IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Ingham v. West Hants (District), 2005NSSC115

20050321
Docket: SH 219923
Registry: Halifax

Between:

Patricia Ingham

Applicant

v.

Municipality of the District of West Hants

Respondent

Judge:	The Honourable Justice M. Heather Robertson
Heard:	February 10, 11 and March 21, 2005, in Halifax, Nova Scotia
Decision:	March 21, 2005 (Orally)
Written Decision:	May 12, 2005
Counsel:	Kelvin Gilpin and Marriott Gilpin, Articled Clerk, for the applicant Derrick J. Kimball and Sharon Cochrane, Articled Clerk, for the respondent

Robertson, J.: (Orally)

[1] The applicant Patricia Ingham requests an order for *certiorari* pursuant to *Civil Procedure Rule* 56.02 to quash the order of the tax sale of property formerly owned by her and situated at 458 Castle Frederick Road, Falmouth, Nova Scotia. She asks the court to quash the tax sale so that the ownership of the property will revert to her and she asks to be indemnified for loss and expense incurred by the Municipality or any other person.

BACKGROUND

[2] On July 12, 2001, a fire broke out at Mrs. Ingham's property and it was substantially destroyed. At a meeting of an Administrative Committee of the Municipality of the District of West Hants ("Committee") held on October 24, 2001, pursuant to the provision of the *Municipal Government Act* a motion was passed that an order be served on Mrs. Ingham to demolish and clean up the property. On November 1, 2001, the order was issued. Mrs. Ingham was given 30 days to comply. The Municipality demolished the property on March 1, 2002.

[3] Mrs. Ingham was billed the costs associated with the demolition and these costs were added to and formed part of her real property taxes pursuant to the *Act.* Mrs. Ingham's taxes fell into arrears several years running that is to say from the tax year 2001-2002 forward. Her taxes remained in arrears and tax sale procedures were commenced culminating in a sale to a third party, Char-Vale Charolais Limited ("Char-Vale"), on October 29, 2003 for $82,000.00 plus HST. Mrs. Ingham did not redeem the property within six months of the tax sale.

[4] Before a deed was issued to the purchaser, Mrs. Ingham sought an *ex parte* interim injunction preventing the transfer of the property pending the hearing of this application. The application was heard by the Honourable Justice R. W. Wright on or about April 29, 2004, and an order was granted by Justice Wright on April 30, 2004 which prevented the Municipality from delivering the deed of the property subject to the tax sale to the purchaser.

[5] At the same time, Mrs. Ingham brought this application *inter partes* against the Municipality by way of *certiorari* seeking an order to set aside the tax sale.

[6] Counsel have agreed that the applicant has no complaint regarding the conduct of the tax sale and acknowledge that all procedures related to the sheriff's sale comply with the *Statutes*, including proper service of the 60 day notice of sale. They also agree that all statutory provisions relating to the meeting of the Administration Committee who issued the demolition order have also been met.

[7] The applicant however takes issue with the steps taken before June 30, 2003, in initiating steps leading to the tax sale which she says was prematurely and relating to the Municipality's decision to render the premises dangerous and unsightly leading to the order for demolition that they say then triggered the tax sale, when the costs of the demolition became owing to the Municipality. It is the applicant's position that but for the costs of the demolition there would be no basis for the tax sale because she was not in arrears of her taxes. She submits that the Municipality did not lawfully demolish her property and therefore she did not owe any monies associated with its demolition.

[8] Counsel have agreed that the Common Book of Documents and the Supplemental Common Book of Documents are in evidence before the court without further proof. Affidavits have been filed with the court; by the applicant Mrs. Ingham and on behalf of the respondent Municipality by Harold G.S. Adams, Q.C. Municipal Solicitor, Gary Lee Lunn By-Law Enforcement Officer, Ron Mullins Director of Finance and Dwight M. Bennett Municipal Clerk and Chief Administrative Officer. The affidavits make reference to a number of documents filed with the court in the Common Book of Documents and Supplemental Common Book of Documents.

[9] The issues before me are:

1. Did the Municipality comply with the provisions of Part XV of the *Municipal Government Act,* relating to Dangerous or Unsightly Premises?

2. At the relevant times were Mrs. Ingham's taxes with respect to 458 Castle Frederick Road in arrears?

3. Should Mrs. Ingham's application for *certiorari* be dismissed for failure to comply with the six month limitation period prescribed by *Rule* 56.06?

4. Did the Municipality violate the principles of procedural fairness?

ISSUE #1 - Did the Municipality comply with the provisions of Part XV of the *Municipal Government Act,* Dangerous and Unsightly Premises?

[10] The applicant complains that her property should not have been demolished by the Municipality on March 1, 2002. The cost of this demolition added with other tax arrears rendered her property subject of tax sale which occurred on October 29, 2003.

[11] It is noted that prior to the fire, Mrs. Ingham had listed this property for sale for $120,000. Following the fire the listing agreement was amended and the list price was $75,000. The listing agreement expired on December 30, 2001. In evidence for listing purposes the house was to be treated as a total loss and any purchaser was to be responsible for the clean up of the property.

[12] The respondent Municipality notes that notwithstanding the tax sale she will be placed in a favourable financial position when the surplus proceeds of sale are distributed to her.

[13] The relevant provision of the *Municipal Government Act* relating to unsightly premises are as follows:

> 344 Every property in a municipality shall be maintained so as not to be dangerous or unsightly.
>
> ...
>
> 345(2) The council may, by policy, delegate its authority pursuant to this Part, or such of its authority as is not delegated to the administrator, to a community council or to a standing committee, for all or party of the municipality.
>
> 346(1) Where a property is dangerous or unsightly, the council may order the owner to remedy the condition by removal, demolition or repair, specifying in the order what is required to be done.
>
> 346(2) An owner may appeal an order of the administrator to the council or to the committee to which the council has delegated its authority within seven days after the order is made.

346(3) Where it is proposed to order demolition, before the order is made not less than seven days notice shall be given to the owner specifying the date, time and place of the meeting at which the order will be considered and that the owner will be given the opportunity to appear and be heard before any order is made.

346(4) The notice may be served by being posted in a conspicuous place upon the property or may be served upon the owner.

...

348(1) In this Section, “order” means an order made by the administrator, committee, council or court pursuant to this Part.

348(2) An order may be served by being posted in a conspicuous place upon the property or may be personally served upon the owner.

348(3) Where the owner fails to comply with the requirements of an order within the time specified in the order.

...

352(1) The administrator may, for the purpose of ensuring compliance with this Part, enter in or upon any land or premises at any reasonable time without a warrant.

[14] Section 3(r) of the *Act* provides a definition for dangerous or unsightly:

“dangerous or unsightly” means partly demolished, decayed, deteriorated or in a state of disrepair so as to be dangerous, unsightly or unhealthy, and includes property containing

...

(iii) any other thing that is dangerous, unsightly, unhealthy or offensive to a person, and includes property, a building or structure.

(iv) that is in a ruinous or dilapidated condition,

(v) the condition of which seriously depreciates the value of land or buildings in the vicinity.

(vi) that is in such a state of non-repair as to be no longer suitable for human habitation or business purposes,

> (vii) that is an allurement to children who may play there to their danger,
>
> (viii) constituting a hazard to the health or safety of the public,

[15] The *Act* clearly confers on a municipality the power to act in relation to dangerous and unsightly premises in Part XV. The Municipality has the power to delegate its authority under this part (s.345) and the Municipal Counsel did so delegate its authority to the Administration Committee (Bennett's affidavit para. 5 and Common Book of Documents #3 p. 946).

[16] I accept that the Committee had the authority to consider whether the property was dangerous and unsightly and to order remedial action.

[17] The meeting was held on October 24, 2001. I accept the evidence of Gary Lunn, the Enforcement By-Law Officer that he made a presentation to the Administration Committee concerning the state of disrepair of Mrs. Ingham's property and that he showed pictures to the Committee. These are found in the Supplementary Common Book of Documents pp. 964-971 which showed the dilapidated condition of Mrs. Ingham's house.

[18] I accept that the premises were properly determined to be dangerous unsightly in accordance with the definition set out in the *Act.* They were not suitable for habitation. They did constitute an allurement to children and therefore a danger. They did constitute a hazard to the safety of the public.

[19] As to whether the notice of the meeting to consider the order for demolition, was properly given to Mrs. Ingham, a notice of the Committee meeting may be served by being posted in a conspicuous place on the property or may be served on the owner (s.346(4)). The provision provides for alternative forms of service. With respect to service on the owner, the section does not require personal service. In that regard, s. 509(1) states:

> Any notice, decision or other document required to be served pursuant to this *Act* may be served personally, by mailing it to the person at the latest address shown on the assessment roll, by electronic mail or by facsimile.

[20] The notice also stated that Mrs. Ingham had a right to attend this meeting and would be given the opportunity to be heard. The notice was emailed to her and

sent to her via facsimile. This is confirmed by Mr. Lunn's affidavit, paras. 7-10. Mrs. Ingham acknowledged by email receiving the notice by facsimile. (Common Book of Documents #1 p. 29).

[21] Mrs. Ingham had provided a fax number for receipt of emails. The meeting had originally been scheduled for August 29, 2001 - postponed due to the ill health of the applicant to September 26, 2001 and finally heard on October 24, 2001.

[22] Although there are conflicting accounts of whether Ms. Ingham's daughter undertook to attend the October 24th meeting on her mother's behalf, from Mr. Adams' affidavit - para. 12, and Mrs. Ingham's own account, it is clear on the evidence before me that Mrs. Ingham had full knowledge of and notice of the meeting that was to be held and that notwithstanding her illness, she could have been represented at that meeting. I find that the notice of the meeting was properly served pursuant to the statutory requirements.

[23] The notice of the October meeting was drafted and sent to Mrs. Ingham by registered mail to her last known address (Adams' affidavit, para. 10). In addition, Gary Lunn posted the notice in a conspicuous place on the property on September 26, 2001 (Common Book of Documents p. 93). All of these dates are well within the seven day notice requirement required by s. 346(3) of the *Act*.

[24] Further I find that proper notice was given of the order providing that Mrs. Ingham had 30 days to demolish the building and clean up the property. Mrs. Ingham was served with a copy of the order dated November 1, 2001 by email (Adams' affidavit para. 22 and Common Book of Documents #1, pp. 144-146), by sending a copy of the order to her daughter Melissa Glenn (Adams' affidavit para. 24 and Common Book of Documents #3, p. 169).

[25] There is a significant volume of communication between Mrs. Ingham and Municipal officials between the date of the fire (July 12, 2001) and the date of the demolition March 1, 2002.

[26] Ms. Ingham did not appeal the order for demolition pursuant to s. 342(2) of the *Act* nor did she bring an application for *certiorari* within six months of the date of the order.

[27] I find that the demolition of the building on March 1, 2002 complied with s. 348(3) of the *Act* and was properly carried out. The evidence is that Mrs. Ingham had ample notice of the intention to demolish the property on March 1, 2002 and there is ample correspondence to confirm this.

[28] Mrs. Ingham recived an e-mail on February 6, 2002, (Adams' affidavit para. 35 and Common Book of Documents #2 p. 268) indicating that the Municipality was proceeding with the demolition. Mrs. Ingham received this e-mail and responded to it on February 8, 2002 (Common Book of Documents #2 p. 268). Mr. Adams emailed Mrs. Ingham again on February 19, 2002, to inform her that the Municipality would be proceeding with the demolition (Adams' affidavit para. 37 and Common Book of Documents #2 p. 275) and again on February 28, 2002 regarding expert reports. Demolition occurred the following day (Adams' affidavit para. 44 and Common Book of Documents #2 p. 376). It is clear Mrs. Ingham was aware the Municipality was going forward with the demolition.

ISSUE #2 - Were Mrs. Ingham's taxes in arrears?

[29] The applicant appears to suggest that the cost of demolition is not a tax, the collection of which may be enforced through a tax sale. If the cost of demolition is not a tax, or if the procedure pursuant to the dangerous and unsightly provisions of the *Act* were not properly followed and the demolition costs not owed by the applicant, then the applicant submits there would be no arrears sufficient to trigger the tax sale.

[30] I find the cost of the demolition formed a lien on Mrs. Ingham's property pursuant to s. 507 of the *Act* which states:

> Where a council, village commission, committee or community council or the engineer, the administrator or another employee of a municipality lawfully causes work to be done pursuant to this Act, the cost of the work with interest at the rate determined by the council, by policy, or by the village commission, by by-law, from the date of the completion of the work until the date of payment, is a first lien on the property upon which, or for the benefit of which, the work was done.

[31] Moreover, pursuant to s. 3(bz) of the *Act*, which defines taxes, the cost is a "tax." The definition is very broad:

> "taxes" includes municipal rates, area rates, change in use tax, forest property tax, recreational property tax, capital charges, one-time charges, local improvement charges and any rates, charges or debts prescribed, by the enactment authorizing them, to be a lien on the property

I find that the demolition charges were properly a first lien on the property pursuant to s. 507, the collection of which is enforceable pursuant to the tax sale provisions of the *Act*.

[32] I have heard the evidence of Mr. Mullins and Mr. Adams concerning the arrears in taxes on this property, how they are calculated together with evidence of the taxation year which runs from April 1 to March 31. Their evidence also informed me of the practices of the Municipality regarding notices and billing practices relating to the taxation year. I accept their evidence. Exhibit 7 before the court outlines the arrears in taxes.

[33] The municipal taxation year runs from April 1st of one year to March 31st of the following year.

[34] For any given taxation year, taxes are due on September 1st. After September 1st of the taxation year, any unpaid taxes are in arrears.

[35] Once the taxation year has expired (March 31st) the property is liable to be sold for taxes in the ensuing year (i.e. after April 1st). However, as specified by the s.134(1) of the statute; "tax sale proceedings...shall not commence before June 30th in the year immediately following that taxation year."

[36] There are a number of preliminary steps taken in relation to a tax sale. A tax sale property list is prepared listing all properties liable to tax sale (s. 137). A preliminary notice is forwarded to the tax payer (s. 138). A title search is conducted and if necessary a survey is obtained (s. 139). Finally, a sixty day notice setting out the proposed date of the sale is issued (s. 140). The *Act* provides for the method of sale and advertising requirements in relation to sale (ss. 141, 142).

[37] The issue has been raised by the applicant that the Municipality was premature in commencing the tax sale proceedings and did so before June 30th.

[38] Pursuant to the *Statute* "tax sale proceedings" commence with the sixty day notice under s. 140 (notice of intent to sell). It appears to be common ground between the parties that no explicit definition of the word "proceedings" is provided in the *Act*. Section 138 however requires the municipality to forward a preliminary notice to the owner.

> S. 138 ... advising that the property is liable to be sold for the arrears, with interest and expenses, and that tax sale procedures will be commenced and costs expended unless the arrears are paid within...

[39] The statutory language is clear that the preliminary notice is 'preliminary' to the tax sale procedure. In the result, the preliminary notice dated March 31, 2003 and the letter advising about the title search are preliminary to the commencement of "tax sale procedures." The "tax sale proceedings" commenced with the sixty day notice (pursuant to s. 140) dated July 28, 2003.

[40] In any event I accept that taxes were in arrears in relation to the taxation year 2001-2002, and that tax sale proceedings in this case could have been commenced pursuant to s. 134 at any time following June 30, 2002. The evidence at the time of the tax sale shows the applicant was in arrears for tax the year 2001-2002 in the amount of $3,035.79, comprised of property taxes of $55.05 as of April 30, 2002 plus interest for a total of $64.95 and the balance of demolition costs of $2,970.84; and real property taxes in relation to the year 2002-2003 in the amount of $220.34. These figures are confirmed on the reminder notice issued October 6, 2003 (appearing at page 1010 Supplementary Book of Common Documents) together with several miscellaneous invoices. Although amounts representing three distinct taxation years were in arrears as of the date of sale, it was only the amounts in relation to the taxation year 2001-2002 that were in arrears in sufficient time to trigger the tax sale proceedings that culminated in the tax sale.

[41] It appears from the evidence of Mrs. Ingham that she was under the misapprehension that the tax year commenced on September 1 of each year. This can be explained by the billing practice of the Municipality. She also testified that she believed that if she paid 20% of the taxes owing no sale could occur. I do not accept that any official of the Municipality told her this.

[42] Mrs. Ingham also gave evidence to suggest that payment made by her daughter Melissa Glenn were or should have been attributed to arrears in taxes.

The evidence is very clear that her daughter Melissa directed the payments she made to the reduction of the demolition as outlined in the credits shown on Exhibit 7 and her correspondence to the Municipality.

ISSUE #3 - Should Mrs. Ingham's application for *certiorari* be dismissed for failure to comply with the six month limitation period prescribed by *Rule* 56.06?

[43] This issue raises a serious question of jurisdiction and is a complete disposition of the matter. However, I intend to further rule on all of the merits of this case so that Mrs. Ingham will feel that all of the issues have been addressed by this court.

[44] Mrs. Ingham has brought the application for an order in the nature of *certiorari* on the basis that the tax sale of her property was invalid. The filing and service of the originating notice that commenced the application did not meet the strict limitation period prescribed as set out in *Rule* 56.06.

[45] *Civil Procedure Rule* 56.06 in relation to *certiorari* applications stipulates as follows:

> 56.06. An originating notice for an order in the nature of certiorari shall be filed and served within six (6) months after the judgment, order, warrant or inquiry to which it relates, and Rule 3.03 does not apply hereto.

[46] *Rule* 3.03 provides for the extension or abridgment of time by a court or consent of the parties.

> **3.03.** (1) The court may, on such terms as it thinks just, extend or abridge the period within which a person is required or authorized by these Rules, or by any order, to do or abstain from doing any act in a proceeding.
>
> (2) The court may extend any period referred to in paragraph (1) although the application for extension is not made until after the expiration of the period.
>
> (3) The period within which a person is required by these Rules or any order to serve, file or amend any pleading or other document may be extended by consent in writing of the parties.

[47] The relevant case law makes it clear that under this *Rule* the time limitations are strictly construed. In the rarest of circumstances the court may extend the six month limitation.

[48] *Melford Concerned Citizens Society v. Nova Scotia (Minister of the Environment)* (1999), 181 N.S.R. (2d) 52 (SC), involves a decision made by the Minister on March 23, 1999. The application for *certiorari* was filed on September 20, 1999, in relation to the Minister's decision of March 23, 1999. While the filing of the application was within the six month time limitation, personal service was not effected until September 27, 1999. The court also held that insufficient service was not an irregularity that could be corrected under *Rule* 2.01(1). At paragraph 28 Justice Wright states:

> Rule 2.01(1) is, however, a provision of very general application and it must yield to the specifics of Rule 3.03, the operation of which is expressly excluded from certiorari applications by virtue of Rule 56.06. Simply put, the court ought not do through the back door what it is expressly precluded from doing through the front door.

[49] *Blue v. Board of Education of Antigonish District* (1990), 95 N.S.R. (2d) 118 (TD). The circumstances were very unusual. Due to a power outage at the prothonotary's office on the last day of the limitation period, a solicitor was unable to file, and hence, serve the application before the expiration of the limitation period. Chief Justice Glube emphasized the importance of strict adherence to the *Rules* at paragraph 13:

> It must be stated however that these are very narrow facts and this decision does not open the door to waiving the time periods for such applications.

[50] *Shepard v. Colchester Regional Hospital Commission* (1994), 131 N.S.R. (2d) 129 discusses the six month limitation period for *certiorari* application. At paragraph 56 Justice Scanlan states:

> As harsh as it may appear the courts have held that the six month limitation must be complied with. ... It is clear that Rule 3.03 is not applicable to 56.06 as it is specifically excluded in Rule 56.06.

[51] *Marvel Metal & Glass Products Ltd. v. Annapolis (County)* (2002), 202 N.S.R. (2d) 18 (T.D.) Is another case where the strict limitation period set out in

Rule 56.06 is adhered to citing both *Melford, supra* and *Shephard, supra.* To satisfy this *Rule*, the application must be filed and served within the six month time frame.

[52] Mrs. Ingham started the application by way of an originating notice on April 23, 2003. While a copy of the originating notice was forwarded to the Municipal Solicitor on April 28, 2004, *Civil Procedure Rule* 10.02(2) requires personal service of an originating notice. According to *Civil Procedure Rule* 10.03(1)(b), personal service of a document on a corporate body is effected by leaving a true copy of the document with the "chairman, mayor, warden or other chief officer." In addition, s. 510 of the *Act* states that where notice is required to be served on a municipality, service on the clerk is sufficient. Dwight Bennett, Chief Administration Officer and Clerk for the Municipality, was not served with the originating notice (application for *certiorari*) until May 7, 2004. Under the *Rule*, the effective date of the *certiorari* application is May 7, 2004.

[53] The *Rule* is specific. It identifies certain procedures which will be amenable to *certiorari*. The application for *certiorari* shall be filed and served within six months after the judgment, order, warrant or inquiry to which it relates. In this case, the application on its face does not precisely identify what "judgment, order, warrant or inquiry" to which it relates. The respondent submits that it can be one of two events; the demolition of the property or the tax sale.

The Demolition Event

[54] The applicant's complaints appear to relate to the demolition of the property on March 1, 2002. The applicant says that the property should not have been demolished. If it were not demolished, the costs of demolition would not have been incurred and there would not have been sufficient tax arrears to subject the property to a tax sale.

[55] To the extent that the demolition is the issue, it appears that the order to which the application for *certiorari* relates is the order for demolition issued on November 1, 2001 by the Municipality. Whether it is the order of November 1, 2001 or the demolition itself of March 2, 2002, it is clear that the application is well beyond the six month limitation period for filing and serving the originating notice.

THE TAX SALE EVENT

[56] To the extent it is subject to *certiorari*, the tax sale of October 29, 2003 is the last event. There is no order, judgment or warrant in relation to tax sales. It is a process engaged in by the municipal treasurer in accordance with statute. It commences with an examination of the tax roll to determine which properties if any are in arrears sufficient to place them on the tax sale list. This occurred in December 2002. Thereafter, the process continues until the property is sold or the taxpayer pays the arrears. It is noteworthy that until the property is actually knocked down at the sale the taxpayer had the right to pay the taxes and expenses to that point and have the property removed from the tax sale.

[57] I find all proper steps were taken in relation to the tax sale process and the Municipality acted within its jurisdiction at all times. In any event, the last opportunity available to the taxpayer to challenge the tax sale process by way of *certiorari* was to file and serve the originating notice herein within six months of the tax sale itself (October 29, 2003). This did not occur. While the application was filed within the six months of the sale (April 23, 2003), it was not served until May 7, 2003, when it was served upon the clerk.

[58] The demolition of the property took place on March 1, 2002. The tax sale of the property occurred on October 29, 2003. The effective date of the application is May 7, 2004. The last date within the six month limitation period for commencing an application was April 30, 2004. The application fails on this ground alone.

[59] As I have indicated I intend to continue and deliver my decision on the merits of this case.

[60] Further I would say that Mr. Gilpin has candidly offered an explanation for the failure of service to the correct municipal official by April 30, 2004, deadline. This explanation would in my view not be sufficient avoid the six month limitation period set out in *Rule* 56.06. Certainly the action was well out of time with respect to quashing the order for demolition and no such action was taken. This was long before Mr. Gilpin became counsel in early April 2004.

Issue # 4 - Did the Municipality violate the principles of procedural fairness?

[61] Dealing with issues of procedural fairness, I find that in any event the claim must also fail.

[62] Mr. Gilpin has cited various authorities with respect to the duty of fairness. In *Board of Education of the Indian Head School Division No. 19 of Saskatchewan v. Knight,* [1990]1 S.C.R. 653 Justice L'Heureux Dubé stated:

> The existence of a general duty to act fairly will depend on the consideration of three factors. (i) The nature of the decision to be made by the administrative body; (ii) the relationship existing between that body and the individual; and (iii) the effect of that decision on the individual's rights. This Court has stated in *Cardinal v. Director of Kent Institution,* [1985] 2 S.C.R. 643 (B.C.), that whenever those three elements are to be found, there is a general duty to act fairly on a public decision-making body (Justice Le Dain for the Court at 653)

And in *Baker v. Canada (Minister of Citizenship and Immigration)* (1999), 174 D.L.R. (4th) 193 (S.C.C.) Justice L'Heureux Dubé stated:

> The duty of procedural fairness is flexible and variable and depends on an appreciation of the context of the particular statute and the rights affected. The purpose of the participatory rights contained within it is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected to put forward their views and evidence fully and have them considered by the decision-maker.

[63] Justice L'Heureux-Dubé also stated in para. 20 that the fact that a decision is administrative and affects "the rights, privileges or interests of an individual" is sufficient to trigger the application of the duty of fairness *Cardinal v. Kent Institution,* [1985] 2 S.C.R. 643 (S.C.C.) at p. 653.

[64] The applicant has further relied on *Sydney Precession Machinery Ltd. v. Cape Breton (Reg. Municipality)* (2003), 219 N.S.R. (2d)129 S.C. and *Riopelle v. Montreal (City)* (1911), 44 S.C.R. 579. These cases are distinguished on their facts from the case before me.

[65] On the evidence before me, I can find no breach of the duty of fairness owed by the Municipality and their officials to Mrs. Ingham.

[66] Throughout these events, the evidence abounds to the contrary, showing that Municipal officials kept in contact with Ms. Ingham, appraised her of all matters and sought solutions that would ultimately avoid the tax sale, such as their offer to provide for structured payments of the arrears. Mrs. Ingham received the appropriate statutory notice for every step of these proceedings from the notice of the meeting that would decide the premises were dangerous and a public hazard requiring demolition, on October 24, 2002, to the notice of the order itself sent in November 2002, as well as proper notice of the tax sale, i.e., the 60 day notice properly sent after June 30, 2003.

[67] The Municipality was if anything lenient, with Mrs. Ingham, delaying the demolition to March 1, 2003.

[68] There is no evidence before me that Mrs. Ingham made any effort to arrange for the demolition and clean up of the property herself.

[69] The Municipality had the demolition work done for a reasonable sum and the amount owing became due on March 25, 2002 in the tax year in which arrears of taxes were also owing.

[70] The demolition costs were properly added to the arrears of the taxes owing. Her property was then subject to sale by the Municipality at a tax sale. Mrs. Ingham had an opportunity to stop the tax sale proceedings at any time until the actual sale of the property by paying her taxes. Failing that, Mrs. Ingham had another six months after the tax sale to redeem her property. The statutory procedures having been followed.

[71] In summary, all proper procedures were followed with respect to the tax sale proceedings. Mrs. Ingham was provided with all requisite notices under the *Act*. Moreover it appears from the various affidavits and volumes of correspondence that all relevant times she was well aware of the arrears and the various notices constituting the tax sale procedures, the date of the tax sale and her right to redeem.

[72] There is no basis for the granting of *certiorari* sought. This application is dismissed.

COSTS

[73] I agree issues were complex and it is true that some of the issues had not been previously adjudicated in this province. I found that most of the answers were provided by reading of the *Statutes* and in placing a reasonable interpretation on what the Legislature intended with respect to tax sale proceedings and notices. I also found the issues of fairness would include the statutory intent. While the issues were to some degree complex or not adjudicated before and required a lot of preparation for both sides largely in the share volume of materials, from my point of view the matter was also quite straight forward in many of its elements. I acknowledge that the Municipality had a responsibility to prepare vast volumes of information to inform the court that it had met and complied with its statutory duties and its general duty of fairness. I am also mindful that Mrs. Ingham has lost her property; the house burnt down and she feels she will not received perhaps the same value that she might have if the property had been sold on the open market. She is an elderly woman. She suffers from some illnesses and it would be kind of me to attribute some of her inappropriate allegations to her state of health. I would not wish to unfairly penalize her because she has tried to pursue what she understood to be her rights or understood to be some infringement of her rights. Nonetheless it was a lengthly application and I think significant award of costs is appropriate. The respondent seeks $8000 in costs. I award costs to the Municipality in the sum of $4000 plus disbursements to be taxed.

Justice M. Heather Robertson