

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Yarmouth District (Municipality) v. Town of Yarmouth Water Utility*, 2008 NSCA 39

**Date:** 20080425

**Docket:** CA 279520

**Registry:** Halifax

**Between:**

Municipality of the District of Yarmouth

Appellant

v.

Town of Yarmouth Water Utility

Respondent

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**Judge:** Honourable Justice Linda Lee Oland

**Appeal Heard:** November 27, 2007

**Subject:** *Fire protection Charge - Public Utilities Act, R.S.N.S. 1989, c. 380, s. 87(1) and 87(2) - Municipal Government Act, S.N.S. 1998, c 18, s. 293*

**Summary:** The Utility Review Board sets the rates to be charged by the Town of Yarmouth Water Utility to its customers. In 2002, it ordered the apportionment of the fire protection charge between the Town of Yarmouth and the Municipality of the District of Yarmouth based on the number of hydrants owned and operated by the Utility in each jurisdiction. In 2003, the Utility installed three hydrants in the Municipality and, the following year, included them in calculating of the Municipality's proportionate share. The Municipality had neither requested nor been consulted regarding the installation. The Board dismissed its application under the *Public Utilities Act* claiming that the rate charged was unjust, unreasonable or unjustly discriminatory and that the Utility's installation was an unjust and unreasonable act or service. The Municipality appealed.

**Issues:**

1. Whether the Board erred in law by concluding that the installation of the fire hydrants in the Municipality should be at the request of the Town's Fire Department.
2. Whether it erred in law in making erroneous assumptions from the evidence in relation to the use of an old transmission line in its jurisdiction.
3. Whether it erred in failing to find that the Municipality's permission is first required regarding the installation of any new fire hydrants, if they were to count towards the calculation of the fire protection rate.
4. Whether the Board erred in failing to determine that, under the *Municipal Government Act*, the Municipality has the jurisdiction to provide for its residents and the level of protection provided.

**Result:**

Appeal dismissed. Whether the Fire Department should be able to request installations did not affect the Board's conclusion that all operating and operable fire hydrants should be included in the count. The use of the old line and any advantage taken of a redundancy played no significant role in the Board's dismissal. The Municipality did not establish that the Board's decision on whether the Utility had to first obtain the Municipality's approval failed to meet the standard of review of reasonableness. Since the Board did not address the interpretation of s. 293 of the *Municipal Government Act* in its reasons, the court provided its interpretation. The Municipality does not provide fire protection services directly to all its residents. Rather, it assists and works with the Town and Utility to do so, within the meaning of s. 293.

**This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 15 pages.**