page 4) Fire charges / costs may be waived where fires are determined to be caused by an unknown source or in other mitigating circumstances at the discretion of the Fire Chief or Council.

### **Municipal Government Act**

The *Municipal Government Act*, RSA 2000, c. M-26 states:

#### *General Jurisdiction to Pass Bylaws*

- s. 7 A council may pass bylaws for municipal purposes respecting the following matters:
- (a) the safety, health and welfare of people and the protection of people and property;
  - ...
  - (f) services provided by or on behalf of the municipality

#### *Guides to interpreting power to pass bylaw*

- 9 The power to pass bylaws under this Division is stated in general terms to:
- (a) give broad authority to councils and to respect their right to govern municipalities in whatever way the councils consider appropriate, within the jurisdiction given to them under this or any other enactment, and
  - (b) enhance the ability of councils to respond to present and future issues in their municipalities.

*Application to the Court of Queen's Bench*

536(1) A person may apply by originating notice to the Court of Queen's Bench for:

- (a) a declaration that a bylaw or resolution is invalid, or
- ....

*Reasonableness*

539 No bylaw or resolution may be challenged on the ground that it is unreasonable.

*Definitions*

541 In this division:

- (a) "emergency" includes a situation in which there is imminent danger to public safety or of serious harm to property
- ...

*Emergencies*

- 551
- (1) Despite section s 549 and 550, in an emergency a municipality can take whatever actions or measures are necessary to eliminate the emergency
  - (2) This section applies whether or not the emergency involves a contravention of this Act, an enactment that the municipality is authorized to enforce or a bylaw
  - (3) A person who receives an oral or written order under this section requiring the person to provide labour, services, equipment or materials must comply with the order
  - (4) Any person who provides labour, services, equipment, or materials under this section who did not cause the emergency is entitled to reasonable remuneration from the municipality
  - (5) The expenses and costs of the actions or measures, including the remuneration referred to in subsection (4) are an amount owing to the municipality by the person who caused the emergency.

*Recovery of amounts owing by civil action*

- 552 Except as provided in this or any other enactment, an amount owing to a municipality may be collected by civil action for debt in a court of competent jurisdiction.

*Adding amounts owing to tax roll*

- 553(1) A council may add the following amounts to the tax roll of a parcel of land:
- ....
- (g) if the municipality has passed a bylaw making the owner of a parcel liable for expenses and costs related to the municipality extinguishing fires on the parcel, unpaid costs and expenses for extinguishing fires on the parcel
- (2) Subject to section 659, when an amount is added to the tax roll of a parcel of land under subsection (1) the amount
- (a) is deemed for all purposes to be a tax imposed under Division 2 of Part 10 from the date it was added to the tax roll, and
  - (b) forms a special lien against the parcel of land in favour of the municipality from the date it was added to the tax roll

*Adding amounts owing to property tax roll*

- 553.1 (1) If a person described in any of the following clauses owes money to a municipality in any of the circumstances described in the following clauses, the municipality may add the amount owing to the tax roll of any property for which the person is the assessed person:
- ...
- (c) a person who owes money to the municipality under section 550(3) or 551(5).

**Standard of Review and Approach**

*Standard of Review for vires*

[25] The standard of review on the question of whether the bylaw is *ultra vires* is correctness. (*Nanaimo City v. Rascal Trucking Ltd.* [2000] 1 S.C.R. 342, 2000 SCC 13 at para 29; *United*

*Taxi Drivers' Fellowship v. Calgary (City)* [2004] 1 S.C.R. 485 at page 492; *New Brunswick (Board of Management) v. Dunsmuir* 2008 SCC 9 at para 9.)

*Proper Approach to the Interpretation of Powers*

[26] Speaking for a unanimous court, Bastarache J. in *United Taxi Drivers' Fellowship v. Calgary (City)* *supra* (SCC), at para 6 - 8 states:

6. The evolution of the modern municipality has produced a shift in the proper approach to the interpretation of statutes empowering municipalities. This notable shift in the nature of municipalities was acknowledged by McLachlin J. (as she then was) in *Shell Canada Products Ltd. v. Vancouver (City)* [1994] 1 S.C.R. 231 at pp. 244-45. The “benevolent” and “strict” construction dichotomy has been set aside, and a broad and purposive approach to the interpretation of municipal powers has been embraced: *Nanaimo, supra* at para 18. This interpretative approach has evolved concomitantly with the modern method of drafting municipal legislation. Several provinces have moved away from the practice of granting municipalities specific powers in particular subject areas, choosing instead to confer them broad authority over generally defined matters [Citations omitted]. This shift in legislative drafting reflects the true nature of modern municipalities which require greater flexibility in fulfilling their statutory purposes: *Shell Canada* at pp. 238 and 245.

7. Alberta's *Municipal Government Act* follows the modern method of drafting municipal legislation. The legislature's intention to enhance the powers of its municipalities by drafting the bylaw passing provisions of the Act in broad and general terms is expressly stated in s.9. Accordingly, to determine whether a municipality is authorized to exercise a certain power, such as limiting the issuance of taxi plate licenses, the provisions of the Act must be construed in a broad and purposive manner.

8. A broad and purposive approach to the interpretation of municipal legislation is also consistent with this court's approach to statutory interpretation generally. The contextual approach requires “the words of an Act ... to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the legislature”: Elmer A. Driedger, *Construction of Statutes*, 2<sup>nd</sup> ed. (Toronto: Butterworths, 1983), at p.87; *Bell ExpressVu Limited Partnership v. Rex* [2002] 2 S.C.R. 559, 2002 SCC 42 (S.C.C.), at para 26. This approach is also consistent with s.10 of Alberta's *Interpretation Act*, R.S.A. 2000, c. I-8, which provides that every provincial enactment must be given a fair, large and liberal construction and interpretation that best ensures the attainment of its objective.

[27] Smith J., in *Passutto Hotels (1984) Ltd. v. Red Deer (City)* 2006 ABQB 641, states:

17. In 1994, the Province adopted the current [Municipal Government Act (“MGA”)] - a major departure from the prior approach to municipal powers.

18. As statutory bodies, municipalities in Alberta have those powers that are expressly given by statute, powers which are necessarily implied or incidental to the express powers, and those which are indispensable to the operation of the corporation. (*Law of Canadian Municipal Corporations* (2003 looseleaf) by Ian McFee Rogers (Toronto: Carswell 2003 at p.309)

19. The traditional approach to municipal legislation was to provide an extensive and detailed listing of the specific matters about which municipalities could pass bylaws. As a result, when courts examined the issue of whether or not a municipality had the power to enact a particular bylaw, they first looked to the enabling statute to find the source of the authority. This principle of judicial review became known as “Dillon’s Rule” ) *Escaping the Straightjackets of Tradition: Municipalities’ Widening Parameters of Power* by Jerald Bellomo (IMLA’s 2004 Annual Conference Material) at p. 6-7; see also *Ottawa Electric Light Co. v. Corporation of Ottawa* (1906) 12 O.L.R. 290 (Ont. C.A.) at para 40.

20. In Alberta this changed in 1994, when the Province adopted the current M.G.A. Instead of containing a list of specific powers, the Act now gives municipalities broad powers to legislate as it sees fit within certain “spheres of jurisdiction” set out in the Act. While the full scope of a municipality’s powers has yet to be delineated by the courts, it is abundantly clear that the legislature intended to give municipalities broad authority.

## Analysis

### *The Fire Services Bylaw*

[28] The Fire Services Bylaw s.12.1 states that:

Where the Fire Department has taken any action whatsoever for the purpose of extinguishing a fire... within ... the County, or for the purpose of preserving... property from ... destruction by fire... on land ... within ... the County ... the Council may, in respect of any costs incurred by the Department in taking such action, charge any costs so incurred by the Department ... to the owner ... of the land ... in respect of which the action was taken.

[29] Additionally, section 12.1 allows such costs to be charged to: (i) the person who caused the fire, (ii) the occupant of the land in respect of which the action was taken by the fire department, or (iii) the owner of the property in respect of which the action was taken by the fire department.

[30] The Fire Services Bylaw s.12.2 states that Council may from time to time approve fees that the fire chief may charge for services provided by the fire department. The Fee for Services Bylaw sets out the fee schedule that council has approved. The Fee for Service Bylaw states at page 4 that “fire charges /costs *may* be waived *where fires are determined to be caused by an unknown source* or in other mitigating circumstances *at the discretion of the Fire Chief or Council*. Thus the bylaw authorizes: (a) fees to be charged even if the cause of the fire isn’t known and; (b) where the cause of the fire is unknown, fees may (or may not) be waived.

[31] The issue of recovery or enforcement is addressed in s.12.3.

[32] Section 12.3 refers first to enforcement “as a debt due and owing to the County”. I interpret this to mean that the county could apply for a court judgment. This would not trigger the process and priority that arises if the costs could be added to and enforced as property taxes.

[33] Section 12.3 permits the amounts described in s.12.1 and 12.2 to be added to property taxes for the land where the fire occurred. It does not grant authority to add the taxes to any other lands. Section 12.3(b) of the Fire Services Bylaw refers to action taken in respect to land within the County, and then goes on to say that such fees may be charged against the land as taxes due and owing in respect of that land.

*Is the Bylaw beyond the County’s powers granted by the Municipal Government Act?*

[34] While section 7 of the *Municipal Government Act*, RSA 2000, c.M 26 (the “MGA”) includes authority to pass bylaws: (i) related to “the safety and protection of people and property”, and (ii) respecting “services provided by or on behalf of the municipality”, there is nothing that specifically addresses fire service charges or whether these could be charged to an owner of land absent evidence that he was responsible for the fire.

[35] Section 9 of the *MGA* states that the power to pass bylaws is stated in general terms to give broad authority to councils and to respect their right to govern within municipalities in whatever way the councils consider appropriate and to enhance the ability of councils to respond to present and future issues in their municipality.

[36] Section 553.1 describes when the municipality can add certain listed amounts to the tax roll of any parcel of land for which the person is assessed, one such listed amount being the amount “owing under 551(5)”. Section 551 creates the debt obligation which s.553.1 enforces. Section 551(1) allows the municipality to take whatever actions or measures are necessary to eliminate an emergency. This section is engaged by an “emergency”: which can be broader than

is not necessarily synonymous with a fire. Section 551(5) states that the expenses and costs for the actions and measures to eliminate an emergency are owed to the municipality by the person who caused the emergency. Such debt owed by the person who caused the emergency can be added to the tax roll of any parcel of land for which the person is the assessed person.

[37] There is nothing in the language of s.553(1)(g) to suggest it is dependent upon or qualified by s.553.1 or s.551(5). Also, unlike s.551(5), there is no reference in s.553(1)(g) to the debt arising because the person caused the emergency.

[38] Section 553 of the *MGA* permits council to add certain listed amounts to the tax roll of a parcel of land. Section 553 creates an enforcement mechanism - the subsections describe (but do not create) the debt obligation which may be so enforced. Section 553(1)(g) authorizes adding to the tax roll of *a* parcel of land, the expenses and costs relating to the municipality extinguishing fires on *the* parcel - in other words, the land on which the fire was extinguished - if the municipality has passed a bylaw making the owner of the parcel liable for such expenses. The words “*a* parcel of land” in the first line of s.553 and “*the* parcel” in s.553(1)(g) can be contrasted to the words “*any* property” in s.553.1. The remedy therefore is limited to adding the costs to the tax roll of the lands where the fire occurred.

[39] Although s.553 creates an enforcement mechanism, the fact there is an enforcement mechanism implies the municipality has the power to impose the charges described. Section 553(1)(g) refers to the municipality passing a bylaw making the owner of a parcel responsible for expenses and costs related to the municipality extinguishing fires on the land. There is nothing in the language of s.553(1)(g) to suggest that the landowner’s liability is dependent upon him having caused the fire, and that he could not be charged simply because he owns the land where the fire was extinguished.

[40] The Respondent argues that Alberta municipalities have had the ability to charge landowners within their municipality for costs incurred in extinguishing fires on their property since 1971.

[41] Before 1971, the *Municipal Government Act* permitted the municipality to charge the owner or occupant of the land for fire suppression costs only when the land was outside the boundaries of the municipality. Section 155(e) of the *Municipal Government Act*, 1968 c.68 [and the *Municipal Government Act*, RSA 1970, c.246] stated:

*Fire Prevention Bylaws*

155. The council of a municipality may pass bylaws:

- (a) for the prevention or extinguishment of fires, the preservation of life and property and the protection of persons from injury or destruction by fire;  
....
- (e) for the charging of the cost to the owner or occupant of land, and for the recovery of such cost as the bylaw may provide where costs have been incurred with respect to extinguishing fires and preserving life and property from injury or destruction by fire on lands situated outside the boundaries of the municipality  
...

[42] This was amended in 1971. From 1971 - 1994, the *Municipal Government Act* expressly permitted a municipality to charge the owner of land located within the municipality for fire suppression costs. Pursuant to *An Act to Amend the Municipal Government Act* SA 1971, c.74, s.155(e) was amended to read:

155. The council of a municipality may pass bylaws:

- (a) for the prevention or extinguishing of fires, the preservation of life and property and the protection of persons from injury or destruction by fire;  
....
- (e) *with respect to extinguishing fires or preserving life or property from injury or destruction by fire on land within or outside the municipality, to provide*
  - (i) *for the charging of any cost incurred, or a minimum fee, to the owner or occupant of the land, and*
  - (ii) *for the recovery of that fee as the by-law may provide*

*and in the case of land within the municipality to provide in default of payment for charging the cost or fee against the land as taxes due and owing in respect of that land*

...

[43] With the RSA 1980 consolidation of the Alberta Statutes, the section was simply renumbered, and now became the *Municipal Government Act*, RSA 1980, c. M-26, s.158 (e).

[44] While a specific, express power to charge landowners within the municipality for fire suppression costs such as that found in s.158 *Municipal Government Act* RSA 1980, c. M-26 is

not found in the Municipal Government Act after the enactment of the Municipal Government Act, SA 1994, c.M-26.1 (the “new MGA”), this is consistent with the new approach found in the new MGA which sets out core purposes of the municipality (s.3), broad grants of authority (s.7 and 8) and a liberal interpretative provision (s.9).

[45] The approach in *United Taxi Drivers’ Fellowship of Southern Alberta v. Calgary (City)*, *supra* (SCC) is instructive. In that case the Respondent argued that because the *Municipal Government Act* prior to 1994 expressly permitted municipalities to limit taxi licenses, the absence of a similar clause in the *Municipal Government Act*, SA 1994, c.M-26.1 implied that the municipality no longer had this power. The Supreme Court of Canada rejected this argument, stating (at page 494) that it is well established that the legislature is presumed not to alter the law by implication. Rather, where it intends to depart from prevailing law, the legislature will do so expressly. In this case, there was no indication that the legislature intended to remove the municipality’s power to limit the number of taxi plate licences. On the contrary, s.9(b) of the *Municipal Government Act*, SA 1994, c.M-26.1, indicates that the legislature did not intend to curtail the powers exercised by municipalities, but rather sought to enhance those powers under the new Act (subject to the limitations in s.70-75 which did not preclude limiting the number of taxi licenses).

[46] Given that Alberta municipalities prior to 1994 were able to pass a bylaw charging a land owner or occupant within the municipality for costs and expenses related to extinguishing a fire on their land, I find that this power has not been narrowed by the enactment of the *Municipal Government Act*, SA 1994, c.M-26.1. This interpretation is bolstered by s.553(1)(g) of *Municipal Government Act*, RSA 2000, c. M-26.

#### **Fire Prevention (Metropolis) Act 1774**

[47] Section 155(e) of the *Municipal Government Act* S.A. 1971 c.74 [s.158(e) of the *Municipal Government Act*, R.S.A. 1980 c. M-26] did not say that the landowner could only be charged for fire suppression costs if he caused or was responsible for the fire. The Respondent argues that the section therefore should be interpreted as permitting the municipality to impose the costs on the landowner without qualification. In other words, the municipality could pass a bylaw allowing such costs or fees to be charged to the landowner even if he is not responsible for the fire or the cause of the fire is unknown.

[48] Neither counsel provided, nor am I aware of any judicial consideration of Section 155(e) of the *Municipal Government Act* S.A. 1971 c.74 or s.158(e) of the *Municipal Government Act* R.S.A. 1980 c. M-26.

[49] The Applicant argues that *Fire Prevention (Metropolis) Act 1774* is in force in Alberta. Pursuant to this there must be some evidence of negligence on the part of the landowner; he cannot be held responsible for firefighting charges where the fire is incapable of being traced to any cause.

[50] Section 86 of the *Fire Prevention (Metropolis) Act 1774*, 14 Geo. 3, c.78 states:

And no action, suit or process whatever shall be had, maintained or prosecuted against any person in whose house, chamber, stable, barn or other building, or on whose estate any fire shall, .... accidentally begin, nor shall any recompence be made by such person for any damage suffered thereby, any law, usage or custom to the contrary notwithstanding...

[51] Several Alberta cases have held that section 86 of the *Fire Prevention (Metropolis) Act 1774*, *supra* is still in force in Alberta. (*Warkentin v. C.M.* 1998 ABQB 306 at para 5; *Prior v. Hanna* [1987] A.J. No. 850 (ABQB) at page 3; *Jordan v. Power* 2002 ABQB 794 at para 20.)

[52] The common law imposed absolute liability on a person for damage done by a fire which originated from his premises. (*R. v. Hayes* 2002 ABQB 282 at para 18). This was modified by the *Fire Prevention (Metropolis) Act 1774*, which, in amelioration of the common law, was passed for the purpose of removing the presumption of liability for fires accidentally begun (*Shultz v. Rycks* 48 W.W.R.150 (Alta. District Ct. 1964) at para 11). The word “accidentally” has been construed by the courts to afford no protection when the fire is caused or continued by negligence, but only where the fire is produced by mere chance or is incapable of being traced to any cause (*Warkentin v. C.M.* 1998 ABQB 306 at para 6).

[53] The Respondent argues that *Fire Prevention (Metropolis) Act 1774* does not apply because:

- a. it is concerned with protection of landowners from suits for damages by third parties and has nothing to do with landowners being responsible for costs incurred in extinguishing fires, and there is no “action, suit or process” to engage the application of this Act; or alternatively
- b. even if the *Fire Prevention (Metropolis) Act 1774* would have applied to a claim by a municipality for its costs and expenses in putting out a fire, it has been impliedly repealed or repealed by operation of law, because the legislature has given clear and unequivocal powers to municipalities to enact bylaws allowing them to recover costs of fighting fires on lands from the owners, without restriction or requirement to prove fault or causation.

**Has the *Fire Prevention (Metropolis) Act 1774* been impliedly repealed or repealed by operation of law?**

[54] I will deal first with the Respondent’s argument that s.86 of the *Fire Prevention (Metropolis) Act 1774* has been impliedly repealed or repealed by operation of law.

[55] The Respondent relies on the following quote from P. St. J. Langan, *Maxwell on The Interpretation of Statutes* (12<sup>th</sup> ed) (London: Sweet & Maxwell, 1969) at p.193:

If, however the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one that the two cannot stand together, the earlier is abrogated by the later.

[56] The Respondent also relies on *Schultz v. Wolski* 75 W.W.R. 441 (Alta. Supreme Court, 1966) where the court ruled that a section from an Imperial statute (the *Offences Against the Person Act*, 1861 (Imp. 24 & 25 Vict. C.100) relied on by the Defendant, was no longer in force. The court held (at para 6) that

... once the Parliament of Canada or a provincial legislature has validly occupied a field covered by Imperial legislation, it cannot be argued that both the Imperial and the local legislation operate. The Imperial legislation, in that case has become inapplicable through repeal, alteration, variation, modification or effect by and through the local legislation of Canada or the province.

and that once the field was occupied by the valid Canadian legislation, repeal of the Canadian legislation would not revive the Imperial legislation it had displaced (para 9).

[57] Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4<sup>th</sup> ed. (Ottawa: Butterworths Canada Ltd. 2002) states at page 275:

The test for determining that a provision has been impliedly repealed is stringent. The court must conclude that the more recently enacted provision was meant to completely displace or subsume the earlier provision so that the continued operation of both would be impossible or inappropriate. This test for implied repeal is well established. In *R. v. Mercure*, (1988) 48 D.L.R. (4<sup>th</sup>) 1 (SCC) La Forest J. wrote:

... [S]tringent tests ... have been established to warrant a holding that a statute has been impliedly repealed. As the court put it in *The India* (1865) 12 L.T.N.S. 316 at 316 ... a prior statute is repealed by implication only “if the entire subject-matter has been so dealt with in subsequent statutes that, according to all ordinary reasoning, the particular provisions in the prior statute could not have been intended to subsist”...

[58] At page 277 - 278, Sullivan goes on to state:

As a method of resolving conflict, implied exception is generally preferred to implied repeal. It is preferred, because unlike implied repeal, which sacrifices one provision to another, implied exception permits both provisions to operate. As Locke J. explained in *Greenshields v. the Queen* [1958] S.C.R. 216 at 226

In the case of a conflict between an earlier and a later statute, a repeal by implication is never to be favoured and is only effected where the provisions of the later enactment are so inconsistent with, or repugnant to, those of the earlier that the two cannot stand together .... Special Acts are not repealed by general Acts unless there be some express reference to the previous legislation or a necessary inconsistency in the two acts standing together which prevents the maxim *generalia specialibus non derogant* being applied.

This analysis expresses the conventional wisdom concerning implied exception and implied repeal. Ordinarily a more recently enacted general provision does not prevail over a more specific one. However, as [*Canada v. Schmidt* [1987] 1 S.C.R. 500] illustrates it is not a hard and fast rule. It would have been possible for the court in *Schmidt* to resolve the conflict using implied exception. It preferred applied repeal because in the circumstances that solution was more in keeping with the apparent purpose of the legislation.

[59] In *Levis (Ville) c. Côté* (2007) 2007 SCC 14 the majority (4/7) decision sets out the following principles (at para 47 and 48):

The starting point in any analysis of legislative conflict is that legislative coherence is presumed, and an interpretation which results in conflict should be eschewed unless it is unavoidable. The test for determining whether an unavoidable conflict exists is well stated by Professor Côté in his treatise on statutory interpretation: “According to case law, two statutes are not repugnant simply because they deal with the same subject matter; application of one must implicitly or explicitly preclude application of the other. (P.A. Côté, *The Interpretation of Legislation in Canada* (3<sup>rd</sup> ed. 2000) at p.350).

Thus a law which provides for the expulsion of a train passenger who fails to pay the fare is not in conflict with another law that only provides for a fine because the application of one law did not exclude the other. (*Toronto Railway v. Paget* (1909) 42 S.C.R. 488 (SCC)). Unavoidable conflicts, on the other hand, occur when two pieces of legislation are directly contradictory or where their concurrent application would lead to unreasonable or absurd results. A law, for example, which allows for the extension of a time limit for filing an appeal only before it expires is in direct conflict with another law which allows for an extension to be granted after the time limit has expired. (*Massicotte v. Boutin* [1969] S.C.R. 818 (SCC)).

and at para 58:

When a conflict does exist and it cannot be resolved by adopting an interpretation which would remove the inconsistency, the question that must be answered is which provision should prevail. The objective is to determine the legislature's intent. Where there is no express indication of which law should prevail, two presumptions have developed in the jurisprudence to aid this task. These are that the more recent law prevails over the earlier law and that the special law prevails over the general (*Côté supra* at pp. 358-62). The first presumes that the legislature was fully cognizant of the existing laws when a new law was enacted. If a new law conflicts with an existing law, it can only be presumed that the new one is to take precedence. The second presumes that the legislature intended a special law to apply over a general one since to hold otherwise would in effect render the special law obsolete. Neither presumption is, however, absolute. Both are only indices of legislative intent and may be rebutted if other considerations show a different legislative intent (*Côté supra* at pp. 358-59).

[60] It is implicit in Section 553(1)(g) of the *Municipal Government Act*, RSA 2000, c.M-26 (the "current MGA") that the Municipality has the power to pass "a bylaw making the owner of a parcel liable for expenses and costs related to the municipality extinguishing fires on the parcel of land." Section 158 of the *Municipal Government Act* R.S.A.1980, c.M-26 (the "pre-1994 MGA") is useful to the interpretation of this section. It would be possible to read in a limitation consistent with the *Fire Prevention (Metropolis) Act 1774* that would allow the costs for extinguishing fires to be charged to the owner of the land unless the fire was caused or continued by negligence, but not if the fire is produced by mere chance or is incapable of being traced to any cause. However, I have concluded that this would be repugnant to the intent of the legislature.

[61] Both s.553(1)(g) of the current MGA and s.158 of the pre-1994 MGA, describe responsibility for fire costs on the basis of ownership of land and not on the basis of the causation or fault regarding the fire.

[62] I have also considered the express statement in s.9 of the *Municipal Government Act*, RSA 2000, c. M-26, that the legislature intended, by drafting the bylaw passing provisions of the Act in broad and general terms, to enhance the ability of councils to respond to present and future issues in their municipalities.

[63] Accordingly, I find that the *Fire Prevention (Metropolis) Act 1774* has been impliedly repealed or repealed by operation of law, to the extent that it is inconsistent with the power granted to municipalities pursuant to the *Municipal Government Act*, RSA 2000, *supra*, to enact bylaws allowing them to recover the cost of fighting fires on lands from the owners of those lands without the requirement to prove fault or causation.

[64] Given my conclusion on this issue, it is not necessary to determine whether the *Fire Prevention (Metropolis) Act 1774* would otherwise have applied.

### **The Forest and Prairie Protection Act**

[65] The preamble of the Fire Service Bylaw states:

WHEREAS the *Municipal Government Act*, R.S.A. 2000 chapter M-26, as amended, provides that the Council of a municipality may pass bylaws respecting the safety, health and welfare of people and the protection of people and property;

and WHEREAS, in accordance with the *Alberta Fire Code 1997*, as permitted under the provisions of the *Safety Codes Act* of Alberta, the municipalities within the boundaries of Beaver County have entered into a joint Quality Management Plan under the direction of the municipal councils;

and WHEREAS the *Forest and Prairie Protection Act*, R.S.A. 2000, Chapter F-19, as amended, provides for the prevention and prairie or running fires and places responsibility for fighting and controlling fires within a municipal district on the County;

and WHEREAS the council of Beaver County wishes to establish a fire and rescue service within the County and to provide for the efficient operation of such a service

....

[66] The *Forest and Prairie Protection Act*, RSA 2000, c.F-19 states:

*Application of Act*

2. This Act applies to all land within Alberta except:
  - (a) land within the boundaries of an urban municipality where there is no specific provision in this Act to the contrary, and
  - (b) land owned by the Government of Canada, in respect of which the Minister has not entered into a fire control agreement under section 6(b).

*Responsibility of municipal districts*

- 7(1) The council of a municipal district is responsible for fighting and controlling all fires within the boundary of the municipal district and the costs and expenses shall be paid by the municipal district, subject to its right to recover them under section 9(3).

*Fighting Fires*

- 9(1) The Minister may fight a fire within a municipal district or an urban municipality where it appears to the Minister that satisfactory action to control and extinguish the fire is not being taken by that municipality and that the fire might damage public land.
- (2) Where the Minister incurs costs and expenses as a result of fighting a fire within a municipal district or urban municipality under subsection (1) that municipal district shall on demand reimburse the Minister for the entire cost or such part of it as the Minister directs.
- (3) The persons who are responsible for a fire shall on demand reimburse the Minister, the municipal district or the urban municipality, as the case may be, for the costs and expenses of fighting the fire.

*Responsibility for fire fighting expenditures*

- 2.1(1) For the purpose of any provision of this Act that enables the Minister or any other person to reimbursement from any person responsible for a fire for the costs and expenses of fighting a fire or that requires any such person responsible to reimburse the Minister or any other person for the costs and expense of fighting a fire,

- a. the person who caused the fire,
- b. the person who directed the lighting of the fire,
- c. the person otherwise responsible for the fire,
- d. the person who owned the land on which the fire began and does not establish that the fire ignited or was lit without that person's consent, express or implied,
- e. the person who was in control of the land on which the fire began and does not establish the fire was lit without that person's consent express or implied

are jointly and severally liable to the Minister or that other person, as the case may be, for the reimbursement of the costs and expenses of fighting the fire.

[67] The Applicant argues that it is clear that from s.7(1) and 9(3) that the municipality's right to recover fire-fighting fees is subject to establishing persons who are responsible for the fire. Further, s.2.1 sets out the persons who may be considered responsible for a fire.

[68] The Respondent acknowledges that s.7 of the *Forest and Prairie Protection Act* imposes a duty on the council of a municipal district to fight and control all fires within the boundary of the municipal district and that Beaver County is a municipal district pursuant to section 77 of the *Municipal Government Act*.

[69] However, the Respondent argues that while s.9(3) and s.2.1(1) provide a mechanism for the recovery of costs by a municipality, this authority does not depend on any municipal bylaw but is authority provided within the statute itself.

[70] Sections 9(3) and 2.1(1) of the *Forest and Prairie Protection Act*, do not take away from any rights conferred by any other legislation such as the *Municipal Government Act* and the right conferred therein to pass a bylaw charging the costs and expenses of extinguishing a fire to the owner of the property for which those costs were incurred.

[71] I agree with the Respondent's analysis.

[72] The Applicant referred to *Alberta v. Hay* 2002 ABQB 282. This case is distinguishable. It was a summary dismissal application pertaining to a claim the Crown had brought against the three lessees of a Crown grazing lease claiming fire suppression costs. The Crown's claim was based on (a) negligence (arguing that the Applicants were liable for the negligence of the co-lessee pursuant to the grazing lease and the law of vicarious liability), (b) nuisance (c) *Rylands v. Fletcher* and (d) s. 12 of the *Forest and Prairie Protection Act*, R.S.A. 1980, c. F-14, which stated that:

When in any case not provided for by this or any other Act, or by agreement under section 6(1), the Minister incurs costs and expenses as a result of fighting or suppressing a fire on any land not excluded by section 2, the minister is entitled on demand to be reimbursed for those costs and expenses *by the person who caused the fire.*

[73] *Alberta v. Hay* supra does not consider fire suppression costs that are charged by a municipality pursuant to authority conferred on them by the *Municipal Government Act* and in particular, pursuant to the right conferred therein to pass a bylaw charging the costs and expenses of extinguishing a fire to the owner of the property for which those costs were incurred.

*Other cases relied on by the Applicant*

[74] The Applicant also refers to *Lewis v. Pincher Creek (Municipal District) No. 9* 2005 ABQB 201.

[75] In *Lewis*, the applicant was combining on his quarter section of land, checked behind his combine and saw a fire on his land. He phoned 911, and the fire departments from the Town of Pincher Creek, the MD, Lundbreck and Cowley responded and extinguished the fire. Lewis was billed \$12,608 for the fire suppression services. Lewis swore that he did not know how the fire started. The fire chief's affidavit deposed that on the day of the fire, Lewis had advised him that his combine hit a rock "which must have ignited a chaf pile."

[76] The Respondent municipality had entered an agreement with the Town of Pincher Creek whereby a committee was established to administer all aspects of emergency services within the M.D. including ensuring all emergency services are "properly billed to responsible persons". Under the agreement and a bylaw passed by the municipality, the committee developed a firefighting fee schedule and Lewis was invoiced in accordance with it. Lewis objected to the fire cost recovery program and made representations to the committee and to council. Allegedly acting under ss.551(5) and 553.1(1)(c) of the *Municipal Government Act*, the Municipality passed a resolution putting the invoiced firefighting fees on the tax roll of the quarter section owned by Lewis and his wife (this was not the parcel where the fire occurred) (para 12 and 34). Section 553.1(1)(c) expressly contemplates the addition of recoverable expenses and costs to the tax roll of *any* property for which the person who cause the emergency is the assessed person. Mason J. held that the cause of the fire was open to conjecture. Therefore for the MD to determine in those circumstances, that Lewis caused the fire within the meaning of s.551(5) was found to be patently unreasonable.

[77] This decision is not relevant because the applicant's pleadings only put in issue the validity of the Fire Services Bylaw. The issue of the Respondent adding the fire suppression charges for NW 17 to the tax roll of NW 20 is not raised in the applicant's pleadings.

**Conclusion**

[78] For the foregoing reasons, the application to have Beaver County Bylaw No. 04-870 declared invalid is dismissed.

[79] No costs are payable in this action.

Heard on the 05<sup>th</sup> day of December, 2007.

**Dated** at the City of Red Deer, Alberta this 14<sup>th</sup> day of May, 2008.

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**J.L. Foster**  
**J.C.Q.B.A.**

**Appearances:**

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