

This case was heard in Small Claims court May 15, 2012. In dispute was the responsibility of the property owner to pay fees for the provision or waste disposal services by the Trinity Bay South Waste Management Inc. on behalf of the local service district in which the Defendant's property was located. The Trinity Bay South Waste Management Inc was a not-for-profit established by the eight local service districts in the area for the purposes of contracting for the provision of service and collection of fees.

The Defendant's claim:

- The property in question was not within the boundaries of the local service district,
- The property owner was not a "user" of the service and therefore not responsible for the fees,

The Learned Trial Judge's finding:

In granting judgment to the Plaintiff the Learned Trial Judge found as a fact that the Defendant's property was within the boundary of the Local Service District of Old Shop and the fees for the service were valid.

"The evidence is clear that in fact it is commonly known that your property is in Old Shop."

"It is not whether you take advantage of the service is the key issue. The key issue is whether or not the service is made available and you're within the local district."

"If in fact you are within this area, which I believe you are, and you have property in that area, whether you take advantage of the service or not, the service has been made available to you and two other people on that street."

"So, it seems to me that, you know, the Plaintiff has on balance, you know, this isn't a criminal trial beyond any reasonable doubt, it's a trial which on balance whether or not these fees are payable as a result of the invoices which were presented, and it would seem to me that the Plaintiff has done that."

"...but the evidence on balance would indicate to me that you, as well as other people in that particular road are subject to paying those service fees."

The Evidence and Legislation in support of the decision:

A representative of the Department of Municipal Affairs, Director of Legislative Services, testified that the regulations established that there is no legal survey description of Old Shop. The Regulations provide that the boundary is "the area commonly known as Old Shop". With reference to the regulation that established the local service district of Old Shop CNLR 328 / 96 in which it states:

Boundaries

2. The boundaries for the local service district shall be the area commonly known as Old Shop

Testimony further illustrated that in order to determine what is commonly known as Old Shop, the Department of Municipal Affairs rely on people of the area, including members of the Local Service District. The Plaintiff provided evidence from the Chairperson of the Local Service District, who confirmed that the area commonly known as Old Shop included the Defendant's property. He stated:

"Q. ... Are you familiar with Mr. Dunphy's property?

A. Yes I am, yeah, I know where it's to.

Q. Would you consider that property in the local service district of Old Shop?

A. Yes I would.

Q. Can you give us any information about how far past Mr. Dunphy's property is considered to be within the boundaries of the local service district of Old Shop, either a number of properties or an estimation of distance?

A. I guess basically to the end of the road down there, as far as I know, is a part of the community, will always be considered to be part of the community which is probably another half a kilometre, three quarters of a kilometre, somewhere in that area."

In addition, the Chairperson also provided testimony that the service was available to the Defendant and to others on the road.

"Q. Are you aware if there are properties on that road that are being serviced by the waste collection contracting service?

A. Yes. To my knowledge, yes.

Q. Are you aware if the service for waste collection is available to Mr. Dunphy's property?

A. Yes."

The authority to charge fees for the provision of service is granted to the local service district under the *Municipalities Act*, SNL 1999, c. M-24, (the "Act") establishes:

Garbage collection

397. A local service district committee may

- (a) establish and maintain a system for the collection and removal and disposal of garbage; or

(b) contract for the collection, removal and disposal of garbage and may determine the time, manner, extent, nature and recipients of that service.

Fee for service

401. (1) A local service district committee may charge a fee for the cost of services or supply, provided under this Part and regulations made by a local service district committee, to the residents of the local service district or to the users of the service or supply as may be prescribed by the local service district committee.

(2) In addition to other remedies that the local service district committee has to enforce payment of a fee imposed under subsection (1), the local service district committee may disconnect the service provided by a water system where the fee is in arrears.

The determination of which residences, businesses or institutions shall be included in the garbage collection is the responsibility of the Local Service District. Local Service District Regulations, CNLR, 747 / 96, states:

Fee for cost of services or supply

25.(1) The committee may, under section 649 of the Act, charge a fee for the cost of services or supply provided in the local service district.

(2) Where a fee referred to in subsection (1) is charged, **the committee may determine the residents or users of the services or supply who shall be responsible for the payment of the fee** and may vary the fee between those residents or users.

(3) The committee may fix the date in each year when the fee referred to in subsection (1) shall be due and payable.

Each resident, business or institution determined by the Local Service District pursuant to Local Service District Regulations, 25, to be within its boundary is provided the garbage collection service and charged its proportionate share of the cost. The Learned Trial Judge delved into the issue of whether the service has to be "used" by the property owner and if this is a material fact in the determination of the validity of the fees.

Judge -the issue here is whether you're not in the district and whether you're not subject to these fees.

D. – Well, the legislation that is quoted in Section 401 says that the local service district may charge fees to residents or users. Okay. Based on the lack of well-defined boundaries and based on I am not a user, my opinion is they are not able. They should not be charging me a fee.

Judge – So you don't use – the truck doesn't go by, you don't put garbage out at all?

D. – the truck goes by to provide a service to people on the inside of me who are cottage owners as well....

The Local Service District of Old Shop provides the list of property owners that are determined to be recipients of the garbage / waste collection service and the Plaintiff provides the service and invoices each property owner their proportionate share of the cost, ie, the fee.

Conclusion

The fees for the collection of waste are valid for the property that is determined to be within the service area of the local service district. The property owner does not have "to use" the service to be a recipient of the service as designated by the local service district. The fees are valid even for seasonal property owners who do not resident in the community and who do not avail of the service.