In the Provincial Court of Newfoundland and Labrador
Judicial Centre of St. John's

Eastern Regional Services Board	Plaintiff
Elizabeth Dawe and John Dawe	Defendants

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Decision of Flynn PCJ
May 28, 2013

[1] The plaintiff in this matter is a corporate legal entity, created by statute. The defendants are property owners in the Goobies area of the province of Newfoundland and Labrador. The plaintiff brings this action to recover fees for garbage collection services made available to the plaintiffs for the 2012 calendar year. The defendants claim that they are not users of the garbage service and as they have declined the service , they should not have to pay the service fee. The issue will resolve itself depending on the interpretation of pertinent legislation governing this matter.

The Evidence

[2] The plaintiff called three witnesses in this matter, while the defendants called one witness. The evidence of the plaintiff's witnesses helped me to understand the present legislative set up of the Eastern Regional Services Board, and assisted in understanding the general intent of the legislative scheme. It also provided some history to the present legislation, which was helpful in appreciating the changes put in place over the past several years to deal with waste management in the rural areas of the province. The evidence of Mr. Dawe on behalf of the defendants was also helpful in explaining the past practice for the collection of garbage and the change to the present practice. Mr. Dawe was quite candid in explaining that the defendants' property was within the Goobies Local Service District, and that his property , as a seasonal use property, does not require the type of garbage collection that the plaintiff offers. He explained that in the past seasonal users of property paid a reduced fee for garbage collection, and he was certainly happy with that . However, he is not happy with the new regime, with its increased fees, and its failure to recognize seasonal use property holders. His argument is that as he is not a "user" of the service, he should not have to pay. Mr. Dawe filed a detailed brief on the issue, referencing the relevant legislation.

Analysis

[3] The Eastern Regional Services Board is a creature of statute. As such it obtains all its authority from statute and from regulations that have been made under the authority of that statute. The first Act for consideration

is the ***Regional Services Board Act*** R.S.N 1990 c.R-8, and amendments thereto. Under section 3 of that Act the Lieutenant Governor in Council may create and establish a regional service board for the purpose of providing regional services in accordance with that Act. The original regional board was titled the Greater Avalon Region, and by Regulations made under the Act on the 20th day of September 2011 that board was renamed the Eastern Regional Services Board and continued under that name. Pursuant to section 13 of the 1990 Act the following is stated:

> *The expenses of a board may be defrayed out of revenue generated by the assessment of*
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> *(a) used fees in a region; and*
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> *(b) each municipal authority which is represented by the board.*

Regulation 92/11 filed September 20, 2011 made under the authority of the 1990 Act also gives the Board authority to charge "user fees", but such authority relates specifically to the charge of user fees to " a municipality , local service district or unincorporated area of the eastern region . . . . .". At first blush this regulation has the appearance of a limiting provision- limiting the charges of "user fees" to the name entities. However, upon further review it is clear that section 13 of the statute is inclusive in nature, and does not limit the scope of such user fees. As it is the statute which grants the authority, regulations cannot then limit the breath of the statute, as the regulations would therefore be in conflict with the Act. . (See ***Friends of Oldman River Society v Canada*** (Minister of Transport) [1992] 1 S.C.R. 3). To avoid such conflict it is necessary to interpret the regulations as being only one aspect of the power granted to the Board under the Act.

[4] The province repealed the 1990 Act and instituted a new Act which was assented to on June 27 2012. That Act contains within section 24, an expanded version of section 13 of the 1990 Act. It states:

> **24.** (1) The expenses of a board may be defrayed out of revenue generated by the assessment of fees from
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> (a) municipal authorities governed by that board or persons who occupy real property, either as owners or tenants of the property, in municipal authorities governed by that board;

(b) persons who occupy real property, either as owners or tenants of the property, in unincorporated areas governed by that board; and

(c) users of facilities and services.

(2) For the purpose of subsection (1), a tenant does not include a lodger or a boarder.

(3) The methods of raising revenue referred to in subsection (1), as well as the date when the money being raised as revenue is due and payable, shall be imposed or varied by a resolution of the board.

(4) Fees referred to in subsection (1) remain in effect and are due according to the nature of the fee and its method of payment, until the resolution of the board imposing it has been cancelled.

[5] The new legislation, assented to on June 27, 2012, was in effect from that date. Thus the new section 24 is much more expansive than the older section 13. In particular it permits the Board to place assessment fees on persons who "occupy real property", and also on persons who are "users of facilities and services". It therefore makes a distinction between those who occupy property and those who may use the facilities in the area. It does not use the term "user fees" as was used in the previous legislation, but uses the term "users of facilities and services". However as noted it is clear that it does make a distinction between property owners and users of facilities , a distinction that was not made in the previous legislation.

[6] As the 1990 Act applied until repealed on June 27, 2012, I must first review its provisions. The term "user fees" is not defined in the 1990 Act, or in the Regulations made pursuant to that Act. As such, one must ascertain its meaning in accordance with well established principles of statutory interpretation. The principal rule of statutory interpretation is that words in a statute are to be given their "ordinary meaning". In Sullivan and Driedger on the Construction of Statutes (4th ed) the ordinary meaning rule means that the author uses the word or words in their ordinary sense. Sullivan and Dreidger further explain that the ordinary meaning rule consists of a number of propositions:

1. It is presumed that the ordinary meaning of a legislative text is the meaning intended by the legislature. In the absence of a reason to reject it, the ordinary meaning prevails.
2. Even if the ordinary meaning is plain, courts must consider the purpose and scheme of the legislation, and relevant legal norms. They must consider the entire context.
3. In light of these considerations, the court must adopt an interpretation that modifies or departs from the ordinary meaning, provided the

interpretation adopted is plausible and the reasons for adopting it are sufficient to justify the departure from ordinary meaning.

[7] In my view the ordinary meaning to be ascribed to the term "user fees" are fees that would be charged to those individuals who use a particular service. In this case the particular service for which the "user fee" was to be charged was garbage collection services. Looking at the context in which the term is placed in the legislation does not, in my view, detract from the ordinary meaning that is suggested here. That is because the section itself is sparse in wording, referring only to the authority to defray costs by imposing "user fees". When ones looks at the entire context of the legislation, one also must conclude that there is nothing in the broader context of the legislation which takes away from the ordinary meaning to be ascribed to that term. The focus of the legislation is essentially on the composition of the Regional Boards, its functioning in general and its authority to borrow and expend funds. The defendants have referred in their brief to a number of dictionary definitions of "user fee" to support the position that they , as non users of the garbage service, are not users. The dictionary definitions presented define "user fees" to include " a fee charged for the use of a product or service" and " a sum of money paid by the individual who chooses to access a service or facility." Sullivan and Driedger suggest that courts have been sometimes hesitant to rely on dictionary definitions of words or phrases in interpretation, mainly because different dictionaries do, depending on their focus and their country of origin, provide different meanings to the same term. However, courts do at times interpose with their reasoning dictionary meanings of particular words and phrases. (See ***Ontario v C.P. Ltd*** [1995] 2 S.C.R. 1031; ***R v Davis*** [1999] 3 S.C.R. 759. In the present context the dictionary meanings provided by the defendants do support the ordinary meaning that I have subscribed to the phrase "user fees".

[8] Reference to section 24 of the 2102 Act further supports the position put forward by the defendants. As noted above, the new section makes a distinction between the assessment of fees to "users of facilities and services" and "persons who occupy real property , either as owners or tenants...." The change in the legislation suggest to me that the Legislature intended to expand the scope of the legislation to include not only users of services but also occupants of real property who may not be actual users of a particular service. That distinction suggest to me that the Legislature recognized a limitation in the previous legislation and took efforts to expand

its scope. This adds further to my conclusion that the ordinary meaning I have ascribed to the term "user fees" is the correct interpretation of that phrase.

[9] I should state that I am aware and have considered the decision of this court in ***Trinity Bay South Waste Management Inc v Robert Dunphy*** decided May 15, 2012. That case did not encompass the same arguments as the present case, and did not have the new 2012 legislation before it to assist in its interpretation of the authority of that entity.

[10] I am therefore of the view that the defendants were not subject to the "user fees' for the collection of garbage commencing on January 1, 2012 up to the 27th day of June 2012. After that date, whether they used the garbage collection service or not, they were occupiers of real property and therefore were required to pay whatever appropriate fees were assessed by the Eastern Regional Services Board. I therefore find for the plaintiff in the amount of $90, which is the amount for the last 6 months of the calendar year 2012. In view of the fact the defendants had a legitimate legal argument to present and informed the plaintiff of its intention to refuse its service, I am not prepared to order any interest as in my view the account was not overdue until the legal issue was determined by this court.

[11] I should say in closing that the Eastern Regional Services Board can only act within the legislative mandate given to it. In this case the Legislature did not give it the mandate to assess all occupiers of property within its region until the legislation changed in June 2012.

[12] Judgment for the plaintiff in the amount of $90 plus $62 filing and service fees.

Colin J Flynn
Provincial Court Judge