

CANADA / JUDGMENT

Mississauga (City) v. Peel (Municipality)

[1979] 2 SCR 244

COURT

Supreme Court of Canada

DECIDED

6 March 1979

Source: decisions.scc-csc.ca · Research copy typeset by Esheria. Not court-issued or certified.

Mississauga (City) v. Peel (Municipality)

Collection

Supreme Court Judgments

Date

1979-03-06

Report

[1979] 2 SCR 244

Judges

Laskin, Bora; Martland, Ronald; Ritchie, Roland Almon; Pigeon, Louis-Philippe; Dickson, Robert George Brian; Beetz, Jean; Estey, Willard Zebedee; Pratte, Yves; McIntyre, William Rogers

On appeal from

Ontario

Subjects

Administrative law

Constitutional law

Decision Content

Supreme Court of Canada

Mississauga (City) v. Peel (Municipality), [1979] 2 S.C.R. 244

Date: 1979-03-06

The Corporation of the City of Mississauga (Plaintiff) Appellant;

and

The Regional Municipality of Peel, The Ontario Municipal Board and Her Majesty The Queen in the Right of the Province of Ontario as Represented by the Minister of the Environment (Defendants) Respondents;

and

The Attorney General for Canada, The Attorney General for the Province of Ontario, The Attorney General for the Province of Quebec, The Attorney General for the Province of Nova Scotia and The Attorney General for the Province of Alberta Intervenors.

1979: February 13; 1979: March 6.

Present: Laskin C.J. and Martland, Ritchie, Pigeon, Dickson, Beetz, Estey, Pratte and McIntyre JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Constitutional law—Distribution of powers—Legislative competence of provincial legislature—The Regional Municipality of Peel Act, 1973 (Ont.), c. 60 as amended, ss. 76, 77, 126, 127—B.N.A. Act, 1867, ss. 91, 92.

Administrative law—Reorganization of municipalities—Legislative competence of provincial legislature—The Regional Municipality of Peel Act, 1973 (Ont.), c. 60 as amended, ss. 76, 77, 126, 127—B.N.A. Act, 1867, ss. 91, 92.

An application was made to the Ontario Divisional Court for judicial review to prohibit the Ontario Municipal Board from exercising the statutory authority conferred upon it by s. 127(2)(3) of The Regional Municipality of Peel Act, 1973 (Ont.), c. 60, which empowered the Board to settle doubts as to the vesting of assets and liabilities and related matters with respect to competing claims by the appellant City and respondent Regional Municipality. By agreements of December 17, 1968, the Town of Mississauga, and its Public Utilities Commission, sold certain trunk water facilities and its trunk sewer facilities to the Ontario Water Resources Commission. The compensation was to be determined in accordance with an agreed formula. The conveyance of the assets to OWRC (whose successor is the Ministry of the Environment) had been approved by the Ontario Municipal Board earlier in 1968 subject to the proviso that “all moneys to be paid ‘should’ be subject to the approval of this Board...”. There was no suggestion that the O.M.B. did not have the jurisdiction to make such an order. More than \$15,000,000 was paid to the Town prior to December 31, 1973. There was money received since that date which had not been spent and there were some millions of dollars still owing which the Ministry of the Environment was holding until it was determined to which municipality the payment should be made. What was urged against the Board’s authority under s. 127(2) and (3) was that the Board was not only required to interpret the agreement but also certain provisions of The Regional Municipality of Peel Act, particularly ss. 76(1)(8)(11) and 77(1)(8)(11). This, it was contended, involved the Board in the exercise of a s. 96 (B.N.A. Act) jurisdiction which it was beyond provincial competence to do. The Divisional Court Judge dismissed the application and this dismissal was affirmed by a

majority in the Court of Appeal.

Held: The appeal should be dismissed.

It is not the detached jurisdiction or power alone that is to be considered. The fact that a provincial tribunal, here the O.M.B., is required to exercise a judicial function does not, of itself, involve a conflict with s. 96 of the B.N.A. Act. The present case is indeed a prime example of this proposition. The integration of amalgamating municipalities necessarily involves adjustments of assets and liabilities and determination of disputes. The Legislature had authority under s. 92(8) of the B.N.A. Act to restructure and reorganize municipal institutions in the Province and was entitled to make its own resolution on such matters or to delegate them to an agency such as the Board. Further, the historical argument confirms the proper exercise of an arbitral power rather than the reverse. It cannot be applied to raise a non-section 96 function out of that category simply because it is not exercised in exactly the same way after Confederation as before.

Toronto v. York, [1938] A.C. 415; Labour Relations Board (Sask.) v. John East Iron Works Ltd., [1949] A.C. 134; Ladore v. Bennett, [1939] A.C. 468; Tomko v. Labour Relations Board (Nova Scotia), [1977] 1 S.C.R. 112; Jones v. Board of Trustees of Edmonton Catholic School District No. 7, [1977] 2 S.C.R. 872; Reference re Adoption Act, etc., [1938] S.C.R. 398 referred to. APPEAL from a judgment of the Court of Appeal for Ontario affirming a judgment of the Divisional Court dismissing an application for judicial review to prohibit the Ontario Municipal Board from exercising the statutory authority conferred on it by subs. (2) and (3) of s. 127 of The Regional Municipality of Peel Act, 1973 (Ont.), c. 60. Appeal dismissed.

John G. Parkinson, Q.C., and R.G. Doumani, for the appellant.

P.H.H. Ridout, Q.C., and John Banfill, for the Regional Municipality of Peel.

Lorraine E. Weinrib, for the Ontario Municipal Board and the Attorney General for Ontario.

T.B. Smith, Q.C., and J.M. Mabbutt, for the Attorney General of Canada.

Henri Brun and Louis Crête, for the Attorney General of Quebec.

J.W. Kavanagh, Q.C., and D.J. Keefe, for the Attorney General of Nova Scotia.

W.Henkel, Q.C., for the Attorney General of Alberta.

The judgment of the Court was delivered by

THE CHIEF JUSTICE—This appeal is concerned with the proper answer to the following question:

Are subsections 2 and 3 of section 127 of The Regional Municipality of Peel Act, 1973 (Ont.), c. 60 ultra vires the Legislature of Ontario, having regard to section 96 of the British North America Act?

It stems from proceedings, taken by way of an application to the Ontario Divisional Court for judicial review, to prohibit the Ontario Municipal Board from exercising the statutory authority conferred upon it by s. 127(2)(3) aforementioned. The application was grounded on the assertion

that s. 96 of the British North America Act precludes the Board from acting under those provisions since its members are not appointed by the Governor in Council or, in other words, are not superior, county or district court Judges in whom alone such authority may be vested. Galligan J., speaking for the Ontario Divisional Court, delivered extensive reasons dismissing the application. The Ontario Court of Appeal, by a majority, Madame Justice Wilson dissenting, affirmed the judgment of dismissal in lengthy reasons delivered by MacKinnon J.A., as he then was. I am in agreement with the reasons and conclusions of the two Courts below but, in deference to the dissenting reasons of Wilson J.A., I wish to make some observations of my own on the s. 96 issue raised in this case. Since the facts have been fully stated in the Courts below, I make but brief reference to them here.

The Regional Municipality of Peel Act, 1973 (Ont.), c. 60, as amended, effected legislatively a considerable restructuring of the municipal organization in what I may loosely call the County of Peel area, amalgamating the Town of Port Credit and of Streetsville into a new municipality the City of Mississauga and annexing to it portions of the Town of Mississauga and of the Town of Oakville. It also amalgamated the Town of Brampton and the Town of Toronto Gore into a city municipality, the City of Brampton, to which was annexed other portions of the Town of Mississauga and portions of the Township of Chinguacousy and it created the Town of Albion from an amalgamation of the Township of Albion, the Township of Caledon, the Village of Bolton and the Village of Caledon East, annexing to it at the same time a portion of the Township of Chinguacousy. Certain police villages were dissolved as of January 1, 1974. By s. 126(1), the County of Peel was dissolved as of January 1, 1974 and the new Regional Municipality of Peel was to stand in its place and, of course, to embrace the area municipalities amalgamated and created by the Act.

What the Ontario Legislature did, as is evident from s. 2(3), was to put itself in the place of the Ontario Municipal Board so far as concerned amalgamations, annexations and dissolutions, and yet, subject to stipulated exceptions, it affirmed the jurisdiction of the Board to exercise its powers consequent upon amalgamations, annexations and dissolutions. I reproduce s. 2(3), which is as follows: 2...

- (3) For the purposes of every Act, the amalgamations, annexations and dissolutions provided for in this Part shall be deemed to have been effected by orders of the Municipal Board not subject to section 42 of The Ontario Municipal Board Act or to petition or appeal under section 94 or 95 of such Act, made on the day this section comes into force pursuant to applications made under sections 14 and 25 of The Municipal Act and, subject to the provisions of this Act, the Municipal Board, upon the application of any area municipality or any local board thereof or of its own motion, may exercise its powers consequent upon such amalgamations, annexations and dissolutions, and sections 94 and 95 of The Ontario Municipal Board Act do not apply to decisions or orders made in the exercise of such powers and “municipalities” in clause a of subsection 11 of section 14 of The Municipal Act includes, for the purposes of such clause, the area municipalities to which territory is annexed.

Certain consequences were stated to follow from the dissolution of the County of Peel, as set out in s. 126(2) which is in these words:

126...

- (2) All the assets and liabilities of the County of Peel become, on the 1st day of January 1974, the assets and liabilities of the Regional Corporation, and all documents and records kept by the clerk or treasurer or any other officer of the County of Peel shall be transferred to the clerk, and on the same date that portion of the Town of Oakville described in clause a of subsection 1 of section 2 is withdrawn from the County of Halton.

I come now to s. 127(2) and (3) and deem it advisable to set out s. 127(1) as well. The entire section reads as follows:

127. (1) Except as provided in this Act, the Municipal Board, upon the application of any area municipality or the Regional Corporation, may exercise any of the powers under clauses a, b and d of subsection 11 of section 14 of The Municipal Act in relation to the dissolution of the County of Peel.
- (2) In the event of any doubt as to whether any particular asset or liability is vested in the Regional Corporation under this Act, the Municipal Board upon application has power to determine the matter as sole arbitrator and sections 94 and 95 of The Ontario Municipal Board Act do not apply to decisions or orders made in the exercise of such power. (3) In the event of any doubts as to whether any outstanding debt or portion thereof is a debt in respect of any asset assumed by or vested in the Regional Corporation under this Act, the Municipal Board upon application may determine the matter and its decision is final.

The prohibition proceedings herein were the results of an application by the newly-established Regional Municipality of Peel under s. 127 for the determination by the Ontario Municipal Board, pursuant to s. 127(2)(3), of the ownership of certain assets also claimed by the City of Mississauga. The facts out of which the application to the Board arose are stated succinctly in the reasons of MacKinnon J.A. as follows:

By an agreement of December 17, 1968 the Town of Mississauga (which is a different entity from the City of Mississauga, as will appear later) and its Public Utilities Commission, sold certain trunk water facilities to the Ontario Water Resources Commission (OWRC). By an agreement of the same date, the Town also sold its trunk sewer facilities to the OWRC. The amount of compensation to be paid for these facilities was to be determined by a formula set out in the agreements. The conveyance of the water and sewer assets to the OWRC (whose successor is the Ministry of the Environment) had been approved by the Ontario Municipal Board by an order of July 12, 1968. It is of some significance to note that the concluding paragraphs of the approval order read:

4. that all moneys to be paid under the agreements to the corporation for assets acquired by the commission shall be subject to the approval of this Board as to the payment thereof and as to the disposition thereof to be made by the corporation.

There was no suggestion that the Ontario Municipal Board did not have the jurisdiction, in its dealings with municipal matters, to make such order.

More than \$15,000,000 was paid to the Town under these contracts prior to December 31, 1973. There has been money received since that date which has not been spent, and there are some millions of dollars still owing which the Ministry of the Environment is holding until it is determined to what Municipality the payments should be made. It is the question of the determination of that entitlement which gave rise to the application to the Ontario Municipal Board and the consequent application to the Divisional Court.

What is urged against the Board's authority under s. 127(2) and (3) is that it is called upon not only to interpret the water and sewer agreements above referred to but also certain provisions of The Regional Municipality of Peel Act dealing with the provision of water and waterworks and of sewage works, especially as set out in ss. 76(1)(8)(11) and 77(1)(8)(11). This, it is contended, invests the Board with a s. 96 jurisdiction and it is beyond provincial competence to do so. Counsel for the appellant conceded that if, as does s. 127(1), the other subsections of s. 127 had preserved Board power to act under s. 14(11)(a)(b)(d) of The Municipal Act, R.S.O. 1970, c. 284 there could be no quarrel with the vesting of the authority given by s. 127(2)(3). Those provisions of The Municipal Act authorize the Board (at least in s. 14(11)(a)(b)) to make adjustment orders as to assets and liabilities as it may consider equitable. Thus, it is submitted, the sting of purely legal interpretation would be removed. I am bound to say that such a tenuous distinction, when considered in relation to the Act as a whole, is hardly a ground for invalidating s. 127(2)(3).

I should note that the exclusion of ss. 94 and 95 of The Ontario Municipal Board Act, R.S.O. 1970, c. 323, from the Board's function under s. 127(2) excludes, respectively, appeals to the Lieutenant-Governor in Council from its orders and appeals to the courts on questions of law or jurisdiction. It was not denied, however, that judicial review would still be open.

The Regional Municipality of Peel Act is replete with references to the Ontario Municipal Board which since 1906 has been the principal administrative agency concerned with regulating municipal institutions in ways too numerous to mention. Apart from the references made by MacKinnon J.A. in his reasons to sections conferring similar authority to that in s. 127(2), I refer also to s. 3(3)(a), s. 43, s. 47, s. 68, the references to the Board in ss. 76 and 77, s. 95, s. 96, s. 108 and s. 113.

The powers so conferred are of different kinds, some conferring what may be called judicial power as under s. 127(2)(3). In segregating this power from the other powers and functions conferred upon the Board, the appellant is attempting to turn the clock back and to restore *Toronto v. York*[1] as the governing authority in this field of constitutional law. That case was re-examined in *Labour Relations Board (Sask.) v. John East Iron Works Ltd.*[2] and the Privy Council there stated, at p. 151, that it was relevant to consider the challenged judicial function in

relation to a. board's other duties and powers. The point made by the appellant here is answered by the Privy Council in the John East case in the following explanation which it gave of *Toronto v. York*, at p. 153:

In *Toronto v. York* it was decided that the Ontario Municipal Board was primarily an administrative body but that certain sections of the Act by which it was established purported to clothe it with the functions of a Court and to vest in it judicial powers and that pro tanto, since its members were not appointed by the Governor-General, the Act was invalid. But it is clear that in that case the question did not arise for argument, as it arises in the case under appeal, whether, upon the assumption that judicial power was vested in the Board, the Board was thereby brought within the ambit of s. 96. It is true that at an early stage in the judgment delivered by Lord Atkin the question was asked "Is, then, the Municipal Board of Ontario a Superior Court, or a tribunal analogous thereto?" But it seems to have been assumed by their Lordships that if the power vested in it was judicial, it was such a tribunal, for (as Duff C.J.C. pointed out in the case cited) it is obvious that their Lordships did not consider, because presumably there was no occasion to do so, the distinction between the Courts that come within the intendment of s. 96 of the B.N.A. Act and other Courts and tribunals.

Apart from the John East case, I think that *Toronto v. York* must be viewed with considerable qualification in view of the decision of the Privy Council in *Ladore v. Bennett*[3]. There the Ontario Legislature had provided for amalgamation of four municipalities into a new city after a report had indicated a serious financial situation with respect to some of them and a likelihood of default on debentures. The Ontario Municipal Board was given extensive powers over the affairs of the city, including powers in respect of the debenture debts, among them power to order substitution of new debentures and compulsory acceptance thereof, and power to vary the terms of the existing debentures, including the interest thereon. No question appears to have been raised with respect to s. 96. However, the case is important for the scope given by the Privy Council to provincial power in relation to municipal institutions and the freedom of the Province to proceed with municipal reorganization, with attendant adjustment of financial obligations, as against contentions of invasion of federal power in relation to bankruptcy and insolvency and in relation to interest.

This brings me to say a word about the relation of the judgments of this Court in *Tomko v. Labour Relations Board (Nova Scotia)*[4], and in *Jones v. Board of Trustees of Edmonton Catholic School District No. 7*[5], to the issue in the present case. In *Tomko*, as in *John East*, the concern was not simply with a particular power or authority which stood detached from the legislative scheme in which it was included, but with its intimate relation to the working of the scheme. It was not as if the impugned power or authority had no connection with the other provisions of the Statute of which it was made a part. That is why this Court said in *Tomko*, at p. 120 that "it is not the detached jurisdiction or power alone that is to be considered but rather its setting in the institutional arrangements in which it appears and is exercisable under the provincial legislation". This proposition was reiterated and applied in the *Jones* case where Martland J., speaking for the Court, said quite plainly (at p. 893) that "the fact that a provincial tribunal is

required to exercise a judicial function does not, of itself, involve a conflict with s. 96”.

The present case, in my opinion, is a prime illustration of the proposition laid down in *Tomko*. The integration of the amalgamating municipalities into new ones and the bringing of them into the embrace, for specified purposes, of the new Regional Municipality of Peel necessarily involved adjustments of assets and liabilities and determination of disputes as to where they respectively belonged. The Legislature, having admittedly the competent authority under s. 92(8) of the British North America Act to restructure and reorganize municipal institutions in the Province, was entitled to make its own resolution of such matters or to commit them to an agency like the Ontario Municipal Board, with a mandate for equitable resolution or legal resolution as might appear more appropriate to the particular matters in issue. I do not see that it could make any difference to the result in the present case if s. 127(2) and (3) be regarded as independent of s. 127(1) and as more properly embodied in a separate section.

The fallacy in the approach by the appellant is in considering that the water and sewer agreements made in 1968 stand by themselves, notwithstanding that they necessarily had to be brought into account when the Legislature decided on the restructuring and reorganization reflected in The Regional Municipality of Peel Act. MacKinnon J.A. expressed himself on this same point as follows:

It must not be forgotten that the questions referred to the Municipal Board in the instant case are merely incidents in the over-all picture of the general restructuring of the municipalities in which the Municipal Board is given an important part to play in the administration of the municipalities' affairs, quite apart from s. 127(2)...

The administration of which MacKinnon J.A. speaks, taken both in its generality and in its particulars, is functionally interrelated. It does not admit of segregation to bring a s. 96 Court into the picture respect to some particular, as under s. 127(2), when such a Court is otherwise properly excluded from the administration of the provincial enactment.

There is one more matter with which I wish to deal and that is what I may call the historical argument. The contention is that although prior to or as of 1867, non-section 96 provincial tribunals exercised, in respect of municipal reorganization, certain arbitration powers, they were not exercised on exactly the same terms as the arbitration powers conferred by s. 127(2) upon the Ontario Municipal Board or, at least, were not exercised in the full manner envisaged by s. 127(2). I find this a rather curious argument for striking down the power conferred by s. 127(2). The historical argument has generally been urged to show that prior to or as of 1867 either the function under examination was discharged by s. 96 Courts or that it was not within the jurisdiction of such Courts but within that of non-section 96 tribunals. In the one case, the purpose was to establish a basis for denying that the function could be exercised after Confederation (at least in the same way, if that was the case) by a non-section 96 tribunal; in the other, it was to support the exercise of the function by such a tribunal. I do not think that the historical argument can be applied to raise a non-section 96 function out of that category simply because it is not exercised in exactly the same way after Confederation as before.

What we have here, based on powers exercisable by arbitrators under The Municipal Institutions Act of Upper Canada, C.S.U.C. 1859, c. 54 in respect of municipal restructuring or reorganization, is a submission that because the arbitrators in some cases were required to do their work before reorganization could be proclaimed (rather than after, as is the case here) there was no analogous non-section 96 function. Again, it was said that analogy was wanting because arbitrators in some situations could apportion debts “as may be just”, a phrase or qualification not found in s. 127(2). Moreover, it was urged, as a differentiating consideration, that the pre-Confederation arbitration awards were required to be made orders of the Superior Courts, as if that did more than provide a means of enforcement.

A sentence by Duff C.J.C. in *Reference re Adoption Act, etc.*[6], at p. 418, is apt here:

I am unable to accept the view that the jurisdiction of inferior courts, whether within or without the ambit of s. 96, was by the B.N.A. Act fixed forever as it stood at the date of Confederation.

I am of like opinion, and hold that the historical argument presented here confirms the proper exercise of an arbitral power by the Ontario Municipal Board rather than the reverse.

I would dismiss the appeal with costs. There will be no costs to or against any of the intervenants.

Appeal dismissed with costs.

Solicitors for the appellant: Gardiner, Roberts, Toronto.

Solicitors for the Regional Municipality of Peel: Manning, Bruce, Macdonald & Macintosh, Toronto.

Solicitors for the Ontario Municipal Board and the Attorney General for Ontario: The Ministry of the Attorney General for Ontario, Toronto.

Solicitor for the Attorney General of Canada: R. Tassé, Ottawa.

Solicitor for the Attorney General for Quebec: René Dussault, Quebec City.

Solicitor for the Attorney General for Nova Scotia: Gordon F. Coles, Halifax.

Solicitor for the Attorney General for Alberta: Ross Paisley, Edmonton.

[1] [1938] A.C. 415.

[2] [1949] A.C. 134.

[3] [1939] A.C. 468.

[4] [1977] 1 S.C.R. 112.

[5] [1977] 2 S.C.R. 872.

[6] [1938] S.C.R. 398.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/4457/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/mississauga-city-v-peel-municipality-1979>

Prepared on 27 October 2026 · Esheria