COURT FILE NUMBER	1703-12327
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF ARRANGEMENT OF 667402 ALBERTA LTD., 18512398 ALBERTA LTD., 816956 ALBERTA LTD., 1371047 ALBERTA LTD., 1919209 ALBERTA LTD. AND CANADA NORTH GROUP LP HOLDINGS LTD.
DOCUMENT	**BRIEF OF THE TOWN OF BONNYVILLE, ATHABASCA COUNTY AND MUNICIPAL DISTRICT OF OPPORTUNITY NO. 17**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BROWNLEE LLP** 700, 396 – 11th Avenue SW Calgary, AB T2R 0C5 **Attention: Gregory G. Plester** **Solicitors for the Town Of Bonnyville, Athabasca County and Municipal District of Opportunity No. 17** Telephone: (403) 232-8300 Fax: (403) 232-8408 E-mail: gplester@brownleelaw.com File No.: 71063-0083 & 71008-0092 & 71796-0415 /GGP

JUDICIAL CENTRE OF EDMONTON
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I. INTRODUCTION

1. This matter concerns the application and priority of a special lien established by section 348 of the *Municipal Government Act*, RSA 2000, c M-26 [***MGA***] for unpaid taxes in favour of three municipalities: the Town of Bonnyville ("**Bonnyville**"); Athabasca County ("**Athabasca**"); and the Municipal District of Opportunity No. 17 ("**Opportunity**") (collectively, the "**Municipalities**").

2. The Municipalities submit that their respective claims for unpaid taxes constitute a special lien against all of the assets that were subject to assessment by each of the Municipalities. Further, these claims rank in priority over all other competing secured creditors.

3. There is no question that municipalities have secured claims when it comes to property tax arrears generally. Section 348(d)(i) of the *MGA* provides municipalities with a special lien "**on land and <u>any</u> improvements on the land**" in instances where the assessed person fails to pay property taxes or local improvement taxes owed to the municipality. This provision provides a municipality with a secured claim which, by virtue of section 348(c), has "**priority over the claims of every other person** except the Crown" [emphasis added].

MGA, s 348 [**Tab 1**]

4. 1371047 Alberta Ltd. ("**137**") and Canada North Camps Inc. (which is now operating under the legal name 1851239 Alberta Ltd.) ("**185**") are subject to these proceedings pursuant to the *Companies' Creditors Arrangement Act*, RSC 1984, c C-36 [**CCAA**] (collectively, the "**Canada North Parties**"), and are indebted to the Municipalities for unpaid taxes.

5. Bonnyville, Athabasca and Opportunity are owed outstanding taxes in relation to properties within their municipal jurisdictions that were used by the Canada North Parties for operation of the Bonnyville, Wandering River and Wabasca Camps.

6. These claims, by virtue of section 348(d)(i), are a special lien against the land and improvements that comprise the respective camps and that were subject to assessment by the Municipalities.

7. The special lien covers all of the property taxes, local improvement taxes, associated penalties, and costs incurred by the Municipalities in respect to tax recovery proceedings. The claims of the Municipalities take priority over any other claim (excluding claims of the Crown) in respect to those assets.

8. Because each of the respective parcels of land and the improvements that are subject to the special lien in favour of the Municipalities are also subject to various other secured charges, assistance from this Court through application of the doctrine of marshalling is necessary to establish an equitable allocation of liability for the first-ranking claim of the Municipalities.

II. BACKGROUND

i. The Municipalities' Tax Claims

9. Each of the Municipalities has levied taxes in respect to parcels of land that are owned (or co-owned) by one of the Canada North Parties.

10. The total amount claimed by each of the Municipalities, including tax levies, penalties and amounts added to the respective tax rolls is as follows:

   a. Bonnyville: $678,327.83 arising from tax levies for the 2016-2019 tax years;

   b. Athabasca: $750,508.90 arising from tax levies for the 2015-2019 tax years; and

   c. Opportunity: $89,899.82 arising from tax levies for the 2018 and 2019 tax years.

11. With respect to the lands in question:

a. In Bonnyville, the taxed lands are comprised of six parcels of land legally described as Plan 1324161, Block 4, Lots 1-6, owned by 137 that were, at least in part, used for the operation of the Bonnyville Camp (the "**Bonnyville Lands**");

Supplemental Affidavit of Janice Wetzstein sworn July 24, 2019 at para 7

b. In Athabasca, the taxed land is a single parcel bearing the short legal description 4; 17; 71; 35; NE, that is owned by 137 and Wandering River Properties Ltd. ("**Wandering River**") and that was used by the Canada North Parties for the operation of the Wandering River Camp (the "**Athabasca Lands**"); and

Supplemental Affidavit of Brian Pysyk sworn July 24, 2019 at para 7 and Exhibit "F"

c. In Opportunity, the taxed lands consist of two parcels of land owned by 185 legally described as Plan 9920455, Lot 2 ("**Parcel 1**"), which is the location of the Wabasca Camp, and Plan 0325037 ("**Parcel 2**") (collectively, the "**Opportunity Lands**"), which is the location of a work camp that was operated in the jurisdictional boundaries of Opportunity.

Affidavit of William Kostiw, sworn July 24, 2019 at para 6

12. 137 and 185 are subject to these proceedings under the *CCAA*, which began as a Plan of Arrangement, but have since become liquidation proceedings under the direction of the Monitor since April 2018.

Canada North Group Inc. (Companies' Creditors Arrangement Act), Re, 2019 ABQB 307 at para 1 [**Tab 8**]

ii. The Assessed Assets

13. The Municipalities are mandated in Part 9 of the *MGA* to impose property taxes in respect to all assessable property, including land and improvements, within each Municipality on an annual basis.

14. The taxes owed to each of the Municipalities were based on the assessed value of the respective parcels of land (described above) and the improvements on them pursuant to Part 9 of the *MGA*.

Supplemental Affidavit of Janice Wetzstein sworn July, 24, 2019 at paras 10-22, and Exhibits "K", "L", "M", "N", and "O"

Supplemental Affidavit of Brian Pysyk sworn July 24, 2019 at paras 9-15, and Exhibits "I" and "J"

Affidavit of William Kostiw sworn July 24, 2019 at paras 7-11, and Exhibits "F", "H" and "I"

15. The assessed improvements located on the Bonnyville Lands, the Athabasca Lands and Parcel 1 of the Opportunity Lands consist primarily of pre-fabricated trailers that comprise the Bonnyville, Wandering River and Wabasca Camps.

Supplemental Affidavit of Janice Wetzstein sworn July, 24, 2019 at para 11

Supplemental Affidavit of Brian Pysyk sworn July 24, 2019 at para 12

Affidavit of William Kostiw sworn July 24, 2019 at para 10 and Exhibit "H"

16. All or a significant portion of the taxes owed to each of the Municipalities were levied after the Initial Order pronounced in these Proceedings on July 5, 2017, and taxes, penalties and costs continue to accrue in respect to all of the properties assessed by the Municipalities.

Supplemental Affidavit of Janice Wetzstein sworn July, 24, 2019 at para 23

Supplemental Affidavit of Brian Pysyk sworn July 24, 2019 at para 17

Affidavit of William Kostiw sworn July 24, 2019 at para 13

17. The Bonnyville Lands and the Athabasca Lands are all subject to tax recovery notifications registered by Bonnyville and Athabasca.

> Supplemental Affidavit of Janice Wetzstein sworn July, 24, 2019, Exhibit "F"
>
> Supplemental Affidavit of Brian Pysyk sworn July 24, 201, Exhibit "F"

iii. <u>The Competing Secured Claims</u>

18. All of the parcels of land and improvements that were assessed by the Municipalities and that are the subject of the underlying taxes are also subject to claims advanced by other creditors of the Canada North Parties.

19. In particular, Great White Sand Tiger Lodging Ltd. ("**Sand Tiger**"), Aurora Lodging Inc. ("**Aurora**"), Element Financial Trailers (succeeded by ECN Capital Corp.) ("**ECN**"), and 726 Remote Accommodations Ltd. and 726 Modular Finance Ltd. (collectively "**726**") provided commercial buildings to the Canada North Parties via leases (the "**Structures**") and some or all of the Structures were located at one of the Bonnyville Camp, the Wandering River Camp or the Wabasca Camp and were assessed by the Municipalities as improvements for the purposes of levying property taxes.

20. Each of the parcels of land that were subject to taxation by the Municipalities are also subject to financial encumbrances registered by other parties.

21. The Bonnyville Lands are subject to a mortgage registered by Northland Mortgage and Investment Corporation ("**Northland**") and the assessed improvements situated on the Bonnyville Lands (the "**Bonnyville Improvements**") are subject variously to claims by other creditors, including: a) Aurora; b) Sand Tiger; c) 726; and d) Canadian Western Bank ("**CWB**").

> Affidavit of Janice Wetzstein, sworn July 24, 2019 at paras 15-19
>
> Affidavit of Mark Eikeland sworn September 18, 2018 at paras 11-17, Exhibit "C"

Affidavit of Sean George sworn October 3, 2018

Affidavit of Wayne Sluice sworn October 4, 2018

Affidavit of Barry Roman sworn October 2, 2018

Affidavit of Jessie Taha sworn October 3, 2018

22. The Athabasca Lands are subject to a mortgage registered by Jeffrey Hadfield and Jackie Hadfield, and a number of assessed improvements on that land (the "**Athabasca Improvements**") are subject variously to claims by other creditors including: a) 726; b) CWB; and c) ECN.

Affidavit of Brian Pysyk sworn July 24, 2019 at para 7, Exhibit "F"

Affidavit of Barry Roman sworn October 2, 2018 at paras 20-26

Affidavit of Jessie Taha sworn October 3, 2018 at para 12(f)

23. In Opportunity, Parcel 1 is subject to a mortgage registered by Northland, and Parcel 2 is subject to a Caveat Re: Agreement Charging Land registered by CWB. The improvements on Parcel 1 (the "**Opportunity Improvements**") may be subject to a claim by VersaBank.

Affidavit of William Kostiw sworn July 24, 2019 at para 11 and Exhibit "C"

Affidavit of Mark Eikeland sworn September 18, 2018

Affidavit of Jessie Taha sworn October 3, 2018 at para 7

Affidavit of Bill Zadorsky sworn October 4, 2018

III. ISSUES

24. The central issues in this application are:

i) Which assets are subject to a special lien pursuant to section 348 of the *MGA* in favour of the Municipalities in respect to unpaid taxes, penalties and other amounts added to the respective tax rolls?

ii) How should the claims of the Municipalities be equitably marshalled or apportioned amongst the various assets that are subject to the special lien?

IV. SUBMISSIONS

A. The MGA Establishes a Special Lien Against Any Improvements

i. Principles of Statutory Interpretation

25. The proper process for all exercises of statutory interpretation is well known:

> Today there is only one principle or approach; namely, the words of an Act are 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 Parliament.

Re Rizzo & Rizzo Shoes Ltd, [1998] 1 SCR 27, 154 DLR (4th) 193 at para 21 [**Tab 9**]

26. Furthermore, the provisions of the *MGA* are to be interpreted in a "broad and purposive" manner.

United Taxi Drivers' Fellowship of Southern Alberta v Calgary (City), 2004 SCC 19 at paras 6-8 [**Tab 10**]

27. The requirement that courts consider purposive factors, or legislative intent is also established by section 10 of the *Interpretation Act*, which states:

> An enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects.

Interpretation Act, RSA 2000, c I-8, s 10 [**Tab 2**]

ii. The Special Lien

28. The special lien established in favour of unpaid taxes is set out at section 348 of the *MGA*, which provides:

> **348 Taxes due to a municipality**
>
> (a) are an amount owing to the municipality,
>
> (b) are recoverable as a debt due to the municipality,
>
> (c) **take priority over the claims of every person except the Crown**, and

(d) **are a special lien**

(i) on **land and <u>any</u> improvements to the land**, if the tax is a **property tax**, ...**a local improvement tax** ...

[emphasis added]
MGA, s 348 [**Tab 1**]

29. That is, section 348(d)(i) gives a municipality a special lien "on land and <u>any improvements</u> to the land" in instances where the tax owing is a property tax or a local improvement tax.

30. Here, all of the outstanding taxes: are assessed in respect to a parcel of land and improvements; consist of either property taxes or local improvement taxes; and were imposed through a municipal bylaw.

MGA, ss 297(1)(b), 353, 354 [**Tab 1**]

Supplemental Affidavit of Janice Wetzstein sworn July, 24, 2019 at paras 5 and 6

Supplemental Affidavit of Brian Pysyk sworn July 24, 2019 at para 5

Affidavit of William Kostiw sworn July 24, 2019 at para 4

31. Importantly, there is an obvious parallel between the assessment provisions set out in Part 9 of the *MGA* and the special lien established in section 348. Section 348 establishes a special lien on land and improvements. Property tax assessments are prepared in respect to land and improvements. Specifically, for the purposes of tax assessment, "improvements" form part of the definition of "property" in the *MGA.* Section 284(1)(r) of the *MGA* defines "property" as i) a parcel of land, ii) **an improvement**, or iii) **a parcel of land and the improvements to it** [emphasis added].

Matters Relating to Assessment and Taxation Regulation, Alta Reg 220/2004, ss 5-6 [**Tab 3**]

Matters Relating to Assessment and Taxation Regulation, 2018, Alta Reg 203/2017, ss 8-9 [**Tab 4**]

MGA, s 284(1)(r) [**Tab 1**]

32. The parallel construction between the assessment provisions and the special lien provision, and the common fundamental reliance on the defined terms "land" and "improvements" provides all the context that is necessary for determining the scope of the special lien established by section 348. The inescapable conclusion is that the land and improvements that are subject to the special lien for unpaid taxes are the same land and improvements that were assessed for the purposes of calculating the tax levy in the first place.

B. The Special Lien Applies to the Structures

i. The Structures are "Improvements"

33. All of the Structures located on the Bonnyville Lands, the Athabasca Lands and the Opportunity Lands are considered improvements for the purposes of assessment and taxation under the *MGA* and for the purposes of the special lien set out in section 348. The Structures would not have been assessed by each of the Municipalities if they did not constitute improvements.

34. Section 284(1)(j) of the *MGA* defines "improvements" as follows:

> (j) "improvement" means
>
> (i) a **structure**,
>
> (ii) anything attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure, [emphasis added].
>
> ...

MGA, s 284(1)(j) [**Tab 1**]

35. "Structure" is further defined in section 284(1)(u) to mean "a building or other thing erected or placed in, on, over or under land, whether or not it is so affixed to the land as to become transferred without special mention by a transfer or sale of the land".

MGA, s 284(1)(u) [**Tab 1**]

36. Importantly, the definitions set out in section 284 of the *MGA* apply to Parts 9 and 10 of the *MGA*, including section 348.

37. Given the broad definitions of "improvement" and "structure" the Structures are clearly property that could be, and were, assessed by the Municipalities as improvements.

> Affidavit of Janice Wetzstein sworn October 23, 2018 at paras 9-13, and Supplemental Affidavit of Janice Wetzstein sworn July 24, 2019 at paras 9-16 and 20
>
> Affidavit of Brian Pysyk sworn October 24, 2018 at para 9, and Supplemental Affidavit of Brian Pysyk sworn July 24, 2019 at paras 8-15
>
> Affidavit of William Kostiw sworn July 24, 2019 at paras 7-8

38. The *MGA* implicitly contemplates that all improvements, including improvements that can be physically removed from the parcel of land, are subject to a municipality's special lien. Section 414 of the *MGA* prevents the removal of improvements from a parcel of land that is subject to a tax recovery notice.

MGA, s 414 [**Tab 1**]

ii. <u>The Owners of Land are the "Assessed Person"</u>

39. Section 284 of the *MGA* defines "assessed person" and "assessed property" as follows:

> 284(1) In this Part and Parts 10, 11 and 12,
>
> (a) "assessed person" means a person who is named on an assessment roll in accordance with section 304;
>
> (b) "assessed property" means property in respect of which an assessment has been prepared;

MGA, ss 284(1)(a) and (b) [**Tab 1**]

40. Section 304 of the *MGA* is clear that, when it relates to improvements situated on a parcel of land, the assessed person is the owner of the parcel of land:

> **304(1)** The name of the person described in column 2 must be recorded on the assessment roll as the assessed person in respect of the assessed property described in column 1.

Column 1 Assessed Property	Column 2 Assessed Person
(a) a parcel of land, unless otherwise dealt with in this subsection;	(a) the owner of the parcel of land;
(b) **a parcel of land <u>and</u> the improvements to it, unless otherwise dealt with in this subsection**;[1]	(b) **the owner of the parcel of land**;

[emphasis added]

MGA, s 304(1) [**Tab 1**]

41. On a plain interpretation of section 304(1)(b), it is clear that the owner of a parcel of land may be different than the owner(s) of the improvements to the land; however, that has no effect on who is the assessed person.

42. That owners of land can be the assessed person for improvements on that land that it does not own has been held so in other jurisdictions even without the clear and unambiguous language as provided in section 304(1)(b) of the *MGA*, such as in *Carsons' Camp Ltd v Municipal Property Assessment Corp*, where the Ontario Court of Appeal held that **where land was comprised of interests owned** by tenants **or third parties other than the owner of the underlying land**, **all of the interests were properly assessed against the owner of the underlying land** [emphasis added].

Carsons' Camp Ltd v Municipal Property Assessment Corp, 2008 ONCA 17, at paras 14-15 [**Tab 11**]

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[1] The Structures are not otherwise dealt with in s 304(1) of the *MGA*.

43. The person liable to pay a property tax imposed under Part 10 of the *MGA* is the assessed person at the time an assessment is prepared. In the present case, then, the owners of the parcels of land in the Municipalities, namely the Canada North Parties, as the assessed persons with respect to the land and the improvements, were thus liable to pay the property taxes, and where applicable, the local improvement taxes.

MGA, s 331(1) **[Tab 1]**

44. With that, looking back at section 348(d)(i) of the *MGA*, the phrasing "[t]axes due to a municipality ...are a special lien...on land and any improvements to the land...", the use of the term "any improvements", interpreted in conjunction with the wording in sections 304(1)(b) and 331(1), can only mean that the special lien attaches to the very thing which is being taxed, which includes the Structures.

C. Penalties, Interest and Tax Recovery Costs Covered by the Special Lien

i. Penalties and Interest

45. Penalties for the outstanding taxes owing to the Municipalities have accrued and continue to accrue. These penalties are all levied pursuant to penalty bylaws that are specifically authorized by sections 344 and 355 of the *MGA*.

46. Once levied, penalties form part of the underlying unpaid tax and are thereby secured as a special lien in the same manner as the underlying tax. As set out in section 346:

> A penalty imposed under section 344 or 345 **is part of the tax in respect of which it is imposed** [emphasis added].

MGA, s 346 [**Tab 1**]

47. The case of *Royal Bank v Lawton Development Inc* dealt with the priority of tax penalties in an Ontario context. Lawton, a developer, went into receivership. While the receiver agreed it had an obligation to pay the accrued property taxes, it disputed the inclusion of penalties claimed by the City of Toronto in the special lien established by section 382 of the *Municipal Act*, which read **"...[t]he taxes due**

upon any land with costs may be recovered with interest as a debt due to the municipality…**and are a special lien on the land in priority to every claim**…" [emphasis added].

Royal Bank v Lawton Development Inc, [1994] OJ No 375, 19 MPLR (2d) 170 at para 21 [*Lawton*] [**Tab 12**]

The Municipal Act, RSO 1990, c M-45, s 382 [**Tab 5**]

48. Ultimately, the Court held that "[t]he penalties, interest and costs … associated with the municipal tax and sewer charge are included within the special liens protecting the tax and charge," as they were "directly related to the collection of taxes after they are past due". As noted by the Court, "…Canadian courts have recognized that taxes serve important social purposes and are, therefore, entitled to judicial respect provided they are imposed in a clear fashion by a proper legislative body," and further, that "[i]f the taxpayer does not pay these amounts, then it is fair…to interpret the provisions imposing the tax and charge as including other costs directly related to trying to place the City in its original position. Interest charges, penalties, and bailiff costs are such costs".

Lawton, at paras 15, 18, 20 and 26 [**Tab 12**]

49. In 2001, the Ontario Court of Appeal confirmed that a municipality's special lien for unpaid property taxes ranked in priority over the claim of a secured creditor (TD Bank), relying upon the plain language of the relevant legislation, and citing *Lawton* with approval. In *Usarco*, at the time of the appointment of the receiver, the total municipal tax arrears were only about $186,000, but had increased to over $2.5 million (including penalties and interest). The municipality sought an order directing that it be paid $900,000 that had been paid by the receiver to the TD Bank, as well as an additional $960,000 from the sale of land owned by a third party (Levy, albeit a principal of Usarco).

The Municipal Act, RSO 1990, c M-45, s 382 [**Tab 5**]

Toronto Dominion Bank v Usarco Ltd, [2001] OJ No 649, 196 DLR (4th) 448 (ON CA) at para 13 [**Tab 13**]

50. There is no basis, therefore, to distinguish between properly imposed penalties and the underlying taxes of which they become a part.

ii. Costs Associated with the Tax Recovery Process

51. Municipalities are afforded the authority to add certain amounts to a tax roll for a property. In particular, municipalities may add "costs associated with tax recovery proceedings" to a tax roll for a parcel of land.

MGA, s 553(1)(f) [**Tab 1**]

52. Once an amount is added to a tax roll, 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.

MGA, s 553(2) [**Tab 1**]

53. Therefore, as with penalties that are levied in respect to unpaid taxes, costs associated with tax recovery proceedings enjoy the same priority status and give rise to the same special lien as the underlying taxes.

D. Special Lien Takes Priority Over Competing Claims

i. Competing Claims are Security Interests Governed by the PPSA

54. Bonnyville has reached a resolution with all of the parties with interests in the Bonnyville Lands and the Bonnyville Improvements, being: CWB, Aurora, Sand Tiger and Northland. (That resolution is in the process of being formalized and will be presented for consideration by this Court at the hearing of this application.) Therefore, this brief will not address any of the claims by those parties in respect to those assets.

55. With respect to the leases for the Structures on the Athabasca Lands and the Opportunity Lands, the claims of the lessors are governed by the *Personal Property Security Act*, RSA 2000, c P-7 [***PPSA***].

56. The *PPSA* applies to:

(a) every transaction that in substance creates a security interest, without regard to its form and without regard to the person who has title to the collateral, and

(b) without limiting the generality of clause (a), a chattel mortgage, conditional sale, floating charge, pledge, trust indenture, trust receipt, assignment, consignment, lease, trust and transfer of chattel paper where they secure payment or performance of an obligation.

PPSA, s 3(1) **[Tab 6]**

57. The *PPSA* also applies to certain deemed interests, being:

(a) a transfer of an account or chattel paper,

(b) a lease of goods for a term of more than one year, and

(c) a commercial consignment,

that does not secure payment or performance of an obligation.

PPSA, s 3(2) **[Tab 6]**

58. Whether the *PPSA* applies to the subject leases for Structures on the Athabasca Lands and Opportunity Lands as a result of the substance of the transaction, or through the deeming provisions of the *PPSA*, the claims of the lessors are asserted as security interests pursuant to the *PPSA*. As such, the *PPSA* governs the priority of the lessor's claims.

Affidavit of Wayne Sluice sworn October 4, 2018

Affidavit of Barry Roman sworn October 2, 2018

Affidavit of Glenn MacDougall sworn July 24, 2017

Affidavit of Bill Zadorsky sworn October 9, 2018

59. The *PPSA* sets aside the traditional concepts of title and ownership. In regards to the Structures, the Canada North Parties, as lessees, constitute "debtors".

60. "[A] debtor has rights in goods leased to the debtor or consigned to the debtor when the debtor obtains possession of them in accordance with the lease or consignment".

PPSA, ss 1(1)(m), 12(2) [**Tab 6**]

Gauntlet Energy Corp, Re, 2003 ABQB 718 at paras 14-24 [**Tab 14**]

61. Thus, the lessors of the Structures are secured creditors, and the lessees have a proprietary interest in the Structures. Consequently, the Municipalities properly conducted assessments on the "ostensible owner" of the Structures.

ii. Special Lien Takes Priority Over Security Interests in the Structures

62. Each of the parties with interests in the Structures is entitled to enforce its security in accordance with the priority regime established under the *PPSA* and other provincial legislation, including the *MGA*. That priority scheme is clear: unpaid taxes take priority over the other creditors here.

63. The special lien under the *MGA* is unaffected by the *PPSA* priority scheme. Section 4(a) of the *PPSA* provides that the *PPSA* does not apply to "a lien, charge or other interest given by an Act or rule of law in force in Alberta". Therefore, the priority established pursuant to section 348(c) of the *MGA* is paramount to any claim under the *PPSA*. The *MGA* clearly establishes taxes due to a municipality take priority over the claims of every person except the Crown.

PPSA, s 4(a) [**Tab 6**]

iii. The Special Lien Attaches to Structures Regardless of Ownership

64. To the extent, if any, that the Structures remain subject to third-party ownership interests, the application of a special lien under section 348 of the *MGA* is not restricted to assets that are owned by the assessed person. The special lien attaches to all of the assessed land and improvements regardless of ownership.

65. There is no doubt that the Legislature has the authority to establish a special lien that attaches to improvements owned by third parties. It has been frequently recognized that "the Legislature within its jurisdiction can do everything that is not naturally impossible, and is restrained by no rule human or divine".

> *Authorson v Canada (Attorney General),* 2003 SCC 39 at para 53 [**Tab 15**]

66. This is not a situation where there would be an "invisible superpriority charge" where a lien attaches beyond the thing being taxed. Instead, as the Manitoba Court of Appeal noted in relation to that province's equivalent special lien provision, the "existence of a lien on land and improvements would be readily ascertainable by a purchaser of the property and by other persons who had commercial dealings with the taxpayer affecting the property".

> *Regent Resources Ltd (Re)*, 2018 ABQB 669 at para 25 [**Tab 16**]
>
> *Wallace (Rural Municipality) v 2214351 Manitoba Ltd,* 2005 MBCA 3 at para 27 [**Tab 17**]

67. Finally, the Legislature could have excluded the special lien provision in section 348 of the *MGA* from applying to improvements or specified that it only applied to improvements owned by the taxpayer. It did not do so, and instead, created a broad special lien that recognizes the structure of the *MGA*, which sees the owner of the lands become the assessed person for the land and <u>all</u> improvements.

68. The concept of the "special lien" is not unique to municipalities in Alberta; many provinces grant municipalities a special lien or charge on property. Notably, however, Ontario restricts the lien to only the land.

> *Municipal Act, 2001*, SO 2001, c 25, s 349(3) [**Tab 7**]

E. Other Considerations

i. Tax Claims Arising Post-Insolvency

69. A significant portion of each of the Municipalities' claims, and in the case of Opportunity, the entire claim, arose after the initial order in these proceedings, which was granted on July 5, 2017. In that respect, each of the Municipalities is, in respect to that portion of the respective claim, a post-insolvency creditor.

70. The Initial Order in these proceedings recognizes that the payment of post-insolvency tax claims is of particular significance; it specifically requires that the Applicant pay, in the normal course, "municipal realty,…or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business of the Applicants". In this way, the Initial Order specifically contemplates that post-insolvency tax claims are treated separately from other claims against the companies – they are instead considered necessary costs of the *CCAA* restructuring process. Taxes are considered to be part of the "necessary costs of preservation" of the estate in insolvency proceedings.

Hamilton Wentworth Credit Union Ltd v Courtcliffe Parks Ltd, [1995] OJ No 1482, 23 OR (3d) 781 [**Tab 18**]

ii. Policy Considerations

71. There are also significant policy considerations that underlie the Legislature's decision to afford municipalities a priority in respect to unpaid taxes. Firstly, as noted above, the courts have recognized the important social purposes that municipal taxes serve. Municipalities provide numerous essential services to communities, and their ability to do so depends on their ability to levy and effectively collect municipal taxes.

72. Secondly, municipalities are commonly involuntary creditors in insolvency proceedings. While other creditors, including institutional lenders, have the opportunity to conduct due diligence, evaluate creditworthiness and ultimately exercise discretion in deciding whether to advance credit, municipalities have no

option but to levy municipal taxes on property within their boundaries. This case is an effective demonstration of this fact in that the Municipalities are the only affected creditors in this application that did not *choose* to become creditors of the Canada North Parties.

F. The Municipalities' Claims Should be Equitably Apportioned

70. The Municipalities are entitled to enforce their claims for outstanding taxes against the lands and the improvements thereon on a joint and several basis. The taxes outstanding in respect to each tax roll constitute an independent actionable debt, and the entire amount of the tax arrears owed for each tax roll attach to, and can be enforced against the respective land, improvements, or the lands and the improvements.

MGA, s 348 [**Tab 1**]

71. However, because each of the respective parcels of land and each of the improvements are subject to various secured charges, and because it is possible, even likely, that the total value of land and improvements in each instance exceeds the corresponding tax debt, the doctrines of marshalling or apportionment apply.

72. The equitable principles of marshalling and "marshalling and apportionment" were described by Justice Manderscheid in *Gerrow v Dorais*. These principles apply in circumstances such as these where an overarching priority claim affects several assets that are also subject to subordinate secured claims of multiple parties. Stated generally, the principle of "marshalling by apportionment" applies such that the first-ranking claim is satisfied from the proceeds of the two (or more) separate assets on a prorated basis according to the respective values of the assets.

Gerrow v Dorais, 2010 ABQB 560 at paras 21 – 29 [*Dorais*] [**Tab 19**]

73. Equity therefore requires that the debts owed to the Municipalities should be apportioned as between the land and improvements that are subject to each special lien, and between the separate groups of improvements, based on the value of each of these assets.

74. While the underlying principle can be plainly stated, its application in this instance is far from straightforward. The circumstances surrounding Bonnyville's claim provides possibly the most straightforward application. There, the various assets were all assessed by the municipality individually based on fair market value. That is, the assessments for each parcel of land include itemized assessments for each improvement and the underlying parcel of land based on what each asset "...might be expected to realize if it is sold on the open market by a willing seller to a willing buyer". Therefore, the assessments prepared by Bonnyville could conceivably form the basis of an apportionment of the tax claim as between the land and improvements subject to claims by Aurora, CWB, Sand Tiger and Northland (although that is no longer necessary as Bonnyville and those parties have reached a mutual resolution in that regard).

MGA, s 1(1)(n) [**Tab 1**]

75. However, equitable apportionment is much less straightforward in respect to the claims of Athabasca and Opportunity. The impediments to obtaining a reliable estimate of value based on the assessments prepared by Athabasca and Opportunity are as follows:

    a. In the case of property that constitutes farmland, including a significant portion of the lands in Athabasca, assessments are prepared based on a rate established by regulation. The regulated assessment for farmland is not an approximation of fair market value and farmland is typically assessed well below market value.

    b. In the case of Parcel 1 in Opportunity, that parcel, which comprises the Wabasca Camp, was assessed based on an income approach. Generally, an income approach attempts to gauge the market value of a property based on its ability to generate income. In the case of Parcel 1 the property in its entirety, including both land and improvements, was assessed as a single income-generating asset. Therefore, the assessment does not provide information regarding the assessed value of the component land and improvements independently.

76. In light of the above, a reliable estimate of the value of the various lands and improvements may be difficult to achieve based on the presently available evidence. Further evidence of value of the respective assets may be necessary.

77. As the Municipalities' claims rank in priority over all of the other secured claims, the appropriate apportionment or mechanism of marshalling the competing claims should ensure with certainty that the Municipalities' ability to recover the outstanding taxes in their entirety is not prejudiced. A fundamental requirement of the principle of marshalling is "…that nothing will be done to interfere with the paramount right of the [first-ranking claim] to pursue his remedy against either of the two estates…"

> *Dorais* at para 23, citing *Ernst Brothers Co v Canada Permanent Mortgage Corporation* [**Tab 19**]

78. The Municipalities request the assistance of this Court in determining an equitable apportionment of the respective tax claims that fairly distributes liability for the Municipalities' claim while ensuring that the ability of the Municipalities to recover is not prejudiced.

V. RELIEF SOUGHT

79. The Municipalities are asking this Court to grant:

   a. An order or orders declaring that all outstanding property taxes, including all property tax levies, accrued penalties and amounts added to the respective tax rolls owed to the Municipalities constitute a special lien pursuant to section 348 of the *MGA* against all assets that were the subject of assessment for the purposes of property taxation by each of the Municipalities respectively;

   b. An Order or orders declaring that a special lien securing any of the unpaid property taxes that attaches to an asset takes priority over any other claim, including any other secured claim but excluding claims of the Crown, in respect to that asset;

c. An order apportioning the outstanding property taxes amongst the various assets in each of the Municipalities that are subject to the special lien established by section 348 of the *MGA*;

d. In the alternative, an order directing the Monitor to obtain appraisals or such other information as may be required in order for this Court to reach a determination as to the appropriate apportionment of the outstanding property taxes amongst the various assets that are subject to the special liens established by section 348 of the *MGA*; and

e. An order confirming that the Municipalities shall be entitled to recover their legal costs and disbursements incurred in this application and in respect to the recovery of all outstanding tax arrears on a solicitor/client basis, that such costs form part of the costs of tax recovery proceedings related to the respective parcels of land, and that the Municipalities may add those costs to the respective tax rolls for the lands as part of the overall costs of tax recovery proceedings pursuant to sections 553(1)(f) of the *MGA*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of August, 2019.

BROWNLEE LLP
~~PER:~~

FOR

GREGORY G. PLESTER,
Counsel for the Town of Bonnyville, Athabasca County, and M.D. of Opportunity No. 17

LIST OF AUTHORITIES

TAB

1. *Municipal Government Act*, RSA 2000, c M-26
2. *Interpretation Act*, RSA 2000, c I-8
3. *Matters Relating to Assessment and Taxation Regulation*, Alta Reg 220/2004
4. *Matters Relating to Assessment and Taxation Regulation, 2018*, Alta Reg 203/2017
5. *The Municipal Act*, RSO 1990, c M.45
6. *Personal Property Security Act*, RSA 2000, c P-7
7. *Municipal Act, 2001*, SO 2001, c 25
8. *Canada North Group Inc (Companies' Creditors Arrangement Act), Re*, 2019 ABQB 307
9. *Re Rizzo & Rizzo Shoes Ltd*, [1998] 1 SCR 27, 154 DLR (4th) 193
10. *United Taxi Drivers' Fellowship of Southern Alberta v Calgary (City),* 2004 SCC 19
11. *Carsons' Camp Ltd v Municipal Property Assessment Corp*, 2008 ONCA 17
12. *Royal Bank v Lawton Development Inc,* [1994] OJ No 375, 19 MPLR (2d) 170 (ON Ct J Gen Div)
13. *Toronto Dominion Bank v Usarco Ltd,* [2001] OJ No 649, 196 DLR (4th) 448 (ON CA)
14. *Gauntlet Energy Corp, Re*, 2003 ABQB 718
15. *Authorson v Canada (Attorney General),* 2003 SCC 39
16. *Regent Resources Ltd (Re)*, 2018 ABQB 669
17. *Wallace (Rural Municipality) v 2214351 Manitoba Ltd,* 2005 MBCA 3
18. *Hamilton Wentworth Credit Union Ltd v Courtcliffe Parks Ltd,* [1995] OJ No 1482, 23 OR (3d) 781
19. *Gerrow v Dorais*, 2010 ABQB 560

Tab 1

Province of Alberta

MUNICIPAL GOVERNMENT ACT

Revised Statutes of Alberta 2000
Chapter M-26

Current as of June 28, 2019

Office Consolidation

Alberta Queen's Printer
Suite 700, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952
Fax: 780-452-0668

E-mail: qp@gov.ab.ca
Shop on-line at www.qp.alberta.ca

(iv) the board of trustees of a district or division as defined in the *School Act*;

(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

(o) "Minister" means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;

(p) "municipal authority" means a municipality, improvement district and special area and, if the context requires, in the case of an improvement district and special area,

(i) the geographical area of the improvement district or special area, or

(ii) the Minister, where the improvement district or special area is authorized or required to act;

(q) "Municipal Government Board" means the Municipal Government Board established under Part 12, and includes any panel of the Board;

(r) "municipal purposes" means the purposes set out in section 3;

(s) "municipality" means

(i) a city, town, village, summer village, municipal district or specialized municipality,

(ii) repealed 1995 c24 s2,

(iii) a town under the *Parks Towns Act*, or

(iv) a municipality formed by special Act,

or, if the context requires, the geographical area within the boundaries of a municipality described in subclauses (i) to (iv);

(t) "natural person powers" means the capacity, rights, powers and privileges of a natural person;

(u) "owner" means

(i) in respect of unpatented land, the Crown, financial year in which the financial plan or capital plan is prepared.

(5) Council may elect to include more than 3 financial years in a financial plan or more than 5 financial years in a capital plan.

(6) Council must annually review and update its financial plan and capital plan.

(7) The Minister may make regulations respecting financial plans and capital plans, including, without limitation, regulations

(a) respecting the form and contents of financial plans and capital plans;

(b) specifying the first financial year required to be reflected in a financial plan;

(c) specifying the first financial year required to be reflected in a capital plan.

2015 c8 s40

Part 9
Assessment of Property

Interpretation provisions for Parts 9 to 12

284(1) In this Part and Parts 10, 11 and 12,

(a) "assessed person" means a person who is named on an assessment roll in accordance with section 304;

(b) "assessed property" means property in respect of which an assessment has been prepared;

(c) "assessment" means a value of property determined in accordance with this Part and the regulations;

(d) "assessor" means

(i) the provincial assessor, or

(ii) a municipal assessor,

and includes any person to whom those duties and responsibilities are delegated by the person referred to in subclause (i) or (ii);

(e) "council" includes

(i) a collecting board that is authorized under section 180 of the *School Act* to impose and collect taxes in a district as defined in that Act, and

(ii) the Minister, in respect of an improvement district or special area;

(f) "Crown" means the Crown in right of Alberta, and includes a Provincial agency as defined in the *Financial Administration Act* and an agent of the Crown in right of Alberta;

(f.01) "designated industrial property" means

(i) facilities regulated by the Alberta Energy Regulator, the Alberta Utilities Commission or the National Energy Board,

(ii) linear property,

(iii) property designated as a major plant by the regulations,

(iv) land and improvements in respect of a parcel of land where that parcel of land contains property described in subclause (i) or (iii), and

(v) land and improvements in respect of land in which a leasehold interest is held where the land is not registered in a land titles office and contains property described in subclause (i) or (iii);

(f.1) "designated manufactured home" means a manufactured home, mobile home, modular home or travel trailer;

(g) repealed 2016 c24 s21;

(g.1) "extended area network" has the meaning given to it in the regulations;

(h) "farm building" has the meaning given to it in the regulations;

(i) "farming operations" has the meaning given to it in the regulations;

(j) "improvement" means

(i) a structure,

(ii) any thing attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure,

(iii) a designated manufactured home, and

(iv) machinery and equipment;

(k) "linear property" means

(i) electric power systems, which has the meaning given to that term in the regulations,

(ii) street lighting systems, which has the meaning given to that term in the regulations,

(iii) telecommunication systems, which has the meaning given to that term in the regulations,

(iv) pipelines, which has the meaning given to that term in the regulations,

(v) railway property, which has the meaning given to that term in the regulations, and

(vi) wells, which has the meaning given to that term in the regulations;

(l) "machinery and equipment" has the meaning given to it in the regulations;

(m) "manufactured home" means any structure, whether ordinarily equipped with wheels or not, that is manufactured to meet or exceed the Canadian Standards Association standard CSA Z240 and that is used as a residence or for any other purpose;

(n) "manufactured home community" means a parcel of land that

(i) is designated in the land use bylaw of a municipality as a manufactured home community, and

(ii) includes at least 3 designated manufactured home sites that are rented or available for rent;

(n.1) "mobile home" means a structure that is designed to be towed or carried from place to place and that is used as a residence or for any other purpose, but that does not meet Canadian Standards Association standard CSA Z240;

(n.2) "modular home" means a home that is constructed from a number of pre-assembled units that are intended for delivery to and assembly at a residential site;

(n.3) "municipal assessment roll" means the assessment roll prepared by a municipality under section 302(1);

(n.4) "municipal assessor" means a designated officer appointed under section 284.2 to carry out the functions, duties and powers of a municipal assessor under this Act;

(o) "municipality" includes

(i) a district, as defined in the *School Act*, in which a collecting board is authorized under section 180 of that Act to impose and collect taxes or, where the district is authorized or required to act, the collecting board, and

(ii) an improvement district and a special area or, where the improvement district or special area is authorized or required to act, the Minister;

(o.1) "operational" has the meaning given to it in the regulations;

(p) "operator" has the meaning given to it in the regulations;

(q) "owner", in respect of a designated manufactured home, means the owner of the designated manufactured home and not the person in lawful possession of it;

(r) "property" means

(i) a parcel of land,

(ii) an improvement, or

(iii) a parcel of land and the improvements to it;

(r.1) "provincial assessment roll" means the assessment roll prepared by the provincial assessor under section 302(2);

(r.2) "provincial assessor" means the provincial assessor designated under section 284.1;

(s), (t) repealed 2016 c24 s21;

(u) "structure" means a building or other thing erected or placed in, on, over or under land, whether or not it is so affixed to the land as to become transferred without special mention by a transfer or sale of the land;

Court authorized inspection and enforcement

296(1) The provincial assessor or a municipality may apply to the Court of Queen's Bench for an order under subsection (2) if any person

(a) refuses to allow or interferes with an entry or inspection by an assessor, or

(b) refuses to produce anything requested by an assessor to assist the assessor in preparing an assessment or determining if property is to be assessed.

(2) The Court may make an order

(a) restraining a person from preventing or interfering with an assessor's entry or inspection, or

(b) requiring a person to produce anything requested by an assessor under section 294 or 295.

(3) A copy of the application and each affidavit in support must be served at least 3 days before the day named in the application for the hearing.

RSA 2000 cM-26 s296;2009 c53 s119;2016 c24 s28

Assigning assessment classes to property

297(1) When preparing an assessment of property, the assessor must assign one or more of the following assessment classes to the property:

(a) class 1 - residential;

(b) class 2 - non-residential;

(c) class 3 - farm land;

(d) class 4 - machinery and equipment.

(2) A council may by bylaw divide class 1 into sub-classes on any basis it considers appropriate, and if the council does so, the assessor may assign one or more sub-classes to property in class 1.

(2.1) A council may by bylaw divide class 2 into the sub-classes prescribed by the regulations, and if the council does so, the assessor must assign one or more of the prescribed sub-classes to a property in class 2.

(3) If more than one assessment class or sub-class is assigned to a property, the assessor must provide a breakdown of the assessment, showing each assessment class or sub-class assigned and the

Recording assessed persons

304(1) The name of the person described in column 2 must be recorded on the assessment roll as the assessed person in respect of the assessed property described in column 1.

Column 1 Assessed property	Column 2 Assessed person
(a) a parcel of land, unless otherwise dealt with in this subsection;	(a) the owner of the parcel of land;
(b) a parcel of land and the improvements to it, unless otherwise dealt with in this subsection;	(b) the owner of the parcel of land;
(c) a parcel of land, an improvement or a parcel of land and the improvements to it held under a lease, licence or permit from the Crown in right of Alberta or Canada or a municipality;	(c) the holder of the lease, licence or permit or, in the case of a parcel of land or a parcel of land and the improvements to it, the person who occupies the land with the consent of that holder or, if the land that was the subject of a lease, licence or permit has been sold under an agreement for sale, the purchaser under that agreement;

	Column 1 Assessed property		Column 2 Assessed person
(d)	a parcel of land forming part of the station grounds of, or of a right of way for, a railway other than railway property, or a right of way for, irrigation works as defined in the *Irrigation Districts Act* or drainage works as defined in the *Drainage Districts Act*, that is held under a lease, licence or permit from the person who operates the railway, or from the irrigation district or the board of trustees of the drainage district;	(d)	the holder of the lease, licence or permit or the person who occupies the land with the consent of that holder;
(d.1)	railway property;	(d.1)	the owner of the railway property;
(e)	a parcel of land and the improvements to it held under a lease, licence or permit from a regional airports authority, where the land and improvements are used in connection with the operation of an airport;	(e)	the holder of the lease, licence or permit or the person who occupies the land with the consent of that holder;
(f)	a parcel of land, or a part of a parcel of land, and the improvements to it held under a lease, licence or permit from the owner of the land where the land and the improvements are used for	(f)	the holder of the lease, licence or permit;

Column 1 Assessed property	Column 2 Assessed person
(i) drilling, treating, separating, refining or processing of natural gas, oil, coal, salt, brine or any combination, product or by-product of any of them,	
(ii) pipeline pumping or compressing, or	
(iii) working, excavating, transporting or storing any minerals in or under the land referred to in the lease, licence or permit or under land in the vicinity of that land.	
(g) machinery and equipment used in the excavation or transportation of coal or oil sands as defined in the *Oil Sands Conservation Act*;	(g) the owner of the machinery and equipment;
(h) improvements to a parcel of land listed in section 298 for which no assessment is to be prepared;	(h) the person who owns or has exclusive use of the improvements;
(i) linear property;	(i) the operator of the linear property;

	Column 1 Assessed property		Column 2 Assessed person
(j)	a designated manufactured home on a site in a manufactured home community and any other improvements located on the site and owned or occupied by the person occupying the designated manufactured home;	(j)	the owner of (i) the designated manufactured home, or (ii) the manufactured home community if the municipality passes a bylaw to that effect;
(k)	a designated manufactured home located on a parcel of land that is not owned by the owner of the designated manufactured home together with any other improvements located on the site that are owned or occupied by the person occupying the designated manufactured home.	(k)	the owner of the designated manufactured home if the municipality passes a bylaw to that effect.

(2) When land is occupied under the authority of a right of entry order as defined in the *Surface Rights Act* or an order made under any other Act, it is, for the purposes of subsection (1), considered to be occupied under a lease or licence from the owner of the land.

(3) A person who purchases property or in any other manner becomes liable to be shown on the assessment roll as an assessed person

(a) must provide to the provincial assessor, in the case of designated industrial property, or

(b) must provide to the municipality, in the case of property other than designated industrial property,

written notice of a mailing address to which notices under this Part and Part 10 may be sent.

(4) Despite subsection (1)(c), no individual who occupies housing accommodation under a lease, licence or permit from a the tax roll and on correcting the roll, it must send an amended tax notice to the taxpayer.

(4) The date of every entry made on the tax roll under this section must be shown on the roll.

1994 cM-26.1 s330

Person liable to pay taxes

331(1) Subject to the regulations, the person liable to pay a property tax imposed under this Part is the person who

(a) at the time the assessment is prepared under Part 9, is the assessed person, or

(b) subsequently becomes the assessed person.

(2) The person liable to pay any other tax imposed under this Part is the person who

(a) at the time the tax is imposed, is liable in accordance with this Part or a regulation made under this Part to pay the tax, or

(b) subsequently becomes liable in accordance with this Part or a regulation made under this Part to pay it.

RSA 2000 cM-26 s331;2005 c14 s11

Taxes imposed on January 1

332 Taxes imposed under this Part, other than a supplementary property tax and a supplementary business tax, are deemed to have been imposed on January 1.

1994 cM-26.1 s332

Tax notices

333(1) Each municipality must annually

(a) prepare tax notices for all taxable property and businesses shown on the tax roll of the municipality, and

(b) send the tax notices to the taxpayers.

(2) A tax notice may include a number of taxable properties and taxable businesses if the same person is the taxpayer for all of them.

(3) A tax notice may consist of one notice for all taxes imposed under this Part, a separate notice for each tax or several notices showing one or more taxes.

(4) The assessment notice and the tax notice relating to the same property may be sent together or may be combined on one notice.

1994 cM-26.1 s333

(3) The penalty must not be imposed sooner than 30 days after the tax notice is sent out.

1994 cM-26.1 s344

Penalty for non-payment in other years

345(1) A council may by bylaw impose penalties in any year following the year in which a tax is imposed if the tax remains unpaid after December 31 of the year in which it is imposed.

(2) A penalty under this section is imposed at the rate set out in the bylaw.

(3) The penalty must not be imposed sooner than January 1 of the year following the year in which the tax was imposed or any later date specified in the bylaw.

1994 cM-26.1 s345

Penalties

346 A penalty imposed under section 344 or 345 is part of the tax in respect of which it is imposed.

1994 cM-26.1 s346

Cancellation, reduction, refund or deferral of taxes

347(1) If a council considers it equitable to do so, it may, generally or with respect to a particular taxable property or business or a class of taxable property or business, do one or more of the following, with or without conditions:

(a) cancel or reduce tax arrears;

(b) cancel or refund all or part of a tax;

(c) defer the collection of a tax.

(2) A council may phase in a tax increase or decrease resulting from the preparation of any new assessment.

1994 cM-26.1 s347

Tax becomes debt to municipality

348 Taxes due to a municipality

(a) are an amount owing to the municipality,

(b) are recoverable as a debt due to the municipality,

(c) take priority over the claims of every person except the Crown, and

(d) are a special lien

(i) on land and any improvements to the land, if the tax is a property tax, a community revitalization levy, a special tax, a clean energy improvement tax, a local improvement tax or a community aggregate payment levy, or

(ii) on goods, if the tax is a business tax, a community revitalization levy, a well drilling equipment tax, a community aggregate payment levy or a property tax imposed in respect of a designated manufactured home in a manufactured home community.

RSA 2000 cM-26 s348;2005 c14 s12;2018 c6 s5

Fire insurance proceeds

349(1) Taxes that have been imposed in respect of improvements are a first charge on any money payable under a fire insurance policy for loss or damage to those improvements.

(2) Taxes that have been imposed in respect of a business are a first charge on any money payable under a fire insurance policy for loss or damage to any personal property

(a) that is located on the premises occupied for the purposes of the business, and

(b) that is used in connection with the business and belongs to the taxpayer.

1994 cM-26 1 s349

Tax certificates

350 On request, a designated officer must issue a tax certificate showing

(a) the amount of taxes imposed in the year in respect of the property or business specified on the certificate and the amount of taxes owing,

(b) the total amount of tax arrears, if any, and

(c) the total amount of tax, if any, in respect of which collection is deferred under this Part.

RSA 2000 cM-26 s350;2016 c24 s51

Non-taxable property

351(1) The following are exempt from taxation under this Part:

(a) property listed in section 298;

(b) any property or business in respect of which an exemption from assessment or taxation, or both, was granted before January 1, 1995

(i) by a private Act, or

(ii) by an order of the Lieutenant Governor in Council based on an order of the Local Authorities Board.

(2) A council may by bylaw cancel an exemption referred to in subsection (1)(b), with respect to any property or business.

(3) A council proposing to pass a bylaw under subsection (2) must notify the person or group that will be affected of the proposed bylaw.

(4) A bylaw under subsection (2) has no effect until the expiration of one year after it is passed.

(5) A copy of a bylaw under subsection (2) must be sent to the Minister and if the bylaw amends a private Act the Minister must send a copy to the clerk of the Legislative Assembly.

1994 cM-26.1 s351

Limitation on time for starting proceedings

352(1) An action, suit or other proceedings for the return by a municipality of any money paid to the municipality, whether under protest or otherwise, as a result of a claim by the municipality, whether valid or invalid, for payment of taxes or tax arrears must be started within 6 months after the payment of the money to the municipality.

(2) If no action, suit or other proceeding is started within the period referred to in subsection (1), the payment made to the municipality is deemed to have been a voluntary payment.

1994 cM-26.1 s352

Division 2
Property Tax

Property tax bylaw

353(1) Each council must pass a property tax bylaw annually.

(2) The property tax bylaw authorizes the council to impose a tax in respect of property in the municipality to raise revenue to be used toward the payment of

(a) the expenditures and transfers set out in the budget of the municipality, and

(b) the requisitions.

(3) The tax must not be imposed in respect of property

(a) that is exempt under section 351, 361 or 362, or

(b) that is exempt under section 363 or 364, unless the bylaw passed under that section makes the property taxable.

1994 cM-26.1 s353

Tax rates

354(1) The property tax bylaw must set and show separately all of the tax rates that must be imposed under this Division to raise the revenue required under section 353(2).

(2) A tax rate must be set for each assessment class or sub-class referred to in section 297.

(3) The tax rate may be different for each assessment class or sub-class referred to in section 297.

(3.1) Despite subsection (3), the tax rate for the class referred to in section 297(1)(d) and the tax rate for the sub-classes referred to in section 297(2.1) must be set in accordance with the regulations.

(4) The tax rates set by the property tax bylaw must not be amended after the municipality sends the tax notices to the taxpayers unless subsection (5) applies.

(5) If after sending out the tax notices the municipality discovers an error or omission that relates to the tax rates set by the property tax bylaw, the Minister may by order permit a municipality to revise the property tax bylaw and send out a revised tax notice.

RSA 2000 cM-26 s354;2016 c24 s52

Calculating tax rates

355 A tax rate is calculated by dividing the amount of revenue required by the total assessment of all property on which that tax rate is to be imposed.

1994 cM-26.1 s355;1995 c24 s47

Calculating amount of tax

356 The amount of tax to be imposed under this Division in respect of a property is calculated by multiplying the assessment for the property by the tax rate to be imposed on that property.

1994 cM-26.1 s356

Special provision of property tax bylaw

357(1) Despite anything in this Division, the property tax bylaw may specify a minimum amount payable as property tax.

(1.1) Despite section 353, a council may pass a bylaw separate from the property tax bylaw that provides for compulsory tax instalment payments for designated manufactured homes.

(2) If the property tax bylaw specifies a minimum amount payable as property tax, the tax notice must indicate the tax rates set by the

(b) send 2 copies of the tax arrears list to the Registrar,

(b.1) send a copy of the tax arrears list to the Minister responsible for the *Unclaimed Personal Property and Vested Property Act*, and

(c) post a copy of the tax arrears list in a place that is accessible to the public during regular business hours.

(2) A tax arrears list must not include a parcel of land in respect of which there is in existence a tax recovery notification from previous years, unless that notification has been removed from the certificate of title for that parcel.

(3) The municipality must notify the persons who are liable to pay the tax arrears that a tax arrears list has been prepared and sent to the Registrar.

RSA 2000 cM-26 s412;2007 cU-1.5 s73

Tax recovery notification

413(1) The Registrar must endorse on the certificate of title for each parcel of land shown on the tax arrears list a tax recovery notification.

(2) The Registrar must certify, on a copy of the tax arrears list, that tax recovery notifications have been endorsed in accordance with subsection (1) and return the certified copy of the tax arrears list to the municipality with a statement of the costs payable to the Land Titles Office by the municipality.

(3) The municipality is responsible for the payment of the costs referred to in subsection (2) but may add the costs to the taxes owing in respect of the parcels of land shown on the tax arrears list.

(4) The Registrar must not remove a tax recovery notification from a certificate of title until the municipality at whose request it was endorsed on the certificate of title requests its removal.

1994 cM-26.1 s413

Removal of improvements

414 When a tax recovery notification has been endorsed on a certificate of title for a parcel of land, the person who is liable to pay the taxes must not remove from the parcel, unless the municipality at whose request the notification was endorsed on the certificate of title consents, any improvements for which that person is also liable to pay the taxes.

1994 cM-26.1 s414

(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.

1994 cM-26.1 s551

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.

1994 cM-26.1 s552

Adding amounts owing to tax roll

553(1) A council may add the following amounts to the tax roll of a parcel of land:

(a) unpaid costs referred to in section 35(4) or 39(2) relating to service connections of a municipal public utility that are owing by the owner of the parcel;

(b) unpaid charges referred to in section 42 for a municipal utility service provided to the parcel by a municipal public utility that are owing by the owner of the parcel;

(c) unpaid expenses and costs referred to in section 549(3), if the parcel's owner contravened the enactment or bylaw and the contravention occurred on all or a part of the parcel;

(d), (e) repealed 1999 c11 s35;

(f) costs associated with tax recovery proceedings related to the parcel;

(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;

(g.1) if the municipality has passed a bylaw requiring the owner or occupant of a parcel to keep the sidewalks adjacent to the parcel clear of snow and ice, unpaid expenses and costs incurred by the municipality for removing the snow and ice in respect of the parcel;

(h) unpaid costs awarded by a composite assessment review board under section 468.1 or the Municipal Government Board under section 501, if the composite assessment review board or the Municipal Government Board has awarded costs against the owner of the parcel in favour of the municipality and the matter before the composite assessment review board or the Municipal Government Board was related to the parcel;

(h.1) the expenses and costs of carrying out an order under section 646;

(i) any other amount that may be added to the tax roll under an enactment.

(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.

RSA 2000 cM-26 s553;2009 c29 s50

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:

(a) a person who was a licensee under a licence of occupation granted by the municipality and who, under the licence, owes the municipality for the costs incurred by the municipality in restoring the land used under the licence;

(b) an agreement holder referred to in section 27.4(1) who owes money to the municipality under section 27.4(1);

(c) a person who owes money to the municipality under section 550(3) or 551(5).

Tab 2

Province of Alberta

INTERPRETATION ACT

Revised Statutes of Alberta 2000
Chapter I-8

Current as of March 1, 2019

Office Consolidation

Alberta Queen's Printer
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10611 - 98 Avenue
Edmonton, AB T5K 2P7
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Enactments always speaking

9 An enactment shall be construed as always speaking and shall be applied to circumstances as they arise.

RSA 1980 cI-7 s9

Enactments remedial

10 An enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects.

RSA 1980 cI-7 s10

Enacting clause

11 The words "HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:" indicate the authority by virtue of which an Act is passed.

RSA 1980 cI-7 s11

Preambles and reference aids

12(1) The preamble of an enactment is a part of the enactment intended to assist in explaining the enactment.

(2) In an enactment,

(a) tables of contents,

(b) marginal notes and section headers, and

(c) statutory citations after the end of a section or schedule

are not part of the enactment, but are inserted for convenience of reference only.

RSA 2000 cI-8 s12;2002 c17 s3

Definitions and interpretation provisions

13 Definitions and other interpretation provisions in an enactment

(a) are applicable to the whole enactment, including the section containing the definitions or interpretation provisions, except to the extent that a contrary intention appears in the enactment, and

(b) apply to regulations made under the enactment except to the extent that a contrary intention appears in the enactment or in the regulations.

RSA 1980 cI-7 s13

Tab 3

Province of Alberta

MUNICIPAL GOVERNMENT ACT

MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION

Alberta Regulation 220/2004

With amendments up to and including Alberta Regulation 220/2018

Current as of December 10, 2018

Office Consolidation

Alberta Queen's Printer
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(a) a parcel of land containing less than one acre;

(b) a parcel of land containing at least one acre but not more than 3 acres that is used but not necessarily occupied for residential purposes or can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;

(c) an area of 3 acres located within a larger parcel of land where any part of the larger parcel is used but not necessarily occupied for residential purposes;

(d) an area of 3 acres that

(i) is located within a parcel of land, and

(ii) can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;

(e) any area that

(i) is located within a parcel of land,

(ii) is used for commercial or industrial purposes, and

(iii) cannot be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;

(f) an area of 3 acres or more that

(i) is located within a parcel of land,

(ii) is used for commercial or industrial purposes, and

(iii) can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel.

(4) An area referred to in subsection (3)(c), (d), (e) or (f) must be assessed as if it is a parcel of land.

(5) The valuation standard for strata space, as defined in section 86 of the *Land Titles Act*, is market value.

AR 220/2004 s4;307/2006

Valuation standard for improvements

5(1) The valuation standard for improvements is

(a) the valuation standard set out in section 7, 8 or 9, for the improvements referred to in those sections, or

(b) for other improvements, market value.

(2) For the purposes of section 298(1)(y) of the Act, an assessment must be prepared for any farm building located in a city, town, village or summer village.

(3) In preparing an assessment for a farm building, the assessor must determine its value based on its use for farming operations.

Valuation standard for a parcel and improvements

6(1) When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value unless subsection (2) or (3) applies.

(2) If the parcel of land is located in a city, town, village or summer village, is used for farming operations and has a farm building located on it, the valuation standard in section 4(1)(b) applies to the land and the exemption in section 22(c) applies to the farm building.

(3) If the parcel of land is located in a county, municipal district, improvement district or special area, is used for farming operations and has a farm building located on it, the valuation standard in section 4(1)(b) applies to the land and section 5(3) applies in respect of the farm building.

(4) If the improvement is railway, linear property or machinery and equipment, the valuation standard is as set out in section 7, 8 or 9, as the case may be.

Valuation standard for railway

7(1) The valuation standard for railway is that calculated in accordance with the procedures referred to in subsection (2).

(2) In preparing an assessment for railway, the assessor must follow the procedures set out in the Alberta Railway Assessment Minister's Guidelines.

AR 220/2004 s7;307/2006

Valuation standard for linear property

8(1) The valuation standard for linear property is that calculated in accordance with the procedures referred to in subsection (2).

(2) In preparing an assessment for linear property, the assessor must follow the procedures set out in the Alberta Linear Property Assessment Minister's Guidelines.

Tab 4

Province of Alberta

MUNICIPAL GOVERNMENT ACT

MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION, 2018

Alberta Regulation 203/2017

With amendments up to and including Alberta Regulation 185/2018

Current as of October 29, 2018

Office Consolidation

Alberta Queen's Printer
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(5) The valuation standard for strata space, as defined in section 86 of the *Land Titles Act*, is market value.

Valuation standard for improvements

8(1) The valuation standard for improvements is

(a) the valuation standard set out in section 10, 11, 12 or 13, for the improvements to which those sections apply, or

(b) for other improvements, market value.

(2) For the purposes of section 298(1)(y) of the Act, an assessment must be prepared for any farm building located in a city, town, village or summer village.

(3) In preparing an assessment for a farm building, the assessor must determine its value based on its use for farming operations.

Valuation standard for a parcel and improvements

9(1) When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value unless subsection (2) or (3) applies.

(2) If the parcel of land is located in a city, town, village or summer village, is used for farming operations and has a farm building located on it, the valuation standard in section 7(1)(b) applies to the land and the applicable exemption under section 30(f) applies to the farm building.

(3) If the parcel of land is located in a county, municipal district, improvement district or special area, is used for farming operations and has a farm building located on it, the valuation standard in section 7(1)(b) applies to the land and section 8(2) applies in respect of the farm building.

(4) If the improvement is railway property, linear property or machinery and equipment, the valuation standard is as set out in section 10, 11, 12 or 13, as the case may be.

Valuation standard for railway property

10(1) The valuation standard for railway property is that calculated in accordance with the procedures set out in the Alberta Railway Property Assessment Minister's Guidelines.

(2) In preparing an assessment for railway property, the assessor must follow the procedures referred to in subsection (1).

Tab 5

Municipal Act

R.S.O. 1990, CHAPTER M.45

Note: This Act was repealed on January 1, 2003. See: 2001, c. 25, ss. 484 (1), 485 (1).

Who liable for taxes, lien on lands

382. The taxes due upon any land with costs may be recovered with interest as a debt due to the municipality from the owner or tenant originally assessed therefor and from any subsequent owner of the whole or any part thereof, saving that person's recourse against any other person, and are a special lien on the land in priority to every claim, privilege, lien or encumbrance of every person except the Crown, and the lien and its priority are not lost or impaired by any neglect, omission or error of the municipality or of any agent or officer, or by want of registration. R.S.O. 1990, c. M.45, s. 382.

Tab 6

Province of Alberta

PERSONAL PROPERTY SECURITY ACT

Revised Statutes of Alberta 2000
Chapter P-7

Current as of June 13, 2016

Office Consolidation

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(m) "debtor" means, subject to subsection (4), a person who owes payment or other performance of the obligation secured, whether or not that person owns or has rights in the collateral, and includes any one or more of the following:

(i) a person who receives goods from another person under a commercial consignment;

(ii) a lessee under a lease for a term of more than one year;

(iii) a transferor of an account or chattel paper;

(iv) in sections 17, 24, 26, 58, 59, 60(12), 62(7), 65(2)(b), 65(3) and 67, a transferee of or a successor to a debtor's interest in collateral;

(n) "default" means the failure to pay or otherwise perform the obligation secured when due, or the occurrence of any event or set of circumstances on which under the terms of the security agreement the security interest becomes enforceable;

(o) "document of title" means a writing issued by or addressed to a bailee

(i) that covers goods in the bailee's possession that are identified or are fungible portions of an identified mass, and

(ii) in which it is stated that the goods identified in it will be delivered to a named person, or to the transferee of the person, to bearer or to the order of a named person;

(o.1) "entitlement holder" means an entitlement holder as defined in the *Securities Transfer Act*;

(o.2) "entitlement order" means an entitlement order as defined in the *Securities Transfer Act*;

(p) "equipment" means goods that are held by a debtor other than as inventory or consumer goods;

(p.1) "financial asset" means a financial asset as defined in the *Securities Transfer Act*;

(q) "financial institution" means a bank, a trust company, a credit union and a treasury branch;

(r) "financing change statement" means a financing change statement in the form authorized under the regulations and, (rr) "security" means a security as defined in the *Securities Transfer Act*;

(ss) "security agreement" means an agreement that creates or provides for a security interest, and, if the context permits, includes

(i) an agreement that creates or provides for a prior security interest, and

(ii) a writing that evidences a security agreement;

(ss.1) "security certificate" means a security certificate as defined in the *Securities Transfer Act*;

(ss.2) "security entitlement" means a security entitlement as defined in the *Securities Transfer Act*;

(tt) "security interest" means

(i) an interest in goods, chattel paper, investment property, a document of title, an instrument, money or an intangible that secures payment or performance of an obligation, other than the interest of a seller who has shipped goods to a buyer under a negotiable bill of lading or its equivalent to the order of the seller or to the order of the agent of the seller unless the parties have otherwise evidenced an intention to create or provide for investment property interest in the goods, and

(ii) the interest of

(A) a transferee arising from the transfer of an account or a transfer of chattel paper,

(B) a person who delivers goods to another person under a commercial consignment, and

(C) a lessor under a lease for a term of more than one year,

whether or not the interest secures payment or performance of the obligation;

(uu) "specific goods" means goods identified and agreed on at the time a security agreement in respect of those goods is made;

(uu.1) "standardized future" means an agreement traded on a futures exchange pursuant to standardized conditions information relates under circumstances in which a reasonable person would take cognizance of it.

(3) A lease referred to in subsection (1)(z)(ii) does not become a lease for a term of more than one year until the lessee's possession extends for more than one year.

(4) If the debtor and the owner of the collateral are not the same person, "debtor" means

(a) in a provision of this Act dealing with the collateral, an owner of, or a person with an interest in, the collateral, or

(b) in a provision of this Act dealing with the obligation, an obligor,

or both where the context permits.

(5) Unless otherwise provided in this Act, goods are "consumer goods", "inventory" or "equipment" if at the time the security interest in the goods attaches they are "consumer goods", "inventory" or "equipment".

(6) Proceeds are traceable whether or not there exists a fiduciary relationship between the person who has a security interest in the proceeds as provided in section 28 and the person who has rights in or has dealt with the proceeds.

RSA 2000 cP-7 s1;2006 cS-4.5 s108(2)

Part 1
General

The Crown is bound

2 The Crown is bound by this Act.

1988 cP-4.05 s2

Application of Act

3(1) Subject to section 4, this Act applies to

(a) every transaction that in substance creates a security interest, without regard to its form and without regard to the person who has title to the collateral, and

(b) without limiting the generality of clause (a), a chattel mortgage, conditional sale, floating charge, pledge, trust indenture, trust receipt, assignment, consignment, lease, trust and transfer of chattel paper where they secure payment or performance of an obligation.

(2) Subject to sections 4 and 55, this Act applies to

(a) a transfer of an account or chattel paper,

(b) a lease of goods for a term of more than one year, and

(c) a commercial consignment,

that does not secure payment or performance of an obligation.

1988 cP-4.05 s3;1991 c21 s29(3)

Non-application of Act

4 Except as otherwise provided under this Act, this Act does not apply to the following:

(a) a lien, charge or other interest given by an Act or rule of law in force in Alberta;

(b) a security agreement governed by an Act of the Parliament of Canada that deals with rights of parties to the agreement or the rights of third parties affected by a security interest created by the agreement, and any agreement governed by sections 425 to 436 of the *Bank Act* (Canada);

(c) the creation or transfer of an interest or claim in or under any policy of insurance, except the transfer of a right to money or other value payable under a policy of insurance as indemnity or compensation for loss of or damage to collateral;

(c.1) a transfer of an interest in or claim in or under a contract of annuity, other than a contract of annuity held by a securities intermediary for another person in a securities account;

(d) the creation or transfer of an interest in present or future wages, salary, pay, commission or any other compensation for labour or personal services, other than fees for professional services;

(e) the transfer of an interest in an unearned right to payment under a contract to a transferee who is to perform the transferor's obligations under the contract;

(f) the creation or transfer of an interest in land, including a lease;

(g) the creation or transfer of an interest in a right to payment that arises in connection with an interest in land, including an interest in rental payments payable under a lease of land, but not including a right to payment evidenced by investment property or an instrument;

(h) a sale of accounts or chattel paper as part of a sale of the business out of which they arose, unless the vendor remains in apparent control of the business after the sale;

(i) a transfer of accounts made solely to facilitate the collection of accounts for the transferor;

(j) the creation or transfer of an interest in a right to damages in tort;

(k) an assignment for the general benefit of creditors made pursuant to an Act of the Parliament of Canada relating to insolvency.

RSA 2000 cP-7 s4;2006 cS-4.5 s108(3)

Applicable law - general rules

5(1) Subject to this Act, the validity, perfection and effect of perfection or non-perfection of

(a) a security interest in goods, and

(b) a possessory security interest in chattel paper, a negotiable document of title, an instrument or money,

is governed by the law of the jurisdiction where the collateral is situated at the time the security interest attaches.

(2) A security interest in goods perfected under the law of the jurisdiction in which the goods are situated at the time the security interest attaches but before the goods are brought into the Province continues perfected in the Province if it is perfected in the Province

(a) not later than 60 days after the goods are brought into the Province,

(b) not later than 15 days after the day the secured party has knowledge that the goods have been brought into the Province, or

(c) prior to the date that perfection ceases under the law of the jurisdiction in which the goods were situated when the security interest attached,

whichever is the earliest, but the security interest is subordinate to the interest of a buyer or lessee of the goods who acquires the buyer's or lessee's interest without knowledge of the security interest and before it is perfected in the Province under section 24 or 25.

Attachment of security interests

12(1) A security interest, including a security interest in the nature of a floating charge, attaches when

(a) value is given,

(b) the debtor has rights in the collateral or power to transfer rights in the collateral to a secured party, and

(c) except for the purpose of enforcing rights between the parties to the security agreement, the security interest becomes enforceable within the meaning of section 10,

unless the parties specifically agree in writing to postpone the time for attachment, in which case the security interest attaches at the time specified in the agreement.

(2) For the purposes of subsection (1)(b) and without limiting other rights that the debtor may have in the collateral, a debtor has rights in goods leased to the debtor or consigned to the debtor when the debtor obtains possession of them in accordance with the lease or consignment.

(3) For the purposes of subsection (1), a debtor has no rights in

(a) crops until they become growing crops,

(b) the young of animals until they are conceived,

(c) minerals until they are extracted, and

(d) trees other than crops until they are severed.

(4) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(5) The attachment of a security interest in a futures account is also attachment of a security interest in the futures contracts carried in the futures account.

RSA 2000 cP-7 s12;2006 cS-4.5 s108(10)

Securities intermediary

12.1(1) A security interest in favour of a securities intermediary attaches to a person's security entitlement if

(a) the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase, and

Tab 7

Municipal Act, 2001

S.O. 2001, CHAPTER 25

Recovery of taxes

349 (1) Taxes may be recovered with costs as a debt due to the municipality from the taxpayer originally assessed for them and from any subsequent owner of the assessed land or any part of it. 2001, c. 25, s. 349 (1).

Interpretation

(2) Subsection (1) does not affect the taxpayer's or owner's recourse against any other person. 2001, c. 25, s. 349 (2).

Taxes on escheated, etc. land

(2.1) For greater certainty, taxes that are levied or charges that are imposed under section 208 on the following land may not be recovered as a debt due to the municipality from the Crown:

1. Land that is vested in the Crown in right of Ontario because of an escheat or forfeiture as a result of the dissolution of a corporation.
2. Land that belongs to the Crown in right of Ontario as a result of the death of an individual who did not have any lawful heirs. 2017, c. 10, Sched. 1, s. 45.

Special lien

(3) Taxes are a special lien on the land in priority to every claim, privilege, lien or encumbrance of every person except the Crown, and the lien and its priority are not lost or impaired by any neglect, omission or error of the municipality or its agents or through taking no action to register a tax arrears certificate. 2001, c. 25, s. 349 (3).

Proof of debt

(4) In any action to recover taxes, the production of the relevant part of the tax roll purporting to be certified by the treasurer as a true copy is, in the absence of evidence to the contrary, proof of the debt. 2001, c. 25, s. 349 (4).

Separate action

(5) The municipality may treat each year's taxes as a separate amount owing to the municipality and may bring separate actions for the purposes of recovering each amount. 2001, c. 25, s. 349 (5).

Tab 8

Court of Queen's Bench of Alberta

Citation: Canada North Group Inc (*Companies' Creditors Arrangement Act*), 2019 ABQB 307

Date: 20190514
Docket: 1703 12327
Registry: Edmonton

In the Matter of the
***Companies' Creditors Arrangement Act*,**
RSC 1985, c C-36, as amended

And in the Matter of a Plan of Arrangement of
Canada North Group Inc, Canada North Camps Inc,
CampCorp Structures Ltd, DJ Catering Ltd,
816956 Alberta Ltd and 1371047 Alberta Ltd

Reasons for Judgment
of the
Honourable Mr. Justice S.D. Hillier

Table of Contents

I. Introduction

[1] The Court continues to render decisions in relation to ongoing issues raised by parties affected under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 as amended [*CCAA* Proceedings]. As referenced in earlier decisions, initial attempts at reorganization have collapsed and the Monitor has continued to deal with liquidation of assets since April 2018.

[2] This application addresses claims by 726 Remote Accommodations Ltd, 726 Modular Finance Ltd and Reliant Asset Management, LLC [collectively "726"] to ownership and priority in respect of property located at various lodges or work camps operated by entities in which the Applicant held a substantial interest, as set out below. It is important to note that the Applicant Group is now composed of Canada North Camps Inc [CNC], CampCorp Structures Ltd, DJ Catering Ltd, 816956 Alberta Ltd, 1371047 Alberta Ltd and 1919209 Alberta Ltd [collectively "CNC Group"], but that the agreements at issue involve dealings between 726 and CNC.

[3] The property at issue includes:

1) modular trailers with registration numbers installed in the camps as accommodation facilities, including kitchen, laundry and recreation areas [Dorms];

2) ancillary equipment such as walkways, electrical, waste water services, lift stations, lights, car plugs, steps, and landings [Ancillary Equipment];

3) smaller items including beds, mattresses, furniture, lights, electrical appliances, shelving, televisions, recreation items (such as gym equipment), pool and foosball tables, but excluding items such as cutlery or bedding [Small Wares].

[4] The claim of 726, latterly, also seeks confirmation of ownership for six "Jack and Jill" Dorms located at the farm property of CNC and intended for delivery to a camp in Bonnyville; as well as two sets of equipment allegedly swapped at a different camp, Kilometer 147.

[5] In addition, the Court is asked to determine whether the property claims of Great White Sand Tiger Lodging Ltd [Sand Tiger] in certain Dorms as well as chattels or Small Wares at other locations operated by CNC take priority or are otherwise exempted from the *CCAA* Proceedings.

[6] The Canadian Western Bank [CWB] claims a prior and overriding security interest against the property sought by 726 as well as the Small Wares sought by Sand Tiger. CWB opposes any declaration of property interests or priority against its entitlements as the primary secured creditor of CNC, subject to a limited reduction of its interest, as will need to be identified in specific context.

[7] The steps to identify claims and priorities were ordered on September 6, 2018: all claimants were to file affidavits by October 4, 2018 to be resolved at a subsequent hearing of disputes. Extensive materials were filed on that date by 726, without mention of Ancillary Equipment or Small Wares. Extensions were granted to accommodate additional new counsel for 726, to file further materials, to conduct Questioning and provide written submissions.

[8] The Court accepted still more evidence from 726 during oral argument. However, when disputes persisted as to inappropriate submission by installment of information of limited

Tab 9

Philippe Adrien, Emilia Berardi, Paul Creador, Lorenzo Abel Vasquez and Lindy Wagner on their own behalf and on behalf of the other former employees of Rizzo & Rizzo Shoes Limited *Appellants*

v.

Zittrer, Siblin & Associates, Inc., Trustees in Bankruptcy of the Estate of Rizzo & Rizzo Shoes Limited *Respondent*

and

The Ministry of Labour for the Province of Ontario, Employment Standards Branch *Party*

INDEXED AS: RIZZO & RIZZO SHOES LTD. (RE)

File No.: 24711.

1997: October 16; 1998: January 22.

Present: Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Employment law — Bankruptcy — Termination pay and severance available when employment terminated by the employer — Whether bankruptcy can be said to be termination by the employer — Employment Standards Act, R.S.O. 1980, c. 137, ss. 7(5), 40(1), (7), 40a — Employment Standards Amendment Act, 1981, S.O. 1981, c. 22, s. 2(3) — Bankruptcy Act, R.S.C., 1985, c. B-3, s. 121(1) — Interpretation Act, R.S.O. 1990, c. I.11, ss. 10, 17.

A bankrupt firm's employees lost their jobs when a receiving order was made with respect to the firm's property. All wages, salaries, commissions and vacation pay were paid to the date of the receiving order. The province's Ministry of Labour audited the firm's records to determine if any outstanding termination or severance pay was owing to former employees under the *Employment Standards Act* ("*ESA*") and delivered a proof of claim to the Trustee. The Trustee disallowed the claims on the ground that the bankruptcy of an employer does not constitute dismissal from employment and accordingly creates no entitlement to sever-

Philippe Adrien, Emilia Berardi, Paul Creador, Lorenzo Abel Vasquez et Lindy Wagner en leur propre nom et en celui des autres anciens employés de Rizzo & Rizzo Shoes Limited *Appelants*

c.

Zittrer, Siblin & Associates, Inc., syndic de faillite de Rizzo & Rizzo Shoes Limited *Intimée*

et

Le ministère du Travail de la province d'Ontario, Direction des normes d'emploi *Partie*

RÉPERTORIÉ: RIZZO & RIZZO SHOES LTD. (RE)

N° du greffe: 24711.

1997: 16 octobre; 1998: 22 janvier.

Présents: Les juges Gonthier, Cory, McLachlin, Iacobucci et Major.

EN APPEL DE LA COUR D'APPEL DE L'ONTARIO

Employeur et employé — Faillite — Indemnités de licenciement et de cessation d'emploi payables en cas de licenciement par l'employeur — Faillite peut-elle être assimilée au licenciement par l'employeur? — Loi sur les normes d'emploi, L.R.O. 1980, ch. 137, art. 7(5), 40(1), (7), 40a — Employment Standards Amendment Act, 1981, L.O. 1981, ch. 22, art. 2(3) — Loi sur la faillite, L.R.C. (1985), ch. B-3, art. 121(1) — Loi d'interprétation, L.R.O. 1990, ch. I.11, art. 10, 17.

Les employés d'une entreprise en faillite ont perdu leur emploi lorsqu'une ordonnance de séquestre a été rendue à l'égard des biens de l'entreprise. Tous les salaires, les traitements, toutes les commissions et les paies de vacances ont été versés jusqu'à la date de l'ordonnance de séquestre. Le ministère du Travail de la province a vérifié les dossiers de l'entreprise pour déterminer si des indemnités de licenciement ou de cessation d'emploi devaient encore être versées aux anciens employés en application de la *Loi sur les normes d'emploi* (la «*LNE*») et il a remis une preuve de réclamation au syndic. Ce dernier a rejeté les réclamations pour le the words, "Where . . . fifty or more employees have their employment terminated by an employer. . . ." Therefore, the question on which this appeal turns is whether, when bankruptcy occurs, the employment can be said to be terminated "by an employer".

19 The Court of Appeal answered this question in the negative, holding that, where an employer is petitioned into bankruptcy by a creditor, the employment of its employees is not terminated "by an employer", but rather by operation of law. Thus, the Court of Appeal reasoned that, in the circumstances of the present case, the *ESA* termination pay and severance pay provisions were not applicable and no obligations arose. In answer, the appellants submit that the phrase "terminated by an employer" is best interpreted as reflecting a distinction between involuntary and voluntary termination of employment. It is their position that this language was intended to relieve employers of their obligation to pay termination and severance pay when employees leave their jobs voluntarily. However, the appellants maintain that where an employee's employment is involuntarily terminated by reason of their employer's bankruptcy, this constitutes termination "by an employer" for the purpose of triggering entitlement to termination and severance pay under the *ESA*.

20 At the heart of this conflict is an issue of statutory interpretation. Consistent with the findings of the Court of Appeal, the plain meaning of the words of the provisions here in question appears to restrict the obligation to pay termination and severance pay to those employers who have actively terminated the employment of their employees. At first blush, bankruptcy does not fit comfortably into this interpretation. However, with respect, I believe this analysis is incomplete.

21 Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994) (hereinafter "*Construction of Statutes*"); Pierre-André Côté, *The Interpretation of Legisla-*

licencier un employé . . .» Le paragraphe 40*a*(1a) contient également les mots: «si [. . .] l'employeur licencie cinquante employés ou plus . . .» Par conséquent, la question dans le présent pourvoi est de savoir si l'on peut dire que l'employeur qui fait faillite a licencié ses employés.

La Cour d'appel a répondu à cette question par la négative, statuant que, lorsqu'un créancier présente une pétition en faillite contre un employeur, les employés ne sont pas licenciés par l'employeur mais par l'effet de la loi. La Cour d'appel a donc estimé que, dans les circonstances de l'espèce, les dispositions relatives aux indemnités de licenciement et de cessation d'emploi de la *LNE* n'étaient pas applicables et qu'aucune obligation n'avait pris naissance. Les appelants répliquent que les mots «l'employeur licencie» doivent être interprétés comme établissant une distinction entre la cessation d'emploi volontaire et la cessation d'emploi forcée. Ils soutiennent que ce libellé visait à dégager l'employeur de son obligation de verser des indemnités de licenciement et de cessation d'emploi lorsque l'employé quittait son emploi volontairement. Cependant, les appelants prétendent que la cessation d'emploi forcée résultant de la faillite de l'employeur est assimilable au licenciement effectué par l'employeur pour l'exercice du droit à une indemnité de licenciement et à une indemnité de cessation d'emploi prévu par la *LNE*.

Une question d'interprétation législative est au centre du présent litige. Selon les conclusions de la Cour d'appel, le sens ordinaire des mots utilisés dans les dispositions en cause paraît limiter l'obligation de verser une indemnité de licenciement et une indemnité de cessation d'emploi aux employeurs qui ont effectivement licencié leurs employés. À première vue, la faillite ne semble pas cadrer très bien avec cette interprétation. Toutefois, en toute déférence, je crois que cette analyse est incomplète.

Bien que l'interprétation législative ait fait couler beaucoup d'encre (voir par ex. Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3e éd. 1994) (ci-après «*Construction of Statutes*»); Pierre-André Côté, *Interprétation des lois* (2e éd.

tion in Canada (2nd ed. 1991)), Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:

> Today there is only one principle or approach, namely, the words of an Act are 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 Parliament.

Recent cases which have cited the above passage with approval include: *R. v. Hydro-Québec*, [1997] 1 S.C.R. 213; *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411; *Verdun v. Toronto-Dominion Bank*, [1996] 3 S.C.R. 550; *Friesen v. Canada*, [1995] 3 S.C.R. 103.

1990)), Elmer Driedger dans son ouvrage intitulé *Construction of Statutes* (2e éd. 1983) résume le mieux la méthode que je privilégie. Il reconnaît que l'interprétation législative ne peut pas être fondée sur le seul libellé du texte de loi. À la p. 87, il dit:

> [TRADUCTION] Aujourd'hui il n'y a qu'un seul principe ou solution: il faut lire les termes d'une loi dans leur contexte global en suivant le sens ordinaire et grammatical qui s'harmonise avec l'esprit de la loi, l'objet de la loi et l'intention du législateur.

Parmi les arrêts récents qui ont cité le passage ci-dessus en l'approuvant, mentionnons: *R. c. Hydro-Québec*, [1997] 1 R.C.S. 213; *Banque Royale du Canada c. Sparrow Electric Corp.*, [1997] 1 R.C.S. 411; *Verdun c. Banque Toronto-Dominion*, [1996] 3 R.C.S. 550; *Friesen c. Canada*, [1995] 3 R.C.S. 103.

I also rely upon s. 10 of the *Interpretation Act*, R.S.O. 1980, c. 219, which provides that every Act "shall be deemed to be remedial" and directs that every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit".

Je m'appuie également sur l'art. 10 de la *Loi d'interprétation*, L.R.O. 1980, ch. 219, qui prévoit que les lois «sont réputées apporter une solution de droit» et doivent «s'interpréter de la manière la plus équitable et la plus large qui soit pour garantir la réalisation de leur objet selon leurs sens, intention et esprit véritables». 22

Although the Court of Appeal looked to the plain meaning of the specific provisions in question in the present case, with respect, I believe that the court did not pay sufficient attention to the scheme of the *ESA*, its object or the intention of the legislature; nor was the context of the words in issue appropriately recognized. I now turn to a discussion of these issues.

Bien que la Cour d'appel ait examiné le sens ordinaire des dispositions en question dans le présent pourvoi, en toute déférence, je crois que la cour n'a pas accordé suffisamment d'attention à l'économie de la *LNE*, à son objet ni à l'intention du législateur; le contexte des mots en cause n'a pas non plus été pris en compte adéquatement. Je passe maintenant à l'analyse de ces questions. 23

In *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986, at p. 1002, the majority of this Court recognized the importance that our society accords to employment and the fundamental role that it has assumed in the life of the individual. The manner in which employment can be terminated was said to be equally important (see also *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701). It was in this context that the majority in *Machtinger* described, at p. 1003, the object of the *ESA* as being the protection of ". . . the interests of employees by requiring employers to comply with

Dans l'arrêt *Machtinger c. HOJ Industries Ltd.*, [1992] 1 R.C.S. 986, à la p. 1002, notre Cour, à la majorité, a reconnu l'importance que notre société accorde à l'emploi et le rôle fondamental qu'il joue dans la vie de chaque individu. La manière de mettre fin à un emploi a été considérée comme étant tout aussi importante (voir également *Wallace c. United Grain Growers Ltd.*, [1997] 3 R.C.S. 701). C'est dans ce contexte que les juges majoritaires dans l'arrêt *Machtinger* ont défini, à la p. 1003, l'objet de la *LNE* comme étant la protection «. . . [d]es intérêts des employés en exigeant que 24

Tab 10

City of Calgary *Appellant*

v.

United Taxi Drivers' Fellowship of Southern Alberta, Rashpal Singh Gosal, Haringer Singh Dhesi, Aero Cab Ltd. and Air Linker Cab Ltd. *Respondents*

and

Attorney General of Alberta *Intervener*

Indexed as: United Taxi Drivers' Fellowship of Southern Alberta *v.* Calgary (City)

Neutral citation: 2004 SCC 19.

File No.: 29321.

2003: December 8; 2004: March 25.

Present: McLachlin C.J. and Iacobucci, Major, Bastarache, Binnie, Arbour, LeBel, Deschamps and Fish JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA

Municipal law — Bylaws — Jurisdiction to pass bylaws — Municipal bylaw regulating taxi industry by stipulating licence requirements and freezing number of licences — Proper approach to interpretation of statutes empowering municipalities — Whether bylaw ultra vires municipality under its governing legislation — Municipal Government Act, S.A. 1994, c. M-26.1, ss. 7, 8, 9.

Administrative law — Judicial review — Standard of review applicable to decision of municipality delineating its jurisdiction.

The City of Calgary regulates its taxi industry by virtue of the *Taxi Business Bylaw* which requires that all taxis have a taxi plate licence. In 1993, the bylaw froze the number of taxi plate licences issued. The following year, the provincial government enacted a new *Municipal Government Act*. The respondents challenged the validity of the freeze on the issuance of taxi plate licences on the basis that the freeze is *ultra vires* the City under its governing legislation, the *Municipal Government Act*. The trial judge held that the City had authority under the new

Ville de Calgary *Appelante*

c.

United Taxi Drivers' Fellowship of Southern Alberta, Rashpal Singh Gosal, Haringer Singh Dhesi, Aero Cab Ltd. et Air Linker Cab Ltd. *Intimés*

et

Procureur général de l'Alberta *Intervenant*

Répertorié : United Taxi Drivers' Fellowship of Southern Alberta *c.* Calgary (Ville)

Référence neutre : 2004 CSC 19.

N° du greffe : 29321.

2003 : 8 décembre; 2004 : 25 mars.

Présents : La juge en chef McLachlin et les juges Iacobucci, Major, Bastarache, Binnie, Arbour, LeBel, Deschamps et Fish.

EN APPEL DE LA COUR D'APPEL DE L'ALBERTA

Droit municipal — Règlements — Compétence en matière d'adoption de règlement — Règlement municipal régissant le secteur des taxis en prévoyant des exigences en matière de permis et le gel du nombre de permis — Démarche à adopter pour l'interprétation des lois habilitant les municipalités — Le règlement outrepasse-t-il la compétence conférée à la municipalité par la loi habilitante? — Municipal Government Act, S.A. 1994, ch. M-26.1, art. 7, 8, 9.

Droit administratif — Contrôle judiciaire — Norme de contrôle applicable à la décision de la municipalité de définir sa compétence.

La Ville de Calgary réglemente son secteur des taxis en l'assujettissant au *Taxi Business Bylaw*, qui exige que tous les taxis aient une plaque de taxi. En 1993, le règlement gèle le nombre de plaques de taxi pouvant être délivrées. L'année suivante, le gouvernement de la province a édicté une nouvelle *Municipal Government Act*. Les intimés contestent la validité du gel de la délivrance de plaques de taxi au motif qu'il outrepasse la compétence conférée à la municipalité par la loi habilitante, la *Municipal Government Act*. Selon le juge de première only required where a municipality's adjudicative or policy-making function is being exercised.

pragmatique et fonctionnelle pour déterminer s'il y a eu excès de pouvoir; une telle démarche ne s'impose que dans le cas où une municipalité exerce une fonction juridictionnelle ou une fonction de prise de décisions de principe.

B. *The Proper Approach to the Interpretation of Municipal Powers*

B. *L'interprétation correcte des pouvoirs municipaux*

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 interpretive 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: *The Municipal Act*, S.M. 1996, c. 58, C.C.S.M. c. M225; *Municipal Government Act*, S.N.S. 1998, c. 18; *Municipal Act*, R.S.Y. 2002, c. 154; *Municipal Act, 2001*, S.O. 2001, c. 25; *The Cities Act*, S.S. 2002, c. C-11.1. 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.

6

L'évolution de la municipalité moderne a entraîné un virage dans la démarche à adopter pour interpréter les lois habilitant les municipalités. Dans *Produits Shell Canada Ltée c. Vancouver (Ville)*, [1994] 1 R.C.S. 231, p. 244-245, la juge McLachlin (plus tard Juge en chef) reconnaît ce virage notable dans la nature des municipalités. La dichotomie entre interprétation « bienveillante » et interprétation « stricte » fait place à une interprétation téléologique large des pouvoirs municipaux : *Nanaimo*, précité, par. 18. Cette méthode d'interprétation s'est développée en même temps que la méthode moderne de rédaction des lois sur les municipalités. Plusieurs provinces, au lieu de conférer aux municipalités des pouvoirs précis dans des domaines particuliers, préfèrent leur accorder un pouvoir général dans des domaines définis en termes généraux : *Loi sur les municipalités*, L.M. 1996, ch. 58, C.P.L.M. ch. M225; *Municipal Government Act*, S.N.S. 1998, ch. 18; *Loi sur les municipalités*, L.R.Y. 2002, ch. 154; *Loi de 2001 sur les municipalités*, L.O. 2001, ch. 25; *Cities Act*, S.S. 2002, ch. C-11.1. Ce virage en matière de rédaction législative reflète la véritable nature des municipalités modernes, qui ont besoin de plus de souplesse pour réaliser les objets de leur loi habilitante : *Shell Canada*, p. 238 et 245.

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 licences, the provisions of the Act must be construed in a broad and purposive manner.

7

La *Municipal Government Act* de l'Alberta suit la méthode moderne de rédaction des lois sur les municipalités. L'intention du législateur d'accroître les pouvoirs des municipalités en formulant en termes larges et généraux les dispositions de la loi relatives à la prise de règlements est expressément énoncée à l'art. 9. De ce fait, pour déterminer si une municipalité est habilitée à exercer un pouvoir donné, comme celui de limiter le nombre de plaques de taxi, il faut donner une interprétation téléologique large aux dispositions de la loi.

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 Parliament": E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87; *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, 2002 SCC 42, 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 objects.

C. *The City's Power to Limit the Number of Licences*

9 The respondents argue that the City does not have the power to limit the number of taxi plate licences under the Act. They submit that the authority to regulate has never implied numerical limits and that ss. 7 and 8 of the current *Municipal Government Act*, unlike s. 234 of the previous *Municipal Government Act*, neither expressly nor impliedly grant a municipality the power to limit the number of taxi plate licences. The respondents argue that while the Act expands the "matters" over which municipalities may enact bylaws under s. 7, the Act limits the "powers" exercisable by municipalities to those expressly specified. As the power to limit the number of taxi plate licences is not expressly specified in s. 8, the respondents allege it has been abolished.

10 In my respectful opinion, the respondents' argument must fail.

11 It is well established that the legislature is presumed not to alter the law by implication: *Sullivan and Driedger on the Construction of Statutes* (4th ed. 2002), at p. 395. Rather, where it intends to depart from prevailing law, the legislature will do so expressly. Here, there is no indication in the Act that the legislature intended to remove the municipality's

Une interprétation téléologique large des lois sur les municipalités est également compatible avec l'approche générale adoptée par la Cour en matière d'interprétation législative. Selon l'analyse contextuelle, il faut interpréter [TRADUCTION] « les termes d'une loi dans leur contexte global selon le sens ordinaire et grammatical qui s'harmonise avec l'esprit de la loi, l'objet de la loi et l'intention du législateur » : E. A. Driedger, *Construction of Statutes* (2e éd. 1983), p. 87; *Bell ExpressVu Limited Partnership c. Rex*, [2002] 2 R.C.S. 559, 2002 CSC 42, par. 26. Cette approche concorde également avec l'art. 10 de l'*Interpretation Act* de l'Alberta, R.S.A. 2000, ch. I-8, qui prévoit que tout texte de la province s'interprète de la manière la plus équitable et la plus large qui soit compatible avec la réalisation de son objet.

C. *Le pouvoir de la Ville de limiter le nombre de permis*

Les intimés soutiennent que la Ville n'a pas le pouvoir de limiter le nombre de plaques de taxi en vertu de la loi. Ils font valoir que le pouvoir de réglementer n'a jamais impliqué le pouvoir d'imposer des limites quantitatives et que les art. 7 et 8 de la *Municipal Government Act* actuelle, contrairement à l'art. 234 de l'ancienne *Municipal Government Act*, n'accordent ni expressément ni implicitement aux municipalités le droit de limiter le nombre de plaques de taxi. Selon eux, alors qu'elle élargit les « domaines » dans lesquels les municipalités peuvent prendre des règlements en vertu de l'art. 7, la loi limite les « pouvoirs » pouvant être exercés par les municipalités à ceux qu'elle prévoit expressément. Comme le pouvoir de limiter le nombre de plaques de taxi n'est pas expressément prévu par l'art. 8, les intimés affirment qu'il a été supprimé.

À mon avis, l'argument des intimés doit être rejeté.

Il est bien établi que le législateur est présumé ne pas modifier implicitement le droit : *Sullivan and Driedger on the Construction of Statutes* (4e éd. 2002), p. 395. Lorsqu'il a l'intention de s'écarter du droit existant, le législateur le fait expressément. En l'espèce, rien dans la loi n'indique que le législateur avait l'intention de supprimer le pouvoir des

Tab 11

Carsons' Camp Ltd. v. Municipal Property Assessment Corp. et al.

[Indexed as: Carsons' Camp Ltd. v. Municipal Property Assessment Corp.]

88 O.R. (3d) 741

Court of Appeal for Ontario,
Simmons, MacFarland and Rouleau JJ.A.
January 14, 2008

Assessment -- Constitutionality -- Trailers owned by third parties which were placed on campground owner's land with sufficient permanency to be considered part of land being included in owner's property tax assessment -- Assessment of trailers not amounting to indirect tax -- Taxation of trailers being authorized by statute and not contravening s. 53 of Constitution Act, 1867 -- Assessment Act, R.S.O. 1990, c. A.31 -- Constitution Act, 1867, s. 53.

Assessment -- Interpretation -- "Current value" -- Inclusion of term "fee simple" in definition of "current value" not having effect of limiting tax assessment to interests owned by owner of the underlying land -- Section 19(1) of Assessment Act contemplating assessment of all that falls within expanded definition of "land" -- Trailers owned by third parties which were placed on campground owner's land with sufficient permanency to be considered part of land being properly included in owner's property tax assessment -- Assessment Act, R.S.O. 1990, c. A.31, ss. 1, 19(1).

The applicant owned and operated a campground which contained campsites that were rented out to third party trailer owners on a seasonal basis. The respondent determined that a number of the third-party-owned trailers were placed on the applicant's

(d) all buildings, or any part of any building, and all structures, machinery and fixtures erected or placed upon, in, over, under or affixed to land,

(e) all structures and fixtures erected or placed upon, in, over, under or affixed to a highway, lane or other public communication or water, but not the rolling stock of a transportation system.

(Emphasis added) [page746]

[13] This broad definition has not changed since its introduction in the Act in 1904 and its interpretation continues to be governed by the Supreme Court of Canada's decision in Northern Broadcasting Co. v. Mountjoy (Improvement District), [1950] S.C.R. 502, [1950] S.C.J. No. 19. In that case, the majority held that the expanded definition of land in the Act meant that certain items not considered fixtures at common law could nonetheless be considered part of the land for the purpose of valuation, so long as they are placed upon or affixed to land with some degree of permanency.

(b) Land is assessed against the owner

[14] Section 17(1) of the Act states that "land shall be assessed against the owner". The term "owner" is not defined in the statute, but has been interpreted to mean the legal owner of the land: see McMaster University and City of Hamilton (Re) (1973), 1 O.R. (2d) 378, [1973] O.J. No. 2179 (C.A.), at p. 383 O.R., affd (1975), 16 N.R. 589 (S.C.C.).

[15] Where the land is comprised of interests owned by tenants or third parties other than the owner of the underlying land, the Act does not provide for separate assessment of each individual owner: Myers v. Ontario Regional Assessment Commissioner, Region No. 32 (1991), 3 O.R. (3d) 488, [1991] O.J. No. 910 (Div. Ct.), at p. 491 O.R. In Myers, the court held that trailers, which were occupied year round in that case, were assessable against the owner of the land upon which they were placed or to which they were affixed, notwithstanding

the trailers being owned by third parties.

(c) Assessment of land is based on current value

[16] Section 19(1) of the Act provides that "[t]he assessment of land shall be based on its current value". "Current value" is defined in s. 1:

> "current value" means, in relation to land, the amount of money the fee simple, if unencumbered, would realize if sold at arm's length by a willing seller to a willing buyer;

[17] The term "current value" first appeared in the Act in 1997. Prior to that, the statute provided that land was to be assessed at its "market value", which was defined as "the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer".

[18] This change in wording to include the term "fee simple" in the definition of "current value" is at the centre of this case. The parties disagree as to whether the introduction of the term "fee [page747] simple" has the effect of limiting tax assessment to interests owned by the owner of the underlying land.

III. The Judgment Below

[19] The application judge appears to have accepted that the 229 trailers in issue were placed on Carsons' land with sufficient permanency so as to constitute land within the expanded definition in s. 1 of the Act. Following Myers, he also accepted that the entire value of a parcel of land is to be included in a single assessment against the owner of the underlying land, and that the Act does not provide for a separate assessment being produced for each trailer distinct from the land upon which it is placed or to which it is affixed.

[20] Nevertheless, the application judge concluded that the 229 trailers could not be assessed and taxed as land because they did not form part of the "fee simple" of Carsons'

Tab 12

1994 CarswellOnt 599
Ontario Court of Justice (General Division)

Royal Bank v. Lawton Developments Inc.

1994 CarswellOnt 599, [1994] O.J. No. 375, 19 M.P.L.R. (2d) 170, 45 A.C.W.S. (3d) 1310

ROYAL BANK OF CANADA v. LAWTON DEVELOPMENT INC.

MacPherson J.

Heard: February 17, 1994
Judgment: February 24, 1994
Docket: Doc. 92-CQ-20369

Counsel: *W. Eric Kay*, for plaintiff and receiver.
Thomas H. Wall, for defendant.

MacPherson J.:

Introduction

1 The principal issue raised by this motion is whether the protection afforded by special liens to municipal taxes and imposts extends to the interest, penalties and costs associated with collecting them.

Facts

2 The defendant Lawton Developments Ltd. (henceforth "Lawton"), owner of a major condominium project in Toronto, has gone into receivership. The plaintiff Royal Bank of Canada (henceforth "Royal Bank") is the largest claimant of the money being administered by the court-appointed Receiver. The Receiver is BDO Dunwoody Ward Mallette Inc. Since August 1992, it has prepared five reports dealing with various aspects of the collection, administration, sale and distribution of the assets of Lawton.

3 In its Fifth Report, dated December 10, 1993, the Receiver requests the Court's direction with respect to two matters, realty taxes and sewer impost charges. The background giving rise to the Receiver's questions, the questions themselves, and the Receiver's position on them are contained in these passages from the Fifth Report, at pp. 7-10:

> **2. Closing Adjustments and Holdbacks**
>
> 20. A copy of the final statement of adjustments after the 24 November 1993 Closing of the sale to the Purchaser is attached hereto as Exhibits. A summary of related realty taxes and sewer impost fees claimed by The City of Toronto for 1991 to 1993 is attached as Exhibit 6.
>
> **(a) Property Taxes**
>
> 22. ...
>
> The Receiver disputes the inclusion of penalties claimed by the City of Toronto in the special lien established by Section 382 of the Municipal Act. In addition, the Receiver believes that the charge for Bailiff's costs in connection with the 1992 realty taxes should not have been incurred as it relates to a proceeding against the property and assets of Lawton initiated after the Court imposed a stay of proceedings.
>
> . . . . .
>
> 24. The Receiver requests the Court's direction with regard to the following matters:

(1) Should the Receiver pay the penalties (approximating $5,800) claimed by City of Toronto on account of 1991 and 1992 realty taxes on the basis that these have priority over the registered mortgagees?

(2) Should the Receiver pay the City of Toronto's claim for Bailiff's costs of about $3,500 in connection with the 1992 realty taxes which were incurred after the Court Order imposing a stay of proceedings?

(b) Sewer Impost Charges

25. The principal amount of the sewer impost charge has been paid to the City by the Receiver and was reimbursed to the Receiver by the Purchaser on closing. The Receiver, however, paid the additional sum of $7,948.73 on account of the penalties and interest, under protest.

26. The Receiver does not believe that the penalities, interest and Bailiff's costs charged by the City are included in the lien constituted by Section 221(27) of the Municipal Act, and furthermore, that this lien has the same priority over the registered mortgages as the special lien established by Section 382 of the Municipal Act. In addition, the Bailiff's costs were incurred after the order of the Honourable Mr. Justice Hoolihan dated June 5, 1992 which, inter alia, prohibited further proceedings against the property and assets of Lawton.

27. The Receiver requests that the Court provide its direction as to the priority of this claim and the following matter:

(1) Should the Receiver pay the penalties, interest and Bailiff's costs totalling almost $10,000 charged by the City of Toronto in connection with the Sewer Impost fee on the basis that these have priority over the registered mortgagees?

4 At the hearing of this motion, one counsel appeared on behalf of both the plaintiff Royal Bank and the Receiver in support of the Receiver's interpretations. The City of Toronto, represented by counsel, appeared to oppose the Receiver's interpretations.

Issues

5 There are two legal issues presented by this motion:

(1) Is the municipal sewer impost [1] claimed by the City of Toronto a special lien entitled to priority over the claims of the other creditors, including the plaintiff; and

(2) Are penalties, interest and costs associated with municipal taxes and municipal sewer charges included within the statutory liens protecting them? (Note: With respect to the sewer charge, this question is reached only if an affirmative answer is given to the first question.)

Analysis

Issue 1 — The Status of the Sewer Charge

6 The sewer charge which is in dispute in this application was imposed pursuant to the provisions of the City of Toronto By-law 314-67. [2] This by-law was enacted pursuant to *The City of Toronto Act, 1961-62*, S.O. 1961-62, c. 171, which provides in part:

1(1) Subject to the approval of the Ontario Municipal Board first being obtained, *the council of the Corporation may pass by-laws for imposing upon the owners of high-rise or other buildings*, as defined by the by-law, for the erection or enlargement of which a building permit was or is issued subsequent to the 6th day of March, 1962, or of any class or classes of such buildings, that impose or may impose a heavy load on the sewer system or water system, or both, by reason of which expenditures are or may be required *to provide additional sanitary or storm sewer* or water supply *capacity*, which, in the opinion of the council, would not otherwise be required, *a special charge or charges* over and above all other rates and charges to pay for all or part of the cost of providing the additional capacity.

(3) *Any charge or charges imposed under subsection 1 are a lien upon the land* on which the building is erected and may be collected in the same manner and with the same remedies as provided by *The Assessment Act* for the collection of real property taxes. (Emphasis added.)

7 The wording of By-law 314-67 is consistent with these provisions; indeed, the lien provision in the by-law, s. 4(3), is almost identical to s. 1(3) of *The City of Toronto Act*.

8 The Royal Bank and Receiver contend that, although s. 4(3) of the by-law establishes a lien in relation to the sewer charge, there is nothing to indicate that it is a lien having priority over other liens and other forms of security. Hence, they say, the bank's security, which was in place before the City's entitlement to the sewer charge, takes priority.

9 I do not agree with this submission. In *New Mount Sinai Hospital v. Toronto (City)*, [1973] S.C.R. 541, the question was whether the exemption from taxation in favour of public hospitals created by s. 3¶7 of *The Assessment Act*, R.S.O. 1970, c. 32, applied in the case of a special sewer charge levied by the very by-law in issue in this application. The Supreme Court of Canada gave an affirmative answer to the question. Hall, J., writing for the majority, said, at p. 546:

The special tax or levy here is a tax.

10 In a concurring judgment, Laskin, J. said, at p. 550:

The reasons of my brother Hall are on the footing that a tax is involved here, and I am of the same opinion.

11 It will be recalled that the charge imposed by s. 4(3) of By-law 314-67 is "a lien upon the land." Coupling this fact with the Supreme Court's decision in *New Mount Sinai Hospital* that the charge is a tax, the result is that the status and recovery of the tax are governed by s. 382 of the *Municipal Act*, R.S.O. 1990, c. M.45, which provides:

382. *The taxes due* upon any land with costs may be recovered with interest as a debt due to the municipality from the owner or tenant originally assessed therefor and from any subsequent owner of the whole or any part thereof, saving that person's recourse against any other person, and *are a special lien on the land in priority to every claim, privilege, lien or encumbrance of every person except the Crown*, and the lien and its priority are not lost or impaired by any neglect, omission or error of the municipality or of any agent or officer, or by want or registration. (Emphasis added.)

12 The underlined passages make it clear that a tax due upon land, which includes the sewer charge, has priority over all other forms of security except security held by the Crown. This conclusion has been reached by several judges of the Ontario courts in cases raising the relationship between a variety of municipal taxes and many different encumbrances held by private parties: see, for example, *Canada Mortgage & Housing Corp. v. Kitchener (City)* (1985), 50 O.R. (2d) 49 (Ont. H.C., per Potts, J.); *Scarbim Realty Ltd. v. Toronto (City)* (1978), 21 O.R. (2d) 558 (H.C., per Pennell, J.); *New Toronto (Town) v. Aull*, [1933] O.W.N. 661 (H.C., per Kerwin, J.). It follows that the security held by the Royal Bank in the instant case does not take priority over the money owed to the City of Toronto under the by-law establishing the sewer charge.

Issue 2 — The Content of Municipal Taxes and Charges

13 In addition to the actual municipal tax and sewer charge, the City also claims three other categories of money from the Receiver on the basis that they are directly related to the tax and charge. These three categories are interest, penalties for late payment, and bailiff costs associated with recovery of the tax money.

14 The Royal Bank and Receiver contend that these three items are not included within the subject matter protected by the special liens in s. 382 of the *Municipal Act* or By-law 314-67. What is accorded special protection under the liens, they say, are only the municipal "taxes" due under s. 382 of the *Municipal Act* and the sewer "charge" under By-law 314-67.

15 I do not agree with this submission. In my view, the interest, costs and penalties directly related to the collection of taxes after they are past due are entitled to be sheltered under the umbrella of the two special liens created by the statute and by-law.

16 It seems obvious that if a taxpayer owes a $1,000 municipal tax on January 1, 1994 and does not pay it, then the municipality is deprived of the use of that money. It will not have the money, to which it is legally entitled and on which it has counted, available to support the education, recreation, housing, social support or other programmes which it is required to provide. If the municipality receives or recovers the $1,000 at a later time, then, in fairness, it should also receive any additional amounts that assist in placing the municipality in the position it would have been in if the tax had been paid on time. Interest payments and bailiff costs are directly related to this result. Penalties are not quite as directly related; however, they are, in my view, close enough to this result in that they are imposed in recognition of the high administrative costs associated with late payment of taxes.

17 Of course, the argument against this interpretation is the oft-cited principle that a taxing statute must be strictly construed. The Royal Bank and Receiver, citing *Cox v. Rabbits* (1878), 3 App. Cas. 473 , rely on this principle. Their simple submission is that, since the provisions establishing the special liens say that they cover the municipal tax and the sewer charge and nothing more, then the provisions should be strictly construed so as not to shelter interest, penalties and bailiff costs.

18 In my opinion, this argument ignores an important development in statutory interpretation and in taxation law. In recent years, Canadian courts have recognized that taxes serve important social purposes and are, therefore, entitled to judicial respect provided they are imposed in a clear fashion by a proper legislative body.

19 Gone are the days described by Estey, J. in *Stubart Investments Ltd. v. R.*, [1984] 1 S.C.R. 536, at p. 577:

> At one time, the House of Lords, as interpreted by Professor John Willis, had ruled that it was "not only legal but moral to dodge the Inland Revenue" ... .

In their place is the modern Canadian view, expressed by Estey, J. two years later in *Leemar Holdings Ltd. v. R.*, (sub nom. *R. v. Golden)* [1986] 1 S.C.R. 209, at pp. 214-215:

> [I]n the construction of taxation statutes the law is not confined to a literal and virtually meaningless interpretation of the Act where the words will support on a broader construction *a conclusion which is workable and in harmony with the evident purposes of the Act* in question. Strict construction in the historic sense no longer finds a place in the canons of interpretation applicable to taxation statutes in an era such as the present, where *taxation serves many purposes* in addition to the old and traditional object of raising the cost of government from a somewhat unenthusiastic public. (Emphasis added.)

See also: *Stubart Investments*, supra, at pp. 576-578.

20 The purpose of the municipal tax and sewer charge in issue in this litigation is to provide the City of Toronto with specific amounts of revenue at certain prescribed times. If the taxpayer does not pay these amounts, then it is fair, in my view, to interpret the provisions imposing the tax and charge as including other costs directly related to trying to place the City in its original position. Interest charges, penalties, and bailiff costs are such costs.

21 I would supplement these general reasons respecting all of the related costs with an additional reason relating to only the costs associated with the municipal tax. It will be recalled that s. 382 of the *Municipal Act* provides in part:

> 382. The taxes due upon any land with costs may be recovered with interest as a debt due to the municipality ... and are a special lien on the land in priority to every claim ...

22 In my opinion, the words "costs" and "interest" are joined with the word "taxes," and all are then covered by the special lien.

23 One final point needs to be addressed. The defendant was placed in receivership by Order of Hoolihan, J. dated June 5, 1992. There are three amounts for bailiff costs claimed by the City. Two of them relate to costs incurred by bailiffs *after* June 5, 1992. At the hearing of the motion, the City withdrew its claim for these two amounts, in recognition of the fact that a submission to the Receiver, not a unilateral seizure by a bailiff, was the only route open to it once an Order of Receivership had been made. The third cost incurred by a bailiff pre-dated the judicial order, and is, in line with my general reasoning, recoverable by the City.

Conclusion

24 The answers to the two questions set out in the Issues section of this judgment are:

25 (1) The municipal sewer charge claimed by the City of Toronto is a special lien entitled to priority over the claims of the other creditors, including the plaintiff; and

26 (2) The penalties, interest and costs (with the exception of the two amounts claimed for bailiff services after June 5, 1992) associated with the municipal tax and sewer charge are included within the special liens protecting the tax and charge.

27 Accordingly, the City is entitled to receive from the money being administered by the Receiver $9,668.82 in penalties, $6,159.99 in interest and $1,478.80 in bailiff costs in relation to the municipal tax, $5,502.96 in penalties, $2,445.77 in interest and $0 in bailiff costs in relation to the sewer charge.

28 Costs may be spoken to, if necessary.

Order accordingly.

Footnotes

1 The Royal Bank does not challenge the priority of the municipal tax over its security, almost certainly because of the clear language of s. 382 of the *Municipal Act*, set out infra.

2 The Royal Bank contends that the governing provision is s. 221 of the *Municipal Act*. I do not agree; in my view, *The City of Toronto Act* and its by-laws are directly applicable to the issues in this motion. In any case, even if s. 221 of the *Municipal Act* were applicable, my analysis of both issues would not change because the structure and contents of s. 221 of the *Municipal Act* and By-law 314-67 are very similar.

Tab 13

2001 CarswellOnt 525
Ontario Court of Appeal

Toronto Dominion Bank v. Usarco Ltd.

2001 CarswellOnt 525, [2001] O.J. No. 649, 103 A.C.W.S. (3d) 740, 142 O.A.C. 70, 17 M.P.L.R. (3d) 57, 196 D.L.R. (4th) 448, 24 C.B.R. (4th) 303

The Toronto-Dominion Bank (Moving Party / Respondent / Appellant) and Usarco Limited and Frank Levy (Defendants) and The Corporation of the City of Hamilton (Moving Party / Respondent / Respondent in appeal) and Coopers & Lybrand Limited (Moving Party / Respondent / Respondent in appeal) and The Ministry of Labour (Respondent / Respondent in appeal)

Austin, Laskin, Simmons JJ.A.

Heard: October 11-12, 2000
Judgment: February 28, 2001
Docket: CA C29472

Proceedings: affirming (1997), 40 M.P.L.R. (2d) 293, 50 C.B.R. (3d) 127, 31 O.T.C. 81 (Ont. Gen. Div.)

Counsel: *John A. Campion*, *Michael J. MacNaughton* and *Carole J. Hunter*, for Appellant, The Toronto Dominion Bank
Neil C. Saxe, for Respondent, Coopers & Lybrand Limited
F. Paul Morrison and *David E. Leonard*, for Respondent, Corporation of the City of Hamilton

The judgment of the court was delivered by *Austin J.A.*:

1 The Toronto-Dominion Bank ("the Bank") appeals from the decision of Rosenberg J. made June 2, 1997, that Coopers & Lybrand Limited (the "Receiver") should have paid to the Corporation of the City of Hamilton (the "City") the municipal taxes on the property of Usarco Limited ("Usarco") and Frank Levy ("Levy") in receivership as they accrued due.

2 From the Bank's perspective, the issue is whether the claim of a fully secured creditor ranks ahead of a municipality's claim for realty taxes on a receivership. The City's position is that it had priority and that the Receiver was wrong in not paying the taxes as they accrued due. Rosenberg J. agreed with the City's position and ordered the Bank to refund the money received during the receivership to the Receiver. The Receiver was also ordered to pay to the City all the money it had realized with the exception of its fees and disbursements, including all the money refunded to it by the Bank. Rosenberg J.'s reasons are reported at (1997), 50 C.B.R. (3d) 127 (Ont. Gen. Div.) and at (1997), 40 M.P.L.R. (2d) 293 (Ont. Gen. Div.). I agree with his reasons and his conclusion. My reasons follow.

3 The matters in issue involve the duty of a court-appointed receiver and the interpretation of certain sections of the *Municipal Act* R.S.O. 1990 c. M.45 (the "Act"), insofar as they bear on the issue of priority. The facts are set out fully in the reasons of Rosenberg J. A summary will suffice for the purposes of the appeal.

4 Levy was a principal of Usarco. Usarco was a scrap metal dealer and processor for over 40 years. It operated on five properties in Hamilton, Ontario, some registered in its name and others in the name of Levy. All or some of these lands were believed to be highly contaminated because of the operations carried out on them.

5 Levy and Usarco had been dealing with the Bank for about 40 years. In 1989, Usarco's business was failing and Usarco owed the Bank about $18,000,000. As security for Usarco's obligations the Bank held, among other security, a registered general security agreement dated December 22, 1987, charging all of Usarco's property, a registered $3,000,000 demand debenture

charging all of Usarco's property, a registered general assignment of book debts, mortgages on 371 Wellington Street North and 735 Strathearne Avenue and guarantees of Usarco's debts to the Bank provided by Levy, secured by mortgages upon 363 Wellington Street, 675 Strathearne Avenue and 725 Strathearne Avenue, all in Hamilton.

6 The Receiver was appointed by the order of Borins J. on October 11, 1990. The Receiver was not to go into possession or to manage or continue the business because of the contamination. The Receiver's function was "to sell, lease, transfer or otherwise dispose of" the assets. Those assets consisted of the five properties and the buildings, contents and equipment on them. The Receiver was granted the power and authority but not the obligation to make payments to persons having prior mortgages, charges or encumbrances upon the assets and to pay any debts, charges or expenses of Usarco and Levy considered "necessary and desirable for the purposes of carrying out this Order." Usarco and Levy remained the owners of the assets. Any tenants were to pay rents and arrears to the Receiver, but the Receiver was not obligated to fulfil any of the obligations of Usarco or Levy as landlords. No proceedings were to be taken or continued against the Receiver without leave of the court.

7 The Receiver actively carried on the receivership from the date of the order until 1996. By that time some of the property had been sold to Archibald Leach ("Leach") and the receivership had been discontinued with respect to the balance of the assets in light of the fact that they were unsaleable. The Receiver and the Bank were in the process of winding up the receivership when the City brought a motion seeking to recover municipal realty taxes.

8 During the receivership the Receiver dealt with the Ministry of Labour respecting claims of former employees, the Ministry of the Environment respecting contamination of the premises and the City with respect to the removal of chemicals from the lands in question into the city at large. The Receiver also dealt with Dofasco with respect to a part of the premises leased to Dofasco.

9 During the receivership, the Receiver recorded receipts of $3,606,611.48 and disbursements of $2,561,238.30. Among the receipts was a payment by Dofasco of $115,245.23 in February 1993, for the years 1990, 1991 and 1992 in accordance with a lease requirement that the tenant's share of the municipal realty taxes be paid to the landlord.

10 Included in the disbursements made by the Receiver were the following:

Security	$267,638.39
Utilities	$120,687.06
Legal Fees	$110,756.34
Telephone	$ 4,408.66
Receiver's Fees	$467,374.52
Ministry of Labour	$509,557.14

The $115,245.23 paid by Dofasco to the Receiver on account of taxes was not paid over to the City.

11 As is the custom, the Receiver's activities were periodically reported to the court. These reports, some lengthy and detailed, were dated March 13 and July 14, 1992, November 15 and December 3, 1993, February 11 and August 10, 1994, September 28, 1995, and March 15 and October 30, 1996. They were presented to the court on or about their respective dates, each accompanied by a notice of motion requesting a particular order or orders, as for instance for the approval of a sale.

12 Although Dofasco's payment to the Receiver on account of taxes was made in February 1993, it does not appear in the lists of disbursements in the reports until October 1996. Presumably it was included under "Rental of Premises" in the earlier reports. No explanation for this accounting was provided. There is no reference to the payment of municipal realty taxes in any of the lists of disbursements in the reports.

13 As of October 11, 1990, $186,002.93 was owing on account of such taxes. Nothing was paid on that account by the Receiver. As a consequence, by January 15, 1997, $2,588,159 was owing for taxes, penalties and interest. No issue was raised with respect to the amounts of these debts.

14 The evidence before the court does not indicate when it was decided not to pay these taxes nor by whom or why. Borden & Elliot were the Receiver's solicitors. In June, 1992 they provided the Receiver with an opinion letter as to the Bank's priority over all other claims. "Unregistered Rights and Liens" were expressly excluded from that opinion. The letter dealt with municipal realty taxes at length. They were described as constituting a "special lien against the land in priority to all other claims except claims by the Crown". It was pointed out that notice of the lien did not require registration. As to s. 384 of the Act, which deals with leases, the letter stated that "[t]his provision takes effect upon the tenant receiving written notice from the "collector" or the treasurer of the municipality" and would not apply otherwise.

15 The only reflection of this opinion letter in the reports to the court is in the Report dated July 14, 1992, paragraph 8 of which states that:

> The Receiver has obtained an opinion from Messrs. Borden & Elliot that, subject to certain qualifications, the Security held by the Bank charges the Proceeds in priority to the claims of third parties.

16 That Report proposed that from its excess receipts, the Receiver should pay to the Bank $900,000 subject to agreement by the Bank to refund to the Receiver as much as might later be revealed to be required to satisfy the costs of the Receivership or a claim ranking in priority to the security held by the Bank. There was no indication in that Report that substantial municipal taxes were owing and were not being paid. Nor is there any indication that any consideration was given to the propriety or otherwise of non-payment of municipal taxes or to the question whether the court should be advised of such non-payment and direction sought.

17 In the first Report dated March 13, 1992, it was noted that a cash offer of $525,000 which had been made for the land and equipment "was withdrawn upon the offeror learning of the property taxes payable in respect of the Wellington Street property".

18 In the same Report, there is a reference to the Receiver being required to pay the Minister of Labour a sum in excess of $500,000 on account of wages, vacation pay, termination pay and severance pay of former employees. An order to this effect was made by Farley J. on August 2, 1991.

19 The Receiver's statement of receipts and disbursements to September 30, 1993, includes the following disbursements:

Pension Plan	$509,557.14
Receiver's Fees	$387,965.95
Security Charges	$253,201.10
Utilities	$120,687.06

There is no mention of municipal taxes.

20 The Report of November 15, 1993, indicated that under the agreement with Leach the purchaser would be responsible for the settlement of all property taxes and that, based on information supplied by the City, the property tax arrears were approximately $260,000. The same report indicated a net excess of receipts over disbursements of $1,322,988.64, $900,000 of which had already been remitted to the Bank.

21 In dealing with the sale to Leach, the Report of December 3, 1993, states that the agreement is "conditional upon Leach making an arrangement with the City of Hamilton with respect to outstanding tax arrears".

22 The motion which accompanied the Report of December 3, 1993, was made on notice to the City. This was the first notice the City had of the receivership or of any of the proceedings before the court. The City was not given notice because of tax arrears owing to the City, but because the City claimed the Receiver was responsible for certain costs incurred when chemicals from the property were spread within the City and a "state of emergency" was declared. The Receiver's response was to send the City a copy of the original receiving order referring:

liquidator or trustee or authorized trustee in bankruptcy shall pay the amount to the collector in preference and priority to any other and all other fees, charges, liens or claims.

33 Courts have long recognized the importance of taxation to society. In *Decker's Delicatessen, Re* (1924), 56 O.L.R. 140 (Ont. S.C.), Fisher J., in the course of interpreting the predecessor to s. 382 of the Act, made the following observation at 142:

> Governments and municipalities must secure revenue, otherwise they could not function; money must be secured, and taxation is the method adopted to secure it; and transactions between individuals must, therefore, unless excepted by statute, be subordinated to that of the Government or municipality.

34 Also on the subject of priority, he said at the same page:

> It also seems to me that banks, loan companies, and persons engaged in the lending of money must have in mind, when valuing the security upon which they make a loan, to provide for taxes due to Dominion and Provincial Governments, or to a municipality, as being a prior charge or encumbrance in the event of insolvency.

35 More recently, MacPherson J. in *Royal Bank v. Lawton Development Inc.* (1994), 19 M.P.L.R. (2d) 170 (Ont. Gen. Div.) noted at 176 that s. 382 of the Act and its related provisions deserved of broad construction. As he explained:

> In recent years, Canadian courts have recognized that taxes serve important social purposes and are, therefore, entitled to judicial respect provided they are imposed in a clear fashion by a proper legislative body.

MacPherson J. also commented on the importance of property taxes at p. 175:

> It seems obvious that if a taxpayer owes a $1,000 municipal tax on January 1, 1994, and does not pay it, then the municipality is deprived of the use of that money. It will not have the money, to which it is legally entitled and on which it has counted, available to support the education, recreation, housing, social support and other programmes which it is required to provide. . . .

36 Inherent in the Bank's appeal is the proposition that the Receiver had no duty to keep current and to pay the arrears of property taxes owed by Usarco and Levy out of the proceeds of the receivership. In my view, this proposition is wrong. It fails to recognize the principles enunciated in *Decker's Delicatessen, Re*, *supra*. Further, it has been specifically rejected in numerous cases.

37 In *Royal Bank v. Lawton Development Inc.*, *supra*, a court-appointed receiver sought the court's advice regarding the payment of certain moneys owed to the municipality. While the receiver did not question that it had an obligation to pay the accrued property taxes, it did question its obligation to pay, *inter alia*, the penalties, interest and costs assessed by the municipality. MacPherson J. specifically endorsed the receiver's recognition of its obligation to pay the accrued property taxes at p. 173 as follows:

> The Royal Bank does not challenge the priority of the municipal tax over its security, almost certainly because of the clear language of s. 382 of the *Municipal Act*. . .

MacPherson J. continued at pp. 174-175:

> . . . the status and recovery of [a municipal] tax are governed by s. 382 ... [The provisions of s. 382] make it clear that a tax due upon land ... has priority over all other forms of security, except security held by the Crown. This conclusion has been reached by several judges of the Ontario courts in cases raising the relationship between a variety of municipal taxes and many different encumbrances held by private parties . . . It follows that the security held by the Royal Bank in the instant case does not take priority over the money owed to the City of Toronto . . .

In the end, MacPherson J. had little difficulty deciding that the priority granted to the City of Toronto under s. 382 of the Act extended to interest, penalties and certain costs.

38 In *Hamilton Wentworth Credit Union Ltd. (Liquidator of) v. Courtcliffe Parks Ltd.* (1995), 28 M.P.L.R. (2d) 59 (Ont. Gen. Div. [Commercial List]) Blair J. observed that the receiver had not made tax payments to the municipality on an ongoing basis, nor had it made any arrangements specifically providing for such payment. In contrast, however, the receiver had made other payments, including legal fees, receivership fees and utilities. When the municipality proposed selling the property pursuant to its powers under the *Municipal Tax Sales Act*, R.S.O. 1990, c. M.60, it appeared there would be insufficient proceeds to pay both the property tax arrears and the receiver's own fees and disbursements. In denying the receiver priority over the municipality, Blair J. noted at p. 63:

> It is the failure [by the receiver] to keep taxes current that has led to the present predicament.

Blair J. also stated at pp. 72-73:

> Accordingly, I am of the opinion that the statutory scheme enacted through the *Municipal Act* and the *Municipal Tax Sales Act* for the imposition and collection of municipal property taxes precludes an order granting a receiver and manager priority over the Municipality for the receiver and manager's fees and disbursements, regardless of whether those fees and disbursements were incurred for the necessary preservation or improvement and realization of the property on behalf of all creditors.
>
> While this approach denies a receiver and manager a "super priority" with respect to municipal property taxes, it does not, in my view, alter what has traditionally been the case - and the understanding in the industry - concerning the payment of such taxes. Such taxes have traditionally been considered to be part of the "necessary costs of preservation" to be paid by a receiver and manager.

39 The City's claim with respect to realty is quite straightforward. Section 382 puts the City's claim ahead of all others except the Crown. As stated by Sherstobitoff J.A. in *Canadian Commercial Bank*, *supra* at p. 251, "the Court will not permit or approve any action on the part of its officer [the receiver] which has the effect of changing the rights of competing creditors . . . " This is precisely what the City says has happened. I agree with Sherstobitoff J.A. that the court will not permit such conduct. The same result is dictated by consideration for other interested parties. Levy and Ursaco should not be prejudiced by the City's claim increasing because of the accretion of penalties and interest.

40 Usarco leased part of the lands in question to Dofasco. This arrangement was continued following the Receiver's appointment. Under the lease Dofasco was responsible for taxes on that land. Dofasco paid $115,245.23 in taxes for the years 1990, 1991 and 1992 to the Receiver on or about February 15, 1993. Counsel for the Bank conceded during oral argument that this amount should have been paid over to the City on account of taxes. No similar concession was made by counsel for the Receiver.

41 In my respectful view, that amount should have been paid to the City on account of taxes in February 1993. It is my understanding that Dofasco remained liable for the taxes on the "leased lands" which were subsequently sold to Leach. To the extent that Dofasco has paid further amounts to the Receiver on account of taxes, such amounts should have been and must now be paid over to the City.

42 Personalty is dealt with under s. 400 of the Act. The Bank advances many reasons why the City has no entitlement to personalty or its proceeds. First, the Bank argues in its factum that the "goods and chattels" the City was entitled to pursuant to s. 400(1) did not include such items as Usarco's receivables, rent and like matters. I understood this argument respecting receivables was withdrawn during oral argument.

43 The Bank then argued that the City was further limited to applying the proceeds of the sale of personalty on a particular lot to the realty taxes on that lot. It was then argued that the City's lien respecting chattels did not arise until after distraint, and since the City never distrained any personalty, it had no lien in that regard and therefore no priority. Finally, in dealing with s. 400(11), which applies where personal property liable to seizure for taxes is in the hands of certain named persons, it was argued that as the Receiver was not one of such named persons, no relief was available to the City under s. 400(11).

Tab 14

Re Gauntlet Energy Corporation (Companies' Creditors Arrangement Act), 2003 ABQB 718

Date: 20030820
Action No.0301-09612

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, R.S.A. 2000, c.B-9

AND IN THE MATTER OF
GAUNTLET ENERGY CORPORATION

REASONS FOR JUDGMENT
of the
HONOURABLE MADAM JUSTICE C.A. KENT

APPEARANCES:

Anthony J. Jordan, Q.C. of Gowlings
for the Applicants, Pulse Data Inc.

Douglas Nishimura of Burnet Duckworth & Palmer LLP
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Sean F. Collins of Miller Thomson LLP
for Alberta Treasury Branches

Josef G.A. Kruger of Borden Ladner Gervais LLP
for Pricewaterhouse Coopers Inc.

INTRODUCTION

[1] Gauntlet Energy Corporation (Gauntlet) and Pulse Data Inc. (Pulse) entered into three Project Management Agreements (Agreements) regarding seismic surveys. Before paying Pulse all of the monies owed under these Agreements, Gauntlet entered into CCAA proceedings. At issue are the rights and entitlements of Gauntlet; Pulse; Gauntlet's operating lender, Alberta Treasury Branches (ATB); and other of Gauntlet's creditors to the seismic data (Data) compiled as per the Agreements.

(ii) possession of the collateral under section 24, without regard to the date of the attachment of the security interest,

(iii) perfection under section 5, 7, 26, 29 or 77, whichever is earlier...

ANALYSIS

[13] Pulse made a preliminary argument that priorities under the PPSA are irrelevant since the contest here is between itself, the creditor, and Gauntlet, the debtor. Priorities under the PPSA are only relevant as between creditors. Generally speaking that is so. However, this issue came to a head because Pulse sent a letter to Gauntlet in early July indicating that it intended to market the seismic data. That precipitated an application by Gauntlet to enjoin Pulse from selling the Data on the basis that the property was now Gauntlet's. Gauntlet wanted to market the Data with the proceeds being paid to ATB, a creditor with a superior claim. That is the background against which this application was heard.

1. Do the Agreements create security interests for the purposes of the PPSA?

[14] Section 1(1)(tt) of the PPSA provides that a security interest for the purposes of the PPSA "secures payment or performance of an obligation", and s. 3(1)(a) provides that the Act applies to everything which "in substance creates a security interest, without regard to its form and without regard to the person who has title to collateral". Conditional sales are specifically cited as security interests under the Act in s. 3(1)(b).

[15] ***Gladue v. Asset Recovery Management & Sales*, [1997] A.J. No. 1251 (Q.B.)**, defines a conditional sales contract as "one in which the amount of the purchase price is paid over time and the seller retains title to the chattel until completion of the payments." (Para 9) The ***Gladue*** contract was held to be such a sales agreement because one of its terms provided that "title to and ownership of the Goods shall remain with the Merchant and shall not pass to the Customer until the Time Balance and any other monies owing hereunder by the Customer have been paid in full." That paragraph is similar to paragraph 2(a) of the Pulse/Gauntlet agreements. In my view these agreements are clearly conditional sales contracts within the scope of the PPSA quite simply because they provide for payment of the purchase price over time with title remaining with Pulse until payment is complete.

[16] Pulse argues, however, that since the purchase price has not been paid Gauntlet does not yet own the Data and hence is not free to dispose of it under CCAA proceedings. Rather, Pulse is the owner and therefore ought to be able to sell the Data. Professors Ronald C.C. Cuming and Roderick J. Wood in their text, the ***Alberta Personal Property Security Act Handbook*, 4th ed. (Toronto: Carswell, 1998) at 51** address the scope of the PPSA in regards to conditional sales contracts as follows:

> It is the view of the authors that a PPSA security interest is a charge conceptually equivalent to the English equitable charge or the hypothec of Roman law. However,

> as the security interest is provided for by statute, it is a legal charge. A security agreement results in a hypothecation of the collateral. A security interest does not involve any dealing with the title to or ownership of it. To view a PPSA security interest as a legal charge or hypothec is to accept ... in the context of a security lease or conditional sales contract that ownership in the goods that are the subject-matter of the transaction vests upon execution of the agreement in the buyer or "lessee." At the same time the seller or "lessor" acquires a charge on those goods.

[17] In the context of this case, upon execution of the Agreement and pending completion of performance, Professors Cuming and Wood would say that title to the Data remained with Pulse but for PPSA purposes, ownership of the Data vested in Gauntlet.

[18] Case law reflects the view of Professors Cuming and Wood. In ***Giffen (Re)*, [1998] 1 S.C.R. 91**, the appellant leased a car from the respondent leasing company. The lease was for a term of greater than a year and was therefore a deemed security interest under the PPSA. The lessor, however, failed to register its security interest in the Personal Property Registry. Giffen later declared bankruptcy and the lessor seized and resold the vehicle. Giffen's Trustee in Bankruptcy brought a motion claiming entitlement to the proceeds of the sale, basing its claim on a section of the British Columbia PPSA giving a Trustee in Bankruptcy priority over an unsecured creditor. The lessor contested the Trustee's claim, arguing that title had never passed to the lessee and so the lessor, as owner, had superior standing to the trustee.

[19] The Supreme Court allowed the appeal and held for the Trustee. Iacobucci J. stated at paras. 25 - 26 that

> [a]t the outset, it is important to note that the Court of Appeal's holding in the present appeal rests on the principle that the "property of the bankrupt" shall vest in the trustee... and that only the property of the bankrupt shall be distributed among the bankrupt's creditors.... In the opinion of the Court of Appeal, the bankrupt, as lessee, did not have a proprietary interest in the car, and since the trustee obtains its entitlements to the contents of the bankrupt's estate through the bankrupt, the trustee cannot assert a proprietary interest in the car. In my view, the Court of Appeal, with respect, erred fundamentally in focussing on the locus of title and in holding that the lessor's common law ownership interest prevailed despite the clear meaning of s. 20(b)(i) [the applicable section of the PPSA].
>
> The Court of Appeal did not recognize that the provincial legislature, in enacting the PPSA, has set aside the traditional concepts of title and ownership to a certain extent.

[20] This change from traditional concepts is illustrated at s. 12(2) of the PPSA, which states that "[f]or the purposes of subsection 1(b) and without limiting other rights that the debtor may have in the collateral, a debtor has rights in goods leased to the debtor or consigned to the debtor when the debtor obtains possession of them in accordance with the lease or consignment."

[21] In ***Giffen***, the Supreme Court held that these rights include a proprietary interest, regardless of whether or not the lessee has title. At para. 37 the Court said, "[f]rom the perspective of both the PPSA and the [***Bankruptcy and Insolvency Act***] the bankrupt, as lessee, can be described as having a proprietary interest in the car." At para. 52, the Court again emphasized this point:

> Provincial legislatures, faced with a policy choice involving the competing interests of the true owner and those of third parties dealing with the ostensible owner, have decided that the true owner must forfeit title, when faced with a competing interest, if she failed to register her interest as required.

[22] In the Alberta Court of Appeal's decision in ***Gimli Auto Ltd. v. BDO Dunwoody Ltd.* (1998), 219 A.R. 166**, Coté J.A. echoes this position at para. 6, stating that the ***Giffen*** Court held that "the P.P.S.A. replaces common-law rules such as nemo dat, and title versus possession, with new statutory priority rules." Again at para. 9 he says, "[t]he whole point of the P.P.S.A. is to overrule certain contractual or property rights: Re Giffen, supra." In ***Gimli***, the PPSA priority rules were applied to a priority dispute between motor vehicle lessors and the lessee's Trustee in Bankruptcy. The Trustee was held to have priority over the lessors, as the lessors had not perfected their prior interests by registration.

[23] Master Quinn in ***Re Thomas* [2001], A.J. No. 1192 (Alta. Q.B.)**, applied the PPSA to a conditional sales agreement. Again he emphasized that the PPSA replaced the common law so that common law concepts should not be applied where to do so would conflict with the statute. At paras. 11-12, he says:

> According to Cuming and Wood [*supra* at 150-51] where a sale of a chattel involves financing the new law pursuant to the P.P.S.A. is engaged and the old concept of ownership of the chattel becomes obsolete. The party who was the owner under the old law becomes a secured party under the P.P.S.A., and must perfect his security by registration in the P.P.S.A. registry....
>
> The best position Grove Dodge [the vendor] could have attained was that of a secured creditor but it never attained that status because it did not register at the P.P.S.A. registry.

[24] In ***National Bank of Canada v. Merit Energy Ltd.*, [2001] A.J. No. 776 (Alta. Q.B.)** LoVecchio J. acknowledges the change made by the PPSA regime when he states at para. 30 that "the structure of the PPSA would be undermined by the application of the principle of nemo dat quod non habet (that you cannot give what you do not have)."

[25] The Agreements between Gauntlet and Pulse are conditional sales agreements. Gauntlet takes a proprietary interest in the Data but Pulse remains titled owner of the Data until Gauntlet fulfills its

Tab 15

Attorney General of Canada *Appellant*

v.

Joseph Patrick Authorson, deceased, by his Litigation Administrator, Peter Mountney, and by his Litigation Guardian, Lenore Majoros *Respondent*

Indexed as: Authorson v. Canada (Attorney General)

Neutral citation: 2003 SCC 39.

File No.: 29207.

2003: April 10: 2003: July 17.

Present: McLachlin C.J. and Gonthier, Major, Bastarache, Binnie, Arbour and LeBel JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Civil rights — Due process rights respecting property — Expropriation without compensation — Veterans' pension and allowances — Government administering pensions and other benefits for war veterans and failing to invest funds or pay interest — Legislation barring claim to interest for the period prior to 1990 — Whether due process protections of Canadian Bill of Rights guard against expropriation of property by passage of valid legislation — Canadian Bill of Rights, S.C. 1960, c. 44, ss. 1(a), 2(e) — Department of Veterans Affairs Act, R.S.C. 1985, c. V-1, s. 5.1(4).

The respondent was named representative plaintiff of a class of disabled veterans who received pensions and other benefits from the Crown under three different statutes. These funds were administered by the Department of Veterans Affairs ("DVA") because the veterans were deemed incapable of managing their money. These funds were rarely invested or credited with interest until 1990, when the DVA began paying interest on the accounts. But Parliament chose to limit the Crown's liability for past interest by enacting s. 5.1(4) of the *Department of Veterans Affairs Act* which provides that no claim shall be made after the coming into force of the provision for or on account of interest on moneys held or administered by the Minister during any period prior to January 1,

Procureur général du Canada *Appelant*

c.

Joseph Patrick Authorson, décédé, représenté par son administrateur à l'instance, Peter Mountney, et par sa tutrice à l'instance, Lenore Majoros *Intimé*

Répertorié : Authorson c. Canada (Procureur général)

Référence neutre : 2003 CSC 39.

N° du greffe : 29207.

2003 : 10 avril; 2003 : 17 juillet.

Présents : La juge en chef McLachlin et les juges Gonthier, Major, Bastarache, Binnie, Arbour et LeBel.

EN APPEL DE LA COUR D'APPEL DE L'ONTARIO

Libertés civiles — Droit à l'application régulière de la loi quant à la jouissance des biens — Expropriation sans indemnisation — Pensions et allocations des anciens combattants — Gestion des pensions et autres allocations des anciens combattants par le gouvernement et défaut de celui-ci de les placer ou de verser des intérêts — Mesure législative rendant irrecevable toute demande visant les intérêts pour la période antérieure à 1990 — Les garanties d'application régulière de la loi établies dans la Déclaration canadienne des droits protègent-elles contre l'expropriation découlant de l'adoption d'une loi valide? — Déclaration canadienne des droits, S.C. 1960, ch. 44, art. 1(a), 2(e) — Loi sur le ministère des Anciens combattants, L.R.C. 1985, ch. V-1, art. 5.1(4).

L'intimé a été nommé représentant d'un groupe d'anciens combattants invalides bénéficiaires d'une pension et d'autres allocations de l'État en vertu de trois lois différentes. Le ministère des Anciens combattants (« ACC ») gérait les fonds de ces anciens combattants parce qu'ils étaient réputés incapables de gérer leurs affaires. Il est rare que ces fonds aient été placés ou que des intérêts aient été versés avant 1990, année où ACC a commencé à verser des intérêts sur ces comptes. Le législateur a toutefois décidé de limiter la responsabilité de l'État relativement aux intérêts non versés auparavant en édictant le par. 5.1(4) de la *Loi sur le ministère des Anciens combattants*, qui rend irrecevables les demandes présentées après son entrée

Laskin J. stated that to read substantive protections into these due process rights would require "compelling reasons" relating to "objective and manageable standards by which a Court should be guided . . ." (pp. 899-900).

Le juge Laskin a déclaré qu'il faudrait avancer des « raisons convaincantes » se rapportant à des « normes objectives et faciles à appliquer, qui doivent guider les tribunaux . . . » pour affirmer que ces droits à l'application régulière de la loi renferment des garanties quant au fond (p. 899-900).

50 In *Re B.C. Motor Vehicle Act*, [1985] 2 S.C.R. 486, Lamer J. (as he was then) considered s. 7 of the *Charter*'s guarantee that liberty be deprived only "in accordance with the principles of fundamental justice". Although there had been evidence that "fundamental justice" was to have given only procedural protections, Lamer J. held that fundamental justice could also contain the substantive right not to be imprisoned for an absolute liability offence. Although this Court has not yet recognized substantive rights stemming from due process, *Re B.C. Motor Vehicle Act* indicates its willingness to recognize that, in the proper circumstances, guarantees of process or justice may confer substantive protections.

Dans le *Renvoi : Motor Vehicle Act de la C.-B.*, [1985] 2 R.C.S. 486, le juge Lamer (plus tard Juge en chef) a examiné la garantie offerte par l'art. 7 de la *Charte*, selon laquelle il ne peut être porté atteinte au droit à la liberté « qu'en conformité avec les principes de justice fondamentale ». Malgré une preuve tendant à indiquer que les principes de « justice fondamentale » n'apportaient que des garanties procédurales, le juge Lamer a conclu que la justice fondamentale pouvait également comporter le droit substantiel de ne pas être emprisonné pour une infraction de responsabilité absolue. Bien que la Cour n'ait pas encore reconnu de droits substantiels découlant de la garantie d'application régulière de la loi, le *Renvoi : Motor Vehicle Act de la C.-B.* indique qu'elle est disposée à reconnaître que, dans des circonstances appropriées, les garanties d'application régulière de la loi ou la justice peuvent offrir une protection quant au fond.

(b) *Substantive Due Process Rights in Property*

(b) *Les droits substantiels inclus dans la garantie d'application régulière de la loi dans le contexte des droits de propriété*

51 The *Bill of Rights* does not protect against the expropriation of property by the passage of unambiguous legislation. It is unnecessary to decide now exactly what other substantive protections, if any, might be conferred by the *Bill of Rights*' s. 1(*a*)'s property guarantees.

La *Déclaration canadienne des droits* n'offre aucune protection contre l'expropriation par l'adoption d'une mesure législative non ambiguë. Il n'est pas nécessaire de décider maintenant quelles sont exactement les autres protections substantielles offertes, le cas échéant, par les garanties touchant les biens établies à l'al. 1*a*) de la *Déclaration canadienne des droits*.

52 The *Bill of Rights* protects only rights that existed at the time of its passage, in 1960. At that time it was undisputed, as it continues to be today, that Parliament had the right to expropriate property if it made its intention clear.

La *Déclaration canadienne des droits* ne protège que les droits qui existaient au moment de son adoption en 1960. À cette époque, tous s'entendaient pour dire, comme aujourd'hui, que le législateur avait le droit d'exproprier des biens à condition d'exprimer clairement son intention.

53 This right has long been recognized. At the turn of the century, Riddell J. of the Ontario High

Ce droit est reconnu depuis longtemps. Au tournant du siècle, le juge Riddell de la Haute Cour de

Court recognized the Crown's right to take property without compensation. The dispute involved a mining company that had failed to properly stake a claim. The claim had subsequently been sold by the Crown. Riddell J. wrote:

> In short, the Legislature within its jurisdiction can do everything that is not naturally impossible, and is restrained by no rule human or divine. If it be that the plaintiffs acquired any rights, which I am far from finding, the Legislature had the power to take them away. The prohibition, "Thou shalt not steal," has no legal force upon the sovereign body. And there would be no necessity for compensation to be given. [Emphasis added.]

(See *Florence Mining Co. v. Cobalt Lake Mining Co.* (1909), 18 O.L.R. 275, at p. 279.)

In *Manitoba Fisheries Ltd. v. The Queen*, [1979] 1 S.C.R. 101, the Court ordered compensation for the loss of goodwill to a fishing company caused by the passage of the federal *Freshwater Fish Marketing Act*, R.S.C. 1970, c. F-13, which created a Crown corporation that would have exclusive extraprovincial marketing rights for all Canadian fish. Although the Court ordered compensation in that case, Ritchie J. made clear that Parliament could effect a taking without just compensation if it did so specifically (at p. 118 (citing *Attorney-General v. De Keyser's Royal Hotel*, [1920] A.C. 508 (H.L.), at p. 542)).

And more recently, in *Wells*, *supra*, at para. 41, the Court held that a senior provincial civil servant whose position was statutorily eliminated still had a contract law remedy against the province. However, the Court reiterated the law on expropriation in Canada. Such expropriations are within the power of legislatures where that intent is clearly and unambiguously stated:

> While the legislature may have the extraordinary power of passing a law to specifically deny compensation to

justice de l'Ontario a reconnu le droit de l'État de s'approprier des biens sans indemnisation. Le litige mettait en cause une société minière qui avait mal jalonné un claim. Le claim avait été ultérieurement vendu par l'État. Le juge Riddell a écrit ce qui suit :

> [TRADUCTION] « En bref, la législature peut faire tout ce qui n'est pas naturellement impossible, dans les limites de sa compétence, et elle n'est limitée par aucune règle, humaine ou divine. Si les demandeurs avaient acquis quelque droit que ce soit, ce que je suis loin de conclure, la législature avait le pouvoir de les leur retirer. L'interdiction « Tu ne voleras point », n'a aucun effet juridique sur l'organisme souverain. Et il ne serait pas nécessaire d'accorder une indemnisation. [Je souligne.]

(Voir l'arrêt *Florence Mining Co. c. Cobalt Lake Mining Co.* (1909), 18 O.L.R. 275, p. 279.)

Dans l'arrêt *Manitoba Fisheries Ltd. c. La Reine*, [1979] 1 R.C.S. 101, la Cour a ordonné qu'une entreprise d'exportation de poisson soit indemnisée de la perte d'achalandage subie à la suite de l'entrée en vigueur de la *Loi sur la commercialisation du poisson d'eau douce*, S.R.C. 1970, ch. F-13, qui créait un Office fédéral auquel elle conférait le droit exclusif de commercialisation de tout le poisson canadien entre les provinces et à l'étranger. Bien que la Cour ait accordé une indemnisation dans cette cause, le juge Ritchie a affirmé que le législateur pouvait déposséder quelqu'un de ses biens sans indemnisation équitable à condition de le prévoir expressément (p. 118 (renvoyant à l'arrêt *Attorney-General c. De Keyser's Royal Hotel*, [1920] A.C. 508 (H.L.), p. 542)). 54

Plus récemment, dans l'arrêt *Wells*, précité, par. 41, la Cour a conclu qu'un haut fonctionnaire provincial dont le poste avait été aboli par une loi pouvait poursuivre la province en vertu du droit contractuel. Toutefois, la Cour a réaffirmé les règles de droit régissant l'expropriation au Canada. Les législatures ont le pouvoir de procéder à de telles expropriations à condition d'exprimer leur intention en des termes clairs et non ambigus : 55

> Bien qu'une législature puisse avoir le pouvoir extraordinaire d'adopter une loi pour refuser expressément

Tab 16

Court of Queen's Bench of Alberta

Citation: Regent Resources Ltd (Re), 2018 ABQB 669

Date: 20180917
Docket: 1601 16147
Registry: Calgary

Between:

Ernst & Young Inc., in its capacity as Court-appointed Receiver of the current and future assets, undertakings and properties of Regent Resources Ltd.

Applicant

- and -

Cardston County

Respondent

Reasons for Judgment
of the
Honourable Madam Justice K.M. Horner

I. Introduction

[1] This is a priority dispute that raises the question of how far a municipality can go to collect tax arrears from an insolvent taxpayer with no valuable property in that municipality.

[2] The Applicant, Ernst & Young Inc. (the "Receiver"), was appointed as Receiver for the insolvent Regent Resources Ltd. ("Regent"). With the exception of the matter at hand here, all claims against Regent have been resolved. However, Regent's largest creditor, Alberta Treasury Branches ("ATB") faces a significant shortfall on its claim.

[3] Regent owned properties in a number of locations in Alberta, including the Respondent Cardston County ("Cardston"). In 2017, the Receiver disclaimed all of Regent's properties and assets in Cardston, taking the position that they had no value. There were, however, arrears of property tax in respect of those Cardston properties. Together with interest and penalties, those arrears amounted to approximately $133,000 as at the date of this hearing. Regent also owned a number of properties in other municipalities that were sold within the receivership proceedings. There is no dispute that municipal taxes were paid on all of those properties.

[4] Cardston claims that it has a "special lien" over all of Regent's property for its municipal tax arrears by virtue of s. 348 of the *Municipal Government Act*, RSA 2000, c M-26 (the

interests in land. In my view, it is equally plausible that the drafters chose the term to distinguish between it and "goods" in the next subsection.

[19] Cardston also points out that the previous version of the MGA provided for the special lien over "the land in respect of which the taxes are due." Cardston asserts that the removal of that language from the current version of the MGA indicates that the Legislature intended to broaden the application of the special lien to all land and improvements owned by the debtor.

[20] While I acknowledge the change in wording, it is not sufficient to require an interpretation that I find will produce absurd results.

[21] As noted above, the Receiver argues that the special lien is applicable only to the particular land on which tax is owing or, at a minimum, only to land within the municipality. It asserts that this interpretation is consistent with the MGA, which permits a municipality to levy property tax on land within its boundaries. It notes further that property taxes are levied by municipal bylaw and that s. 12 of the MGA provides that a bylaw normally applies only within the municipality's boundaries.

[22] Significantly, the Receiver argues that Cardston's interpretation would lead to absurd results and that it is a principle of statutory interpretation that such results are to be avoided. It points to ***R v Canadian Pacific Ltd*** [1995] 2 SCR 1031 where Justice Gonthier held at para 66 that "Where a provision is open to two or more interpretations, the absurdity principle may be employed to reject interpretations which lead to negative consequences, as such consequences are presumed to have been unintended by the legislature."

[23] The Receiver identifies several possible "negative consequences" to Cardston's interpretation. First, it notes that giving such broad scope to the special lien could lead to competing special lien claims on the same land. There is no provision in the MGA for determining the priority of such competing claims, though counsel for Cardston suggested during the hearing that such claims could simply be paid out *pari passu*.

[24] The Receiver points out that Cardston's interpretation could lead to a municipality making special lien claims against land anywhere in the world. If the application of the special lien is not limited to the municipality's borders, the Receiver argues, there is no reason to limit it to Alberta or indeed to Canada. The Receiver submits that this cannot be what the Legislature intended.

[25] Counsel for the Receiver also made the important point that a broad scope special lien would be "an invisible superpriority charge" of which purchasers and lenders would not have notice. A party intending to lend funds secured against land reasonably may be expected, through its due diligence, to discover arrears of tax in the municipality where the land is located. However, I agree with the Receiver that it is not reasonable to expect lenders to ascertain whether there are tax arrears in every municipality in Alberta. This is particularly so where, as here, the debtor has disclaimed its interest in the land. Under Cardston's interpretation, a lender would have to determine whether the debtor previously had owned land with taxes owing. The Legislature cannot have intended to create a due diligence requirement of that kind.

[26] Finally, I note that a municipality is not left without a remedy if its special lien is limited to its own boundaries. Cardston acknowledges in its brief that a municipality has the ability to obtain a judgment for unpaid taxes and to enforce that judgment against the debtor's assets. That judgment is not limited to assets within the municipality, but may be enforced against any of the

Tab 17

Citation: Wallace (Rural Municipality) v. Mead Petroleums & Farms Ltd. et al., 2005 MBCA 3

Date: 20050114
Docket: AI 04-30-05862

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Richard J. Scott
Mr. Justice Alan R. Philp
Mr. Justice A. Kerr Twaddle

B E T W E E N:

THE RURAL MUNICIPALITY OF WALLACE	***O. L. Currie*** *for the Appellant*
(Applicant) Appellant	***D. J. Sheldon, Q.C.*** *for the Respondents*
- and -	
MEAD PETROLEUMS & FARMS LTD., 2214351 MANITOBA LTD. and MARVEN SYLVESTER HANNEM	*Appeal heard:* ***November 1, 2004***
(Respondents) Respondents	*Judgment delivered:* ***January 14, 2005***

PHILP J.A.

INTRODUCTION

1 Are the lien and seizure and sale provisions of *The Municipal Act*, C.C.S.M., c. M225 (the *Act*), contradictory or inconsistent, and if they are, how are they to be rationalized or reconciled? Those are the questions that arise on the application of the Rural Municipality of Wallace (Wallace) for a declaration that it has a lien on oil well site personal property of 2214351 Manitoba Ltd. (2214351) that was previously owned by Mead Petroleums & Farms Ltd. (Mead) for arrears of taxes on other oil well site personal property owned by Mead.

See (2002), 165 Man.R. (2d) 249, 2002 MBQB 201 and Wallace's right to execute on the judgment against the property of Mead.

26 By virtue of the application of s. 347(3)(b) of the *Act*, the lien on all the personal property of Mead was not defeated with respect to the personal property of the active wells by the change in ownership of that property. Wallace is therefore entitled to a declaration that it has a lien against the personal property of the active wells for the amount of tax arrears owing with respect to the inactive wells. As we have seen, however, the lien "does not in itself create a debt, or an obligation to discharge the lien" and a declaration of Wallace's right to a lien is not a pecuniary judgment. 2214351 is not liable to pay the tax arrears of Mead in respect of the inactive wells, and absent a finding of fraud or *mala fides*, Wallace is not entitled to recover a judgment against 2214351 for those arrears. Without a pecuniary judgment against 2214351, and with no statutory powers to enforce its lien against the active wells, Wallace, it appears, is left with a right without a remedy.

27 Those determinations exhaust the relief sought by Wallace in its application and on this appeal. However, I wish to add a few comments on the provisions of the *Act* that the court was required to consider on this appeal. The first comment is that the lien created under s. 347(2) upon personal property is quite unlike the lien created under s. 347(1) on "land and improvements." The lien under s. 347(1) is limited to the land and improvements with respect to which the taxes were imposed; it does not extend to other lands and improvements of the taxpayer in the municipality or beyond. The existence of a lien on land and improvements would be

readily ascertainable by a purchaser of the property and by other persons who had commercial dealings with the taxpayer affecting the property.

28 By contrast, a lien under s. 347(2) attaches "all the personal property of a taxpayer." It creates a cloud upon the title of other personal property of the taxpayer, wherever located. Mead, 2214351 and Hannem argue that it would be "commercially chaotic and fantastically burdensome" to require purchasers to undertake inquiries in "each of Manitoba's over 200 municipalities" to determine the state of the title to personal property in the "millions and millions of personal property transactions" that take place each year.

29 The answer to that concern lies, perhaps, in the fact that the Draconian reach of the lien created by s. 347(2) is muted by the absence of provisions for its enforcement. The *Act* is one of the rare Manitoba statutes in which a lien is created without ancillary enforcement provisions. If the addition of enforcement provisions was contemplated, the legislature may well wish to consider the commercial realities and consequences of adding them to the present unlimited scope of the lien. As well, the legislature might look to the rights of the good faith purchaser, as it did when the seizure and sale provisions in Part 11 – Division 4 of the *Act* were enacted.

CONCLUSION AND DISPOSITION

30 Wallace's appeal is allowed, and the judgment of the motions judge is set aside. Judgment is granted to Wallace against Mead in the amount of the arrears of taxes on the inactive wells to the date that they were seized by the Province of Manitoba. Wallace is entitled to a lien in that amount against all

Tab 18

Hamilton Wentworth Credit Union Limited, in liquidation v. Courtcliffe Parks Limited et al;

Courtcliffe Parks Limited et al. v. Hamilton Wentworth Credit Union Limited, in liquidation et al.

[Indexed as: Hamilton Wentworth Credit Union Ltd. v. Courtcliffe Parks Ltd.]

23 O.R. (3d) 781
[1995] O.J. No. 1482
Nos. B117/92 and 92-CQ-20023

Ontario Court (General Division),
R.A. Blair J.
May 30, 1995

Municipal law -- Tax sale -- Municipality requiring leave to proceed with tax sale where land being managed by court-appointed receiver -- Court in granting leave without jurisdiction to vary statutory scheme for sale -- Municipal Act, R.S.O. 1990, c. M.45, s. 382 -- Municipal Tax Sales Act, R.S.O. 1990, c. M.60.

Municipal law -- Tax sale -- Municipality's claim for taxes having priority to court-appointed receiver's claim for fees and disbursements -- Municipal Act, R.S.O. 1990, c. M.45, s. 382 -- Municipal Tax Sales Act, R.S.O. 1990, c. M.60.

Debtor and creditor -- Receivers -- Municipality's claim for taxes having priority to court-appointed receiver's claim for fees and disbursements -- Municipal Act, R.S.O. 1990, c. M.45, s. 382 -- Municipal Tax Sales Act, R.S.O. 1990, c. M.60.

By court order dated May 5, 1992, D & T Inc. (the "Receiver") was appointed receiver and manager of C Ltd., whose only asset improvement and realization of the property on behalf of all creditors.

While this approach denies a receiver and manager a "super priority" with respect to municipal property taxes, it does not, in my view, alter what has traditionally been the case -- and the understanding in the industry -- concerning the payment of such taxes. Such taxes have traditionally been considered to be part of the "necessary costs of preservation" to be made by a receiver and manager. As Mr. Justice Houlden pointed out in Kowal Investments v. Deeder Electric, supra, at pp. 91-92, a receiver and manager is generally given priority over security-holders for such payments. He cited the following passage from the judgment of James L.J. in Regent's Canal Ironworks Co., Ex p. Grissell (1875), 3 Ch. D. 411 (C.A.) (at p. 427):

> The only costs for the preservation of the property would be such things as have been stated, the repairing of the property, paying rates and taxes, which would be necessary to prevent any forfeiture, or putting a person in to take care of the property.

(Emphasis added)

Discretion

I should add, before concluding, that if I am in error in arriving at the foregoing conclusions, and there is some discretion in the court to grant the receiver priority over the municipality for its fees and disbursements, I would not have granted such an order in any event, in the circumstances of this case, except to a limited extent. I would have been prepared to grant the receiver priority only to the extent of its fees and disbursements (including its costs for the "necessary preservation and improvement" of the property) incurred before the Jacob Ellen & Associates Inc. appraisals obtained in June 1993.

There is no doubt that when the receiver was appointed immediate emergency measures were required to place the trailer

Tab 19

Court of Queen's Bench of Alberta

Citation: Gerrow v. Dorais, 2010 ABQB 560

Date: 20100903
Docket: 0903 13412
Registry: Edmonton

Between:

Anthony Ford Gerrow

Plaintiff

\- and -

Michel Joseph Dorais, Hinton Pine Holdings Inc., Hinton Leaf Holdings Inc., 1033543 Alberta Ltd., Hinton Sky Inc., Green Holdings Inc., Hinton Green Inc., Growth Partners Inc., Capitalplus Financial Inc., Zenith Capital Investment Corp., and Dorais Financial Inc.

Defendants

Reasons for Judgment
of the
Honourable Mr. Justice Don J. Manderscheid

I. Introduction

[1] This matter arises out of three Notices of Motion involving the respective rights of a Court appointed receiver and various secured creditors and the equitable doctrines of marshalling, apportionment and subrogation. As well, this matter involves the application of the *Statute of Elizabeth (Fraudulent Conveyances Act),* 1571 (13 Eliz. 1) c. 5, and the *Personal Property Security Act*, R.S.A. 2000, p-20. Counsel for 805251 Alberta Ltd. advised the Court that his client was not proceeding with their claim under the *Fraudulent Preferences Act*, R.S.A. 2000, F-24.

[19] Furthermore, "under the doctrine of subrogation, all of the circumstances must be balanced, and the Court must be satisfied that no injustice will be done through the substitution of one party in the place of another via a subrogation arrangement", ***Alberta (Treasury Branches) v. Alberta (Public Trustee)***, at para. 50, Cairns J., quoting ***Brown v. McLean***, (1889), 18 O.R. 533 (H.C.J.), at 536.

[20] Lastly, in ***Coupland Acceptance Ltd. v. Walsh***, [1954] S.C.R. 90, [1954] 2 D.L.R. 129, the Supreme Court of Canada confirmed that the doctrine of subrogation is not confined to matters of priority between mortgages, but applies as well to the relationships between mortgages and other prejudicial instruments such as builders' liens and executions. In this respect, Kellock J., stated (at para. 6):

> While s. 13(1) of *The Mechanics Lien Act* , R.S.O., 1950, c. 227, gives priority to the lien over all payments or advances made under a mortgage after registration of the lien, the section is not to be construed as affecting the right relied upon here by the appellant. The appellant does not rely upon its mortgage for priority as to the moneys here in question but upon the equitable right to stand in the place of the Kerbel mortgagees whose priority to the lien is unquestionable. The position of the lienholder remains the same as it was before the appellant intervened and it would, in my opinion, require more than is to be found in the section to bring about a result so unjust that it would, to paraphrase the language of Parker J., in the ***Crosbie-Hill*** case, permit the lienholder, by a mere accident, to obtain priority at the expense of people who never intended to benefit him. Had the appellant been in fact aware of the registration of the lien, it could have purchased the Kerbel mortgage, in which event no possible question could have arisen.

2. Marshalling

[21] In its simplest form the doctrine of marshalling dictates that if a creditor has two funds to draw upon to satisfy the debt, the Court will require him to take satisfaction from that fund upon which another creditor has no security. In Alberta, the seminal case on the doctrine of marshalling is ***First Investors Corp. v. Veeradon Developments Ltd.*** (1988), 84 A.R. 364, 47 D.L.R. (4th) 446 (Alta. C.A.). In that case, Belzil J.A., in explaining the doctrine of marshalling, noted that the leading formulation of the doctrine of marshalling as a principle of equity is that of Lord Hardwicke in ***Lanoy v. The Duke and Dutchess of Athol*** (1742), 2 Atk. 444. At p. 669 Lord Hardwicke held that if a creditor has two funds, he must take his satisfaction from the fund that has no lien by another creditor. He went on:

> Suppose a person, who has two real estates, mortgages both to one person, and afterwards only one estate to a second mortgagee, who had no notice of the first; the court, in order to relieve the second mortgage, have directed the first to take his satisfaction out of the estate only which is not in mortgage to the second mortgagee, if that is sufficient to satisfy the first mortgage, in order to make room

> for the second mortgage, even though the estates descended to two different persons.

[22] Belzil J.A. went on to adopt the formulation in *Snell's Principles of Equity*, (28th Ed), by P.V. Baker and P. St.J. Langan (London : Sweet and Maxwell, 1982) at p. 416, which provides that where there are two creditors of the same debtor, and one creditor has a right to resort to two funds for payment of his debt, and the other a right to resort to one fund only, the court will 'marshal' or arrange the funds so that both creditors are paid as far as possible. The authors of *Snell's* noted that the doctrine has several applications, but marshalling as between mortgagees is perhaps the most usual. *Snell's* continues that the doctrine of marshalling is not allowed to prejudice the first mortgagee. Relying on the Blackacre/ Whiteacre forumla, *Snell's* noted:

> If, for instance, a person having two estates, Blackacre and Whiteacre, mortgages both estates to A, and afterwards mortgages only Blackacre to B, either with or without notice of A's mortgage, the proper course is for A to realise his debt first out of Whiteacre and to take only the balance out of Blackacre, in order to leave as much as possible of Blackacre to satisfy B... A can therefore realise his securities as he pleases, for A is not a trustee for B. But if A pays himself out of Blackacre, B is allowed to resort to Whiteacre to the extent to which Blackacre has been exhausted by A, and to have the same priority against Whiteacre as A had.
>
> ...In the above example, B's right to marshal will be enforced not only against the original mortgagor but also against all persons claiming through him as volunteers, as where the mortgagor dies and Blackacre and Whiteacre pass to different persons. But it is not allowed to prejudice purchasers or mortgagees of one of the estates. Thus if in the above example the mortgagor had created another mortgage of Whiteacre in favour of C. B would have no equity to throw the whole of A's mortgage on Whiteacre, and so destroy C's security."

[23] Belzil J.A. also accepted the definition of marshalling from the judgment of Orde, J. in ***Ernst Brothers Co. v. Canada Permanent Mortgage Corporation*** (1920), 47 O.L.R. 362, affirmed 48, O.L.R., 57 D.L.R. 500 (C.A.) that include the following qualification at para. 22:

> ... This right is always subject to two important qualifications: first, that nothing will be done to interfere with the paramount right of the first mortgagee to pursue his remedy against either of the two estates; and, second, that the doctrine will not be applied to the prejudice of third parties.

[24] Belzil J.A. further noted that these definitions speak of "satisfaction" or "payment of the first mortgage debt out of marshalled "funds". In ***Canada Permanent Trust Company v. King Art Developments Ltd. et al.*** [1984], 4 W.W.R. 587, 54 A.R. 172 (CA) Laycraft, J.A. at para. 45 adopted the following definition of "satisfaction" in *Black's Law Dictionary* (at p. 643):

> ... the discharge of an obligation by paying a party what is due to him (as on a mortgage, lien or contract), or what is awarded to him by the judgment of a court or otherwise.

[25] The most important qualification in these definitions is that the application of marshalling cannot prejudice the "paramount" right of the first mortgagee to realize its securities and pursue its remedies as it pleases. That primary right to receive and enforce payment of its debt in money is at its election. The first mortgagee thus may seek a "Rice" order, take the land by final foreclosure, or pursue other courses of action such as simply leaving its security in force. Belzil J.A. noted in ***First Investors Corp. v. Veeradon Developments Ltd.*** that the consequence of this is that if the right is not to be prejudiced, it follows that the prerequisite to applying marshalling to mortgages is that first mortgage properties have all been sold and converted to money funds exceeding the amount due under the first mortgage. He continues:

> In those circumstances, the first mortgagee must pay itself firstly out of the funds derived from the properties not covered by the second mortgage. Equity will not allow the first mortgage to needlessly wipe out the second mortgage by paying itself firstly out of funds derived from the properties covered by both mortgages. The first mortgagee must leave as much as possible for the second mortgagee out of funds derived from properties covered also by the second mortgage. In modern practice, the funds derived from sale will be under control of the court, and the court will marshall by simply directing payment accordingly.

[26] Belzil J.A. further noted that the underlying issue is really between the second mortgagee and the mortgagor and its assigns and there is really no contest between the first and second mortgagees, citing ***Gibson v. Seagrim*** (1855), 20 Beav. 614. The first mortgagee's sole interest is in receiving the money owed to it, and marshalling does not affect that interest. It does not matter to the first mortgagee which fund it receives its money from. Equity, Belzil J.A. says, assumes that a reasonable first mortgagee would want to act honourably, and not capriciously, by leaving as much as possible for the second mortgagee. He quotes North, J. in ***Re Loder's Trusts (a)*** [1886], The Law Times, Vol LV., N.S. 582:

> This is the course which a straightforward man would take.

[27] The doctrine of marshalling is not applied only to mortgagees, and accordingly, I know of no reason why the holder of a builders' lien cannot have resort to the doctrine of marshalling: ***Narduzzi v. Richardson***, 2009 BCSC 588, 54 C.B.R. (5th) 1 (at para. 29 and the cases cited therein at paras. 25-28).

[28] Of further consideration is the principle which is called "marshalling by apportionment". This particular strain of the doctrine of marshaling was aptly explained by Scarth J., in ***Bancorp Investments (Fund 2) Ltd. v. Bhugra Holdings Ltd.***, 2006 BCSC 893, 23 C.B.R. (5th) 108, at para. 25 as follows:

With respect to Apportionment Mr. Justice Burnyeat writes the following at [paragraph] 12:

> Apportionment
>
> 12 In a situation where an owner mortgages both properties in favour of the same first mortgagee but then mortgages the first property to "B" and the second property to "C", the doctrine of "marshalling by apportionment" applies:
>
> > ... where each of the two funds has been assigned or charged by the debtor to a different subsequent claimant, equity interposes so as to secure that the claim of the first claimant is borne by the two funds rateably.
>
> [Halsbury's (4th ed) Vol. 16, p. 785, para. 876.]
>
> As between "B" and "C" in the example noted above, the loss will not lie where the first mortgagee makes it lie. The charge of the first mortgagee will be apportioned rateably between the two properties (according to their value) so that the competing interests of "B" and "C" can be adjusted.

[29] Marshalling by apportionment was further explained in ***Victor Investment Corp. v. Fidelity Trust Co.***, [1975] 1 S.C.R. 251, 41 D.L.R. (3d) 65 as arising in relation to two properties held in separate hands, but subject to the one mortgage debt covering both of them. Thus under apportionment the debt was prorated according to the respective values of the two properties, in the absence of any stipulation that one of the properties would bear the burden or bear it primarily as between the two holders of the equities of redemption.

3. Statute of Elizabeth

[30] 805 submits that this case also involves the principles raised by the *Statute of Elizabeth*. It is clear from the judicial authorities that the *Statute of Elizabeth* is in force in Alberta, ***Goyan v. Kinash***, [1945] 2 D.L.R. 749, [1945] 1 W.W.R. 291 (Alta. S.C.) at 753 in D L.R.

[31] Romaine J. in ***Krumm v. McKay***, 2003 ABQB 437, 342 A.R. 169 provided a concise overview of the application of the ***Statute of Elizabeth***, noting that the purpose of the statute and of the *Fraudulent Preferences Act* is to strike down any conveyances made with the intention to defeat creditors, except for conveyances made for good consideration and *bona fides* to persons not having notice of fraud. She noted that the legislation must be interpreted liberally, and includes any kind of transfers or conveyances made with the requisite intent no matter what the