SUPREME COURT OF NOVA SCOTIA

Citation: *Region of Queens v Wagner & Brophy*, 2020 NSSC 296

Date: 20201009
Docket: BWT No. 499111
Registry: Halifax

Between:

Region of Queens Municipality

Applicant

v.

Kevin Wagner and Tracy Brophy

Respondents

LIBRARY HEADING

Judge: The Honourable Justice Diane Rowe

Heard: October 6, 2020 in Bridgewater, Nova Scotia

Oral Decision: October 9, 2020

Subject: *Interpretation Act*; s.266 of *Municipal Government Act*; Summary Conviction; Bylaw Enforcement

Issues: Does s.266 of the *Municipal Government Act* require a Summary Conviction for a bylaw offence prior to Court order?

Result: Order granted for enforcement. S.266 does not require a Summary Conviction on a bylaw offence prior to an Order being issued by the Court pursuant to the *Municipal Government Act*.

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DECISION

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Heard: October 6, 2020, in Bridgewater, Nova Scotia

Counsel: Peter Rogers, QC and Aileen Furey, for the Applicant
G.F. Philip Romney, for the Respondents

By the Court:

[1] The Region of Queens Municipality contains beautiful lakes and outstanding beaches. The weather is warm. The tourism industry thrives here, as many people seek to experience this part of the Province of Nova Scotia. Many seek accommodations, to enjoy the area at leisure.

[2] The Region of Queens Municipality (Queens) is one of several created pursuant to the *Municipal Government Act*, SNS 1998, c. 18. ("MGA" or the Act)

[3] Section 2 of the MGA sets out its purposes, among which subsection 2(a) provides as follows:

> 2 The purpose of this Act is to
>
> (a) Give broad authority to councils, including broad authority to pass by-laws, and to respect their right to govern municipalities in whatever ways the councils consider appropriate within the jurisdiction given to them;…

[4] Queens regulates land use within its municipal boundaries under the "Region of Queens Municipality Land Use Bylaw", passed by its Regional Council, dated July 20th, 2009 ("Bylaw"). This Bylaw was entered into evidence at the hearing, in its entirety.

[5] "Campground" is a defined term within the Bylaw, providing at page 8:

> "Campground" means an area of land managed as a unit, providing short term accommodation for tents, tent trailers, travel trailers, recreational vehicles and campers.

[6] Further, the term "Development" is defined at page 10 as follows:

> "Development" means any erection, construction, alteration, placement, location, replacement or relocation of, or addition to, a structure and a change or alteration in the use made of land, buildings, or structures.

[7] It should be noted that this definition of "Development" is identical in content to the definition of "Development", found in Part VIII "Planning and Development" of the MGA, at subsection 191 (c). This Part of the Act sets out the process for land use planning, and, among many items, provides for an administrative appeal to the Nova Scotia Utility and Review Board for applicants who are denied approval of a permit for development by a municipality.

[8] Section 266 of the MGA, as per its heading "Remedies where offence", is applicable to municipal land use and planning matters set out within Part VIII and matters set out within Part IX (headed "Subdivision). Section 266 provides that a municipality may apply to the Court for relief in the event there is an offence in regard to land use planning and regulation in the following manner:

> Remedies where offence
>
> 266 (1) This Section applies to this Part and Part IX.
>
> (2) In the event of an offence

> (a) where authorized by the council or by the chief administrative officer, the clerk or development officer, in the name of the municipality; or
>
> (b) the Director, in the name of the Province, when authorized by the Minister, may apply to the Supreme Court of Nova Scotia for any or all of the remedies provided pursuant to this Section.
>
> (3) The Supreme Court may hear and determine the matter at any time and, in addition to any other remedy or relief, may make an order
>
> (a) restraining the continuance or repetition of an offence in respect of the same property;
>
> (b) directing the removal or destruction of any structure or part of a structure that contravenes any order, regulation, municipal planning strategy, land-use by-law, development agreement, site plan or statement in force in accordance with this Part and authorizing the municipality or the Director, where an order is not complied with, to enter upon the land and premises with necessary workers and equipment and to remove and destroy the structure, or part of it, at the expense of the owner;
>
> (c) as to the recovery of the expense of removal and destruction and for the enforcement of this Part, order, regulation, land-use by-law or development agreement and for costs as is deemed proper, and an order may be interlocutory, interim or final.

[9] Queens seeks an Order from the Court for remedies pursuant to section 266 of the Act, maintaining that the respondents Mr. Wagner and Ms. Brophy have developed a campground on lots zoned R-7, without obtaining prior approval of the municipality, which Queens argues is an offence pursuant to the Bylaw.

[10] The Respondents, in answer, have replied in various ways. Since the application first came before the Court this has shifted in content from the formal filed reply, then the written brief on the hearing which was filed, and then again in

oral argument. I will not canvass them all here, except to note a few for reference to impart how varied the response to the application was during the course of the matter: that the Respondents have never operated a campground; there is some discrimination against the Respondents personally; that the persons who have filed affidavits in relation to their roles as employees or officers of Queens do not have any authority concerning recreational vehicles or travel trailers, as these are not buildings; that this is a quasi-criminal matter requiring a conviction prior to seeking relief pursuant to section 266 of the MGA.

[11] On the filings for the Motion for Directions, and at the appearance on that Motion, counsel for the Respondents indicated that possibly 11 witnesses would be put forward on behalf of the Respondents' position. At the hearing of the Application held on October 6th, 2020, however, there was no evidence led by the Respondents in the form of affidavits filed prior to the hearing on their behalf.

[12] Further, on the motion for directions, discoveries of witnesses were offered and were to be facilitated by counsel for Queens, but these were not held prior to the hearing. Counsel for the Respondents did choose to cross examine Ms. Wendy Connor, Mr. William Leighton and Mr. Tim Clattenburg, all acting employees of Queens, in relation to their affidavit evidence.

[13] This litigation approach is noted as it is relevant to the subsequent decision concerning the issue of costs.

[14] It is evident from the photographs that were attached to the affidavits of both Mr. William Leighton and Mr. Tim Clattenburg that a significant amount of change or alteration to the character of the land at these two parcels, consistent with the definition of “development” within the Bylaw, has taken place.

[15] The photographs attached as Exhibits to the Leighton and Clattenburg affidavits demonstrate that there was extensive ground levelling, evident in photographs of the lands in 2019 and 2020, with gravel roads adequate for trailers and motorized vehicles. In addition, there are multiple crushed stone trailer pads on the properties, all closely adjacent to one another, with electrical hookups clearly visible. Structures erected on the lands are evident, as was a small utility vehicle on site with a brush attachment for surface maintenance.

[16] More than three trailers are in view, in Exhibit “A”, of Mr. Clattenburg’s affidavit, dated June 16, 2020, with as many as five appearing within the frame of the photograph, as they are all closely adjacent to the other in the cleared area. I also note that there are arrangements of deck furniture and barbecues next to some of the camping trailers. A pile of firewood is nearby. Further, the bedroom compartment

of a trailer is extended, indicating accommodation within is occurring. It appears to be organized for the comfort of individuals who are enjoying short term accommodation on site in camping trailers.

[17] I find, based on the affidavit evidence of Mr. Clattenburg and Mr. Leighton, and their evidence at the hearing, that this is a development of the lands as a campground, in keeping with the definitions of each term as set out within the Bylaw, as canvassed earlier.

[18] Upon reviewing the evidence in the Affidavit of Ms. Connor, and upon hearing her oral evidence on cross examination in the hearing, I also find that the zoning of the two parcels was listed as R 7, and that the Respondents had not obtained a permit for development of a campground from Queens prior to undertaking the extensive, and presumably costly, development. Since July, 2019, Ms. Connor, who was acting in her capacity as Development Officer for Queens, has corresponded with the Respondents to advise that the development was unauthorized by Queens and to direct compliance measures. These measures were not undertaken in relation to the removal of the excess number of camper trailers.

[19] This matter was initially brought as an application under section 266 in regular Chambers, requiring no more than half an hour. An objection was raised by Mr.

Romney, counsel for the Respondents, who indicated the Respondents intended a fulsome defence to the summary offence and requested at least a day, which was scheduled.

[20] Prior to the hearing, the Respondents filed a brief raising a point of law, rather than evidence, concerning whether a conviction pursuant to the *Summary Proceedings Act*, RSNS 1989, c. 45 was a precondition prior to a Court issuing an Order pursuant to s. 266 of the MGA. The Respondents argue that there has been no charging of an offence by Queens. In support of that legal argument, the case *Cape Breton Regional Municipality v. Smith* 2019 NSSC 41 is cited within the Respondents' brief, with specific reliance upon paragraph 21 of that decision.

[21] Upon reading that section of the decision of Justice Edwards, and considering this paragraph within the context of the decision, it appears that the reference to a summary conviction made in that paragraph is simply to highlight the differences between a summary conviction charge pursuant to the *Summary Proceedings Act* and an offence pursuant to section 266 of the MGA. Justice Edwards highlights that there are no statutory requirements on timing for filing an application to remedy an offence as set out in the MGA, in contrast with the statutory requirements for time for a summary conviction charge to be laid in relation to an offence.

[22] It is the meaning of the word "offence" in the MGA and related cases on s. 266 that appears to be the basis of this argument by the Respondent.

[23] The *Interpretation Act*, RSNS 1989, c. 235 provides at subsection 9(5) that:

> (5) Every enactment shall be deemed remedial and interpreted to insure the attainment of its objects by considering among other matters
>
> (a) the occasion and necessity for the enactment;
>
> (b) the circumstances existing at the time it was passed;
>
> (c) the mischief to be remedied;
>
> (d) the object to be attained;
>
> (e) the former law, including other enactments upon the same or similar subjects;
>
> (f) the consequences of a particular interpretation; and
>
> (g) the history of legislation on the subject.

[24] The correct approach to statutory interpretation was restated in *Nova Scotia (Office of the Ombudsman) v Nova Scotia (Attorney General)*, 2019 NSCA 51 at paras 61 and 62. This appellate decision indicates that an enactment is intended to be read (quoting Driedger, *Construction of Statutes*, 2d ed. (Toronto: Butterworths, 1983) "…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".

[25] I accept Queens' submission that Courts have recognized that this principle of interpretation applies to bylaws, and that, as per *Archibald v. Nova Scotia (Utility and Review Board)*, 2010 NSCA 27, that zoning bylaws should be read as reflective of the intent of the municipal legislators.

[26] Section 505 of the MGA provides for a fine upon a summary conviction for an offence which is prosecuted. That is not the case in this matter.

[27] In this application, Queens is seeking an Order pursuant to s. 266 of the MGA for the removal of trailers to bring the property into compliance with its zoning, and a declaration as to the placement of trailers in accordance with the Bylaw.

[28] In this sense, the interpretation of the word "offence", as it appears in Part VIII of the MGA , refers to a person acting in contravention of a land use planning bylaw, as passed in accordance with the MGA and in keeping with the statutory purpose of the MGA. In this case, the Bylaw was passed by Queens to regulate land use within its municipal boundaries. The details of the Bylaw, and the zoning, appear to be intended to address and regulate land use and density, in an area of the Province which is valued for, among its many qualities, its recreational opportunities in nature with related tourism enterprises.

[29] The Region of Queens Municipality "Municipal Planning Strategy" dated July 20th, 2009 ("Planning Strategy") which was provided in the submissions by Queens counsel, canvasses the policy that underlies its Planning Strategy and zoning, referring to these multiple uses and interests within the Municipality throughout. As is noted at page 25 of the Planning Strategy:

> Policy 3.3.20
>
> It shall be the intention of Council to limit the types and intensities of land uses within the Seasonal Residential (R 7) Zone to primarily low density residential development.

[30] The Respondents lands are zoned R 7. The Respondents admitted in their written submission that they do not have a permit for development on the properties.

[31] Queens relied upon the decisions in *New Glasgow (Town) v. MacGillivray Law Office Inc*., 2001 NSSC 164 and *Annapolis County (Municipality) v Heritage Wooden Shingles*, 58 2016 NSCA as cases that are indicative that the issuance of an Order by the Supreme Court pursuant to s. 266 of the MGA does not require a precondition of a summary conviction for an offence under that section of the Act. Further, they also cited *Cape Breton Regional Municipality v. Smith,* 2019 NSSC 41, although putting forward a very different interpretation of the case from that suggested by the Respondent. I have addressed the Respondents' interpretation earlier in this decision.

[32] All three of these cases set out fact situations in which an Order was being sought by a municipality pursuant to s. 266 of the MGA in analogous circumstances. However, none of the decisions address squarely whether, as a precondition for the Supreme Court to issue an Order concerning a bylaw offence pursuant to s. 266 of the MGA, an offence must first be proven by the charge and conviction of a person with a summary conviction offence concerning that bylaw.

[33] Applying the terms of the *Interpretation Act*, as set out before, with an analysis of the MGA and Queens' Bylaw enacted pursuant to this statute, I am led to the conclusion that an Order made pursuant to s. 266 of the MGA may be issued by the Supreme Court without a precondition requirement of a charge and summary conviction pursuant to the *Summary Proceedings Act*. Section 266 of the MGA, which does not contain either the heavier penalties set out under either s. 505 or s. 184 of the MGA of fine and forfeiture, or injunctive relief, provides that, on a broad and purposive reading in the context of the Act, that the remedy being sought by Queens is appropriate for an offence of the zoning Bylaw in this matter. I am prepared to issue this Order, based on the submissions of Queens' counsel, and the evidence before me.

[34] Finally, it should be noted that in a brief filed prior to the hearing, Queens was also seeking, in the alternative, an Order pursuant to s. 184 of the MGA for an

injunction. As this was not raised in the pleadings or canvassed in the hearing, it is not part of this decision on the initial s. 266 MGA application and the Order which follows this decision.

[35] An Order will be issued by the Court, substantially in the form as follows, made pursuant to s. 266 of the MGA:

(a) Mr. Wagner and Ms. Brophy will remove or cause to be removed from the property any and all recreational vehicles and trailers in excess of two in total, within 15 days of the date of this Order;

(b) In the event of non-compliance with paragraph (a), the Municipality is authorized to enter the property to remove any recreational vehicles in excess of two, and to store them at a suitable site provided that the owners of the removed vehicles shall have the right to reclaim them upon showing proof of ownership, and providing an undertaking not to place them unlawfully within the Municipality, and to charge expenses incurred by the Municipality in such removal;

(c) Mr. Wagner and Ms. Brophy shall not place or authorize others to place additional recreational trailers or camping vehicles on the Property in excess of two;

(d) Pursuant to this Order, no more than one recreational vehicle or trailer is permitted to be placed upon each of the following lots owned by Mr. Wagner and Ms. Brophy, to be identified in greater particularity in the terms of the issued Order.

[36] I am requesting written submissions on costs from counsel for the parties, to be filed with the Court within five days of this decision, with an Order on the issue of costs to be made after.

[37] Counsel will submit a form of Order for the Court to issue, in keeping with this decision.

Diane Rowe, J.