IN THE PROVINCIAL COURT OF NOVA SCOTIA
Citation: R. v. Manship Holdings Ltd., 2006 NSPC 31

Date: 2006/06/29
Docket: 1587951
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1587954
Registry: Halifax

Her Majesty the Queen

v.

Manship Holdings Ltd.

DECISION

Judge:	The Honourable Judge Castor H. Williams
Heard:	April 27, 2006, in Dartmouth, Nova Scotia
Oral decision:	Decision, June 29, 2006
Charge:	s. 9(11)(a), s. 9(11)(b), s. 9(11)(f), s. 9(11)(f) of the Downtown Dartmouth Land Use By-Law
Counsel:	Randall Kinghorne, for the Halifax Regional Municipality (Crown) Mark Knox, for Manship Holdings Ltd. (Defence)

By the Court:

[1] The defendant, Manship Holdings Ltd., since 1996, operated a massage parlour in the City of Dartmouth that, at the time of its acquisition, was accepted by the governing Council, as a non-conforming use of land. Although it was a non-conforming use of the land, it was, nonetheless, under existing laws, an acceptable and permissible lawful use of the property.

[2] However, upon the amalgamation of the City of Dartmouth with the cities of Halifax, Bedford and Halifax County creating the Halifax Regional Municipality, the new Council adopted bylaws that, *prima facie*, impacted upon the continuing use of the property, at its present location, as a massage parlour. As a result, the Halifax Regional Municipality has charged the defendant with several violations of its current bylaws pertaining to the Dartmouth Downtown Neighbourhood Zone contrary to the ***Municipal Government Act,*** S.N.S, 1998, c.18, s.505(1) that states:

> 505 (1) A person who
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> (3) (a) violates a provision of this Act or of an order, regulation or by-law in force in accordance with this Act;
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> (b) fails to do anything required by an order, regulation or by-law in force in accordance with this Act;

> (c) permits anything to be done in violation of this Act or of an order, regulation or by-law in force in accordance with this Act; or
>
> (d) obstructs or hinders any person in the performance of their duties under this Act or under any order, regulation or by-law in force in accordance with this Act,
>
> is guilty of an offence.

The Charges

[3] The defendant stands charged as follows:

> Between April 27, 2005 and October 27, 2005 at, or near 70 Windmill Road, Dartmouth, Nova Scotia did:
>
> in the Downtown Neighbourhood Zone fail to comply with the requirements for home businesses by having in their employ more than one employee who was not living in the dwelling contrary to section 9(11)(a) of the Downtown Dartmouth Land Use By-Law, pursuant to section 505(1) of the Municipal Government Act, c.18, S.N.S., 1998;
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> and furthermore at the same place and time, did in the Downtown Neighbourhood Zone fail to comply with the requirements for home businesses by having more than twenty-five percent (25%) of the gross floor area of the dwelling for business use contrary to section 9(11)(b) of the Downtown Dartmouth Land Use By-law, pursuant to section to 505(1) of the Municipal Government Act, c.18, S.N.S., 1998;
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> and furthermore at the same place and time, did in the Downtown Neighbourhood Zone fail to comply with the requirements for home businesses by unlawfully having more than one sign advertising a home business contrary to section 9(11)(f) of the Downtown Dartmouth Land Use By-Law, pursuant to section to 505(1) of the Municipal Government Act, c.18, S.N.S., 1998.
>
> and furthermore at the same time place and time, did in the Downtown Neighbourhood Zone fail to comply with the requirements for home businesses by unlawfully having a sign that exceeded two (2) square feet in area contrary to section 9(11)(f) of the Downtown Dartmouth Land Use By-

> Law, pursuant to section to 505(1) of the Municipal Government Act, c.18, S.N.S., 1998.

Position of the Parties

[4] The case came on for trial but prior to its commencement the defendant raised the issue that, because of prior enactments and bylaws, its non-conforming use of the land had an acquired or vested right. As a result, the Municipality has moved against it under the wrong enactment as nothing has changed in its continuing use as approved and protected by prior legislation and bylaws. In short, to allege a violation the Municipality should aver that it was in violation of its status as a nonconforming user of the land under a prior enactment that granted or allowed that status.

[5] On the other hand, although accepting that there was and still is a non-conforming use of land, the Municipality submitted that with the adoption by its Council on July 11, 2000, of Land Use Bylaws for Downtown Dartmouth, the new regime of bylaws has an adverse effect upon the operation of the defendant's massage parlour at its present location. Therefore, the defendant was in violation of these

bylaws but, in its defence, could bring itself within any exceptions that would permit it to continue its non-conforming use of the land.

[6] To assist the process, the court canvassed with the parties the duty of the prosecution to prove all the elements of the offences charged beyond a reasonable doubt and the undesirability of an onus on the defendant to prove a negative. Further, since the status of the non-conforming use was established, the court queried whether it would not have been more appropriate to aver a violation of that status by reference to the provisions of the enabling enactments. Consequently, the parties have submitted legal briefs on the issue of whether the prosecution ought to proceed as presented.

Issues

[7] Here, I think that the question that arises is strictly a narrow one:

> Has the defendant accrued or vested rights survived the existence of new bylaws adopted by the Halifax Regional Municipality? If so, is it in violation of any bylaw that is in force in accordance with the provisions of the Municipal Government Act and, what would be those bylaws?

[8] Furthermore, I think that it may well be a question of statutory interpretation as it applies to the paramountcy of legislation and the effect, if any, of the repeal or

the amendment of a by-law, made by a subordinate body, that conflicts with the law covering the same subject matter made by the sovereign legislature.

Analysis

[9] The prosecution appears to admit that either there is a non-conforming use of land or a non-conforming use in a structure pursuant to the current bylaws. Furthermore, it has admitted that this non-conforming use predated the current bylaws and was in existence before the amalgamation of the cities of Halifax and Dartmouth. Specifically, it existed as a nonconforming use under the provisions of the 1978 **City of Dartmouth Zoning Bylaw**, Bylaw C-357, s.9 that states:

> Buildings or uses of land lawfully in existence at the date of the first publication of notice of intention to pass this by-law and which do not conform to it may continue to exist subject to the provisions of the Planning Act.

[10] However, the Municipality has also submitted that the portions of the Dartmouth Land Use Bylaw of 1978 that pertains to the subject area were "specifically repealed in respect to Downtown Dartmouth by Section 2(2) of the July 2000 by-law." Thus, "It is legally impossible to charge the person under the 1978 by-law. However it is open to the defendant to plead and prove compliance with the 1978 by-law as a defence to the charges under the 2000 by-law."

[11] The defendant, in response, submitted, in effect, that the Municipality's response to the perceived problem was a case of tautological nonsense in that if its true position is that the 1978 bylaws are repealed there can be no reference to these bylaws for a defence. However, if it is saying that a defence, in law, still exists under the 1978 bylaws then, tacitly, it is admitting that the rights accrued under the 1978 bylaws have survived its repeal. If so, then why are we here?

[12] In response, I must look to the various and pertinent enactments for the answer. First, an ***Act to Incorporate the Halifax Regional Municipality***, 1995, S.N.S c.3, amalgamated the former cities of Halifax, and Dartmouth, Bedford and Halifax County as one administrative entity. However, the ***Municipal Government Act,*** S.N.S,1998, c.18**,** that came into force on April 1, 1999(the whole Act), repealed the ***Halifax Regional Municipality Act.*** Notwithstanding, pursuant to the ***Municipal Government Act,*** s.538***:***

> The by-laws, orders, policies and resolutions in force in a municipality or village immediately prior to the coming into force of this Act continue in force to the extent that they are authorized by this Act or another Act of the Legislature until amended or repealed. 1998, c. 18, s. 538.

[13] Second, the ***Halifax Regional Municipality Act,*** s. 21(6) had stated:

> The by-laws or ordinances, administrative orders and resolutions in force in a municipal government immediately prior to the incorporation of the Regional Municipality continues to be in force until amended or repealed by the Council

[14] Third, additionally, by virtue of the ***Municipal Government Act,*** (as amended) s.238(1):

> A nonconforming structure, nonconforming use of land or nonconforming use in a structure, may continue if it exists and is lawfully permitted at the date of the first publication of the notice of intention to adopt or amend a land-use by-law.

[15] Fourth, furthermore, pursuant to the ***Municipal Government Act,*** (as amended) s.261:

> Property is deemed not to be injuriously affected by the adoption, amendment or repeal of a statement of provincial interest, interim planning area and development regulations in connection with it, subdivision regulations, subdivision by-law, municipal planning strategy, land-use by-law or the entering into, amending or discharging of a development agreement.

[16] Fifth, I note further, that pursuant to the ***Interpretation Act,*** R.S.N.S. 1989, c.235, ss. 22(3) and 23(1) states:

> 22 (3) An amending enactment, so far as consistent with its tenor, is part of the enactment that it amends.
>
> 23 (1) Where an enactment is repealed, the repeal does not
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> (a) revive any enactment or provision of law that was repealed by the enactment or prevent the effect of any saving clause contained in the enactment;
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> (b) affect the previous operation of the enactment so repealed or anything duly done or suffered under it;
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> ©) affect a right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment;

[17] Sixth, and further, pursuant to the ***Interpretation Act***, s.24:

> 24 (1) Where an enactment is repealed and other provisions are substituted by way of amendment, revision or consolidation,
>
> (a) all regulations made under the repealed enactment remain in force, in so far as they are not inconsistent with the substituted enactment, until they are annulled or others made in their stead; and
>
> (b) a reference, in an unrepealed enactment to the repealed enactment, shall, as regards a subsequent transaction, matter or thing, be read as a reference to the provisions of the substituted enactment relating to the same subject-matter as the repealed enactment, but where there are no provisions in the substituted enactment relating to the same subject-matter, the repealed enactment shall be read as unrepealed as far as is necessary to maintain or give effect to the unrepealed enactment.

[18] I therefore think that the Land Use Bylaw for Downtown Dartmouth is a self-contained code of rules and regulations delegated by and made pursuant to the sovereign law of the Provincial Legislature and, it makes reference, for its efficacy, only to its enabling statute, the ***Municipal Government Act***. Consequently, it is the ***Municipal Government Act*** that sets out the procedures and rules that govern and affect non-conforming uses of land and the exceptions, if any. Therefore, if there is an exception or a violation of these exceptions, or at all, I think that we must look to the ***Municipal Government Act*** for such exceptions and the relevant procedural road map pertaining thereto.

[19] Thus, it would appear and, it is my opinion, that if the defendant, in accordance with the provisions of the ***Municipal Government Act,*** *had accrued a right* to use land in a manner that does not conform to the current land-use bylaws, and that right had existed lawfully before the coming into force of those bylaws that define and regulate the current land use, such accrued rights may continue provided they adhere and conform to the provisions of the ***Municipal Government Act***.

[20] However, the analysis does not end. Here, it is also my opinion, that two legal presumptive principles are alive concerning the application of statutory enactments. First, there is the presumption against retroactivity. Second, there is the presumption that legislation is not meant to take away vested rights. See: Pierre-Andre Cote, *The Interpretation of Legislation in Canada, (Third Edition)*, Carswell, © 2000 Thompson Ltd., pp.140-176.

[21] On the principle of the presumption against retroactivity, courts have pronounced, as articulated by Dickson J., in ***Gustavson Drilling (1964) Ltd., v. Canada (Minister of National Revenue M.N.R.),*** [1977] 1 S.C.R. 271:

> First, retrospectivity. The general rule is that statutes are not to be construed as having retrospective operation unless such a construction is expressly or by

> necessary implication required by the language of the Act. An amending enactment may provide that it shall be deemed to have come into force on a date prior to its enactment or it may provide that it is to be operative with respect to transactions occurring prior to its enactment. In those instances the statute operates retrospectively. Superficially the present case may seem akin to the second instance but I think the true view to be that the repealing enactment in the present case, although undoubtedly affecting past transactions, does not operate retrospectively in the sense that it alters rights as of a past time. The section as amended by the repeal does not purport to deal with taxation years prior to the date of the amendment; it does not reach into the past and declare that the law or the rights of parties as of an earlier date shall be taken to be something other than they were as of that earlier date. The effect, so far as appellant is concerned, is to deny for the future a right to deduct enjoyed in the past but the right is not affected as of a time prior to enactment of the amending statute.

[22] On the second presumption, concerning the interference with vested rights, Duff, C.J., pronounced in ***Spooner Oils Ltd., v. Turner Valley Gas Conservation***, [1933] S.C.R. 629 at 638:

> A legislative enactment is not to be read as prejudicially affecting accrued rights, or "an existing status" (Main v. Stark [(1890) 15 App. Cas. 384, at 388]), unless the language in which it is expressed requires such a construction. The rule is described by Coke as a "law of Parliament" (2 Inst. 292), meaning, no doubt, that it is a rule based on the practice of Parliament; the underlying assumption being that, when Parliament intends prejudicially to affect such rights or such a status, it declares its intention expressly, unless, at all events, that intention is plainly manifested by unavoidable inference.

[23] The same principles that apply to statutory enactments must of necessity also apply to bylaws.

[24] Other principles come to mind. For example, statutes are considered paramount over subordinate legislation, such as bylaws, because legislatures are sovereign bodies. Additionally, in relation to legislation which also would be applicable to bylaws, it would appear that if any bylaws are repealed and replaced by new bylaws that incorporate the desired change, to the extent that the new bylaws do not substantially differ from the previous ones, the bylaw is, in effect, re-enacted. Under this principle, the reformulated or new provision comes into effect upon the date of its adoption while the operation of the earlier provision remains uninterrupted. If, however, the bylaw adds new provisions or repeal existing provisions and replaces them with new ones and the new provisions make substantive changes to the law, they operate as amendments, rather than re-enactments and only come into force when adopted by Council. See also: Ruth Sullivan, ***Statutory Interpretation***, Faculty of Law, University of Ottawa ©) 1997 Irwing Law Inc. *"Chapter 1. D. Temporal Operation of Legislation."*

[25] Hence, on the principle of the sovereignty of legislation, in my opinion, it is not competent for the Halifax Regional Municipality to pass bylaws to the extent that such bylaws nullify the provisions of the ***Municipal Government Act*** to which the Legislature has given the force of law in the execution of any Municipal Development Plan, by negating or nullifying the rights of the defendant created, preserved and

protected by the ***Municipal Government Act***. It therefore seems to me, that any bylaw that the Halifax Regional Municipality purports to endow with the force of a statute directed against non conforming uses of land vested in the defendant under the ***Municipal Government Act*** and which purports to regulate or deny the defendant of his right to continue to operate his premises as a non conforming use pursuant to the provisions of the ***Municipal Government Act***, in effect, would be an attempt by the Halifax Regional Municipality to legislate in relation to a subject reserved to the exclusive legislative jurisdiction of the Province.

[26] Thus, if s. 2(2) of the Downtown Dartmouth Bylaw adopted July 2000 purports to nullify the rights accrued under the ***Municipal Government Act*** it would be of no force and effect with respect to those accrued rights that existed prior to its adoption. Significantly, I should point out that these right are specifically preserved and protested by the same bylaw, s. 5(1) that states:

> Buildings or uses of land lawfully in existence at the date of the first publication of notice of intention to pass this by-law and which do not conform to it may continue to exist subject to the provisions of the Municipal Government Act.

I also note that s.4(ac) of the said bylaw define “non-conforming use” to mean:

> ...a building or use of land lawfully existing at the date of the first publication of notice of intention to pass this by-law, which does not conform to the regulations of the zone in which it is now situated.

[27] Put another way. In my opinion, the City of Dartmouth bylaws that were in force and effect at the time of the amalgamation and unless repealed by the Regional Council pursuant to the provisions of the ***Halifax Regional Municipality Act,*** would still be in force and effect on the coming into effect of the ***Municipal Government Act*** on April 1, 1999. Furthermore, *prima facie*, it would appear that the defendant's nonconforming use in a structure, or the non-conforming use of land, the operation of a massage parlour, if it existed and was lawfully permitted, as it appears to have been, at the date that the Halifax Regional Municipality adopted or amended the Land Use Bylaw for Downtown Dartmouth, it may continue to do so, subject of course, to the provisions of the ***Municipal Government Act***.

[28] However, this does not mean that pursuant to the ***Municipal Government Act***, s.219 a Municipality cannot adopt Land Use Bylaws to regulate land use and development within its jurisdiction and pursuant to the provisions of the said ***Act***. It means, however, that all bylaws must conform to and recognize the authority of the ***Municipal Government Act***. The Halifax Regional Municipality appears to have done so and, in the exercise of its mandate, it has adopted the following relevant bylaws:

Section 9(11)(a)	Any business shall be wholly contained within the dwelling which is the principal residence of the operator of the business. No more than one employee not living in the dwelling shall be permitted.
Section 9(11)(b)	No more than twenty-five (25) per cent of the gross floor area of the dwelling or accessory building shall be devoted to any business use, and in no case shall any business use occupy more than three hundred (300) square feet (27.9 m2) of gross floor area.
Section 9(11)(f)	No more than one(1) sign shall be permitted advertising any such home business and no such sign shall exceed two(2) square feet (0.2 m2) in area. Only exterior illumination of a low wattage, shielded design shall be permitted.

[29] In contrast and by way of comparison, before the adoption of the above noted bylaws the following bylaws were in force and effect, pursuant to the City of Dartmouth Zoning Bylaw, 1978:

Section 23. A home occupation shall be permitted in any dwelling in the R-1, R-2, R-3, R-4, T and TH zone provided:

(a) it shall be conducted by the resident occupant in his or her residence;

(b) it shall be clearly accessory and incidental to the use of the dwelling as a residence;

(f) there shall be no exterior evidence of the conduct of a home occupation except for a business identification plate or sign of two square feet in maximum area;

(g) not more than 25% of the total floor area of the dwelling shall be used for a home occupation;

[30] I note that the 1978 bylaw did not define "home occupation." However, the 2000 bylaw, s.4(t) defines "home business" to mean:

> ...the use of a dwelling for gainful employment involving the provision or sale of goods or services or both goods and services and without limiting the generality of the foregoing does not include restaurants, take-outs, convenience stores, the keeping of animals, taxi stands, any use pertaining to vehicles, or any use deemed to be obnoxious.

Thus, it would appear that the 2000 bylaw has clarified the law with respect to businesses that may be conducted in a non-business designated zone or in "a building or a portion thereof which is designated or used for residential purposes."

[31] The resistance presented by the defendant, as I understand it, is not directed toward the validity of the 2000 bylaws themselves but rather toward their applicability and the attempt to effect their immediate application that, in its view, would be inherently arbitrary, unfair and also would offend the rule of law. It therefore contends that any charges should have been proffered under the 1978 bylaws.

[32] I, however, think, that upon a review and comparison of the two versions of bylaws and when I apply the principles of statutory interpretation that I have discussed

above, the 2000 bylaws were either a partial re-enactment of the 1978 bylaws as they repealed existing provisions and replaced them with new provisions that incorporate, what I dare say, are desired changes. Or, they are amendments, in that they repealed existing provisions and replaced them with new ones.

[33] It seems to me that in the bylaws of 2000, s.9(11)(a), incorporates the bylaws of 1978, s.23(a) and (b). The bylaw restricting a home business to be conducted by an owner solely on his or her premises is embodied substantially in the first clause of the bylaws of 2000, s.9(11)(a). This is not something new but rather a reformulation of the 1978 bylaw in a more succinct manner. Because this rule is a re-enactment of the 1978 bylaw its operation is not interrupted and its coming into force is still September 15, 1978. However, the second clause, "no more than one employee . . . " adds something substantially new and therefore will operate as new law that will come into force on July 11, 2000.

[34] The first part of the bylaw I think, would be of "general application" applying to continuous facts, while the second part would be "prospective" in nature, applying to present or future facts. As there is a presumption against retroactive application and, as there are no expressed or implied provisions of retroactivity in the bylaws of

2000 concerning the second part of the bylaw, its efficacy, as it affects the rights of the defendant is tempered by the operation of the bylaws of 2000, s.5(1) and the ***Municipal Government Act***, ss.238, 261 and 538.

[35] The bylaw of 2000, s.9(11)(b) has added new provisions to that of 1978, s.23(g). The new provisions have made substantial change to the existing law. I think that the twenty-five percent of the "gross floor area of the dwelling or accessory building", is substantially the same as in the 1978 bylaws when I consider the identical meaning of "floor area" and "dwelling" as defined in both sets of bylaws. The bylaws of 2000 have simply re-enacted these definitions. It has also re-enacted the amount of allowable floor space for business operations but has added restrictive maximum space that can be utilized as such. Again, it seems to me, that upon applying the principles of statutory interpretation, as I have presented above, the coming into force of the re-enacted part would remain September 15, 1978 while the new provisions would come into force on July 11, 2000. The same efficacy of the bylaw's application would apply as I have earlier stated.

[36] Likewise, I think that the bylaws of 2000, s.9(11)(f) has re-enacted that of 1978, s.23(f) but adding new provisions. No substantial changes have been made about the

number of signs and its size. The new and added provision speaks about the kind of illumination that is permitted. Once more, the same analysis that I have made above would prevail.

[37] Thus, pursuant to the operation of the ***Interpretation Act,*** ss.23(1) and 24(1), the ***Municipal Government Act,*** ss.238, 261 and 538, and on the above analysis, the re-enactment of the provisions of the 1978 bylaw, in so far as it is not inconsistent with the 2000 bylaw, has kept it in force and effect since the date of its adoption in 1978. It is therefore consistent with that principle, and, it is my opinion, that any violation, if at all, of the provisions that were in force since 1978 should be proffered under those bylaws.

[38] The salient issue here in not whether the defendant has an "exception under statute" defence but rather whether it has an accrued legal right established by statute that is unassailable and is not subject to retroactive application unless expressly stated in an enabling statute. The Municipality has not pointed to any such legislation. Thus, the established accrued legal rights remain intact subject to the provisions of the ***Municipal Government Act***.

[39] Even so, the Municipality has submitted that despite the accrued vested legal right conferred by the sovereign statute it can still charge the defendant with violations of its current bylaws. It avers that the defendant must then prove an exception to the bylaws by claiming its non-conforming status under the ***Municipal Government Act***. Then, the Municipality, ostensibly, would disprove the existence of the non-conforming status.

[40] I, however, think that from a practical point of view, as the existence of a previous bylaw and the legally vested status of non-conforming use by the defendant is known by the Municipality it would be imposing an unnecessary and undue burden on the defendant to compel it to prove a negative. Since the onus would be on the Municipality to prove beyond a reasonable doubt the violation of any currently operating and effective bylaws and the defendant can prove the lawfully vested continuing right of the non-conforming use, I think that in the words of MacKay, J.A., in ***R.v. Buday***, [1960] O.R. 403 (C.A.):

> It would be a simpler procedure for the municipal authorities either to prosecute under the earlier by-law or prove that there was such an earlier by-law in force.

[41] It is my opinion that the simpler procedure is the preferred approach given my above analysis.

Conclusion

[42] On the above analysis I think that the approach adopted by the Municipality is an attempt to impose moral blameworthiness because of the defendant's legally accrued right to use land in a manner that does not conform to the zoning bylaw. That respectfully, may well violate the fundamental principles of the presumption of innocence and of the onus of proof on the prosecution as pronounced by Dickson, J., in ***R. v. City of Sault Ste. Marie*** (1978), 40 C.C.C. (2d) 353 (S.C.C.), to prove every element of the offence charged beyond a reasonable doubt and, then it is open to the defendant to prove, on the balance of probabilities, that it "reasonably believed in a set of facts which, if true, would render the act or omission innocent, or [it] took all reasonable steps to avoid the particular event." Thus, in my view, it is only the defence of due diligence that would be open to the defendant under a violation of the bylaws. See also: ***R.v. Loomis,*** [2006] N.S.J. No.140, 2006 NSPC 14.

[43] Furthermore, I think that although the prosecution has an obligation, in the public interest, to defend the bylaws and to ensure that they are sustainable as a matter of law, it also has a duty to be fair. See, for example: ***R.v. Swinimer***, [2005] N.S.J. No. 555, 2005 NSPC 59. In my opinion, rights that are accrued under a sovereign law,

are not defenses, *per se*, against delegated and subordinate enactments such as municipal bylaws. Against such subordinate enactments those accrued rights which are also known to exist by the Municipality, in my view, are not subjected to any diminution or challenge by the subordinate body unless it resorts to the enabling statute, in this case, the ***Municipal Government Act,*** for a remedy or relief.

[44] The substantive offences created by the 2000 bylaws and under which the defendant is charged, do not grant any exemptions or exceptions in their provisions. The Municipality, however, in adopting these bylaws has acknowledged an accrued right, and with respect to this right, correctly defers to the provisions of the ***Municipal Government Act,*** the enabling statute that conferred that right. As a result, in my view, the provisions of the ***Criminal Code***, s.794(2) which places the burden of proving that it is favoured by "an exception, exemption, proviso, excuse prescribed by law" on the defendant, would not be applicable to this case. I say so because the ***Criminal Code***, s.794(2) does not refer to accrued rights. To rule otherwise, in my opinion, would be to cloak the bylaws with equal powers with, or supremacy over its enabling statute.

[45] Thus, I think that, in the final result, the basis for any conviction would lie under the surviving provisions of the 1978 bylaws or under the appropriate and relevant provisions of the ***Municipal Government Act***. However, if as asserted by the defendant, " that a previous acquittal occurred under the by-law which applied at the time regarding maximum square footage of allowable use", then the defendant, with respect to that issue, could conceivably avail itself to either one of the special pleas of *autrefois acquit*, issue estoppel or *res judicata.*

J.