



**IN THE PROVINCIAL COURT OF NEWFOUNDLAND AND LABRADOR
DISTRICT OF ST. JOHN'S
(SMALL CLAIMS DIVISION)**

Citation: *Eastern Waste Management v. Keating*, 2016 NLPC 0116C00156

Date: 2016 11 01

Docket: 0116C00156

BETWEEN: EASTERN WASTE MANAGEMENT **PLAINTIFF**

AND: KEVIN KEATING **DEFENDANT**

Before: The Honourable Judge D. Orr

Place of Trial: St. John's, Newfoundland and Labrador

Dates of Trial: September 7, 2016

Appearances:

Ken Kelly appears as agent for the Plaintiff

Defendant appears on his own behalf

Authorities Cited:

CASES CONSIDERED: *Eastern Regional Services Board v. Dawe*, [2013] N.J. No. 207

TEXTBOOKS CONSIDERED: *Regional Service Board Act, 2012*, SNL 2012 Chapter R-8.1; *Evacuated Communities Act*, RSNL 1990 Chapter E-15;

REASONS FOR JUDGMENT

ORR, P.C.J.:

INTRODUCTION

[1] The Plaintiff Company is a company created under the *Regional Service Boards Act*. The Plaintiff was charged with collecting waste from the Defendant's property in the "town" of Spread Eagle. The Plaintiff states that it provided garbage collection and billed the Defendant for it since 2013.

[2] The Defendant for his part testified that he has a summer home in Spread Eagle and did not use the garbage collection service provided by the Plaintiff. He states that Spread Eagle is a resettled community and that as such the Plaintiff does not have authority to provide services there. There is no question that not using the service does not provide him with a defence to the Plaintiff's claim. The issue is whether or not the Plaintiff can provide and charge a fee for the service.

[3] The Defendant's position is that pursuant to the "*Evacuated Communities Act*" the Plaintiff does not have the legislated authority to perform the services for which it has claimed compensation. The *Evacuated Communities Act* pursuant section 3 permits the Minister to declare a community to be vacated. Section 7 makes it an offence to build or to occupy a building in a vacated community. Section 5 does permit building or occupying a building in a vacated community if the individual obtains a permit to do so.

[4] In **Eastern Regional Services Board v. Dawe**, [2013] N.J. No. 207, Judge Flynn found the defendant liable to board for fees for garbage fees. He noted:

The province repealed the 1990 Act and instituted a new Act which was assented to on June 27 2012.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

(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.

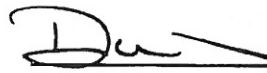
7 In my view the ordinary meaning to be ascribed to the term "user fees" are fees that would be charged to those individuals who use a particular service. In this case the particular service for which the "user fee" was to be charged was garbage collection services. Looking at the context in which the 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 one 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.

[5] In this case then the Defendant could be assessed a user fee as the occupier of real property whether or not he used the service. He quite candidly admitted that he could have used the service but elected not to do so.

[6] There is no reference in the *Service Boards Act* to evacuated communities. I have been unable to find any case law on the point. The purpose of the *Evacuated Communities Act* is to declare a community vacated and prevent any building without approval. It does not prevent any building or prevent individuals from developing with permission. Consequently, by extension it does not prevent the services board from collecting garbage from homes that are within a vacated community.

[7] I find, as a result, that the Defendant is an occupier of real property and the services board is entitled to charge him a user fee.

[8] I give judgment to the Plaintiff as claimed in the amount of \$1150.52.



David Orr
Provincial Court Judge