

CANADA / JUDGMENT

North Cowichan (District) v. Bradshaw

2013 BCSC 2384

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Supreme Court of British Columbia

DECIDED

31 December 2013

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2013 BCSC 2384 North Cowichan (District) v. Bradshaw

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

North Cowichan (District) v. Bradshaw,

2013 BCSC 2384

Date: 20131231

Docket: 13232

Registry: Duncan

Between:

The Corporation of the District of North Cowichan

Petitioner

And

Kimberley Anne Bradshaw, Barry Brian Bradshaw

Janice Rosanne Bradshaw

Respondents

Before: The Honourable Mr. Justice D. Halfyard

Reasons for Judgment

Counsel for the Petitioner:

A.D. Taylor

Respondent appearing on his own behalf:

Barry Brian Bradshaw

The Respondents Kimberley Anne Bradshaw and Janice Rosanne Bradshaw did not appear, although they had been served with notice of this hearing

No appearance

Place and Date of Trial/Hearing:

Duncan, B.C.

December 6, 2013

Place and Date of Judgment:

Duncan, B.C.

December 31, 2013

The Petition

- [1] The petitioner, The Corporation of the District of North Cowichan, brings this proceeding under the authority of section 274 of the Community Charter, S.B.C. 2003, c. 26, seeking to enforce several of its bylaws, namely Bylaw No. 2856 and Bylaw No. 2857.
- [2] The petitioner alleges firstly that the respondents have contravened section 4 of Bylaw No. 2856 (a bylaw to regulate the keeping of Dogs and other Animals), which states as follows:
 - 4. No person shall own any dog over the age of 4 months, unless a licence under this bylaw has first been obtained and the applicable fee, as prescribed in the Fees Bylaw, paid.
- [3] Second, the petitioner alleges that the respondents have contravened section 15 of Bylaw No. 2856, which states:
 - 15. No person shall keep or maintain more than three dogs, on any premises, unless that person has first obtained a dog kennel licence under this bylaw and paid the applicable fee as prescribed in the Fees Bylaw.
- [4] Finally, the petitioner alleges that the respondents have contravened section 2 and section 3(1) of Bylaw No. 2857 (a bylaw to provide for noise control). Those provisions state:
 - 2. No person shall make nor allow to be made any noise that disturbs the quiet, peace, rest, enjoyment, comfort, or convenience of any person or persons in the neighbourhood or vicinity, whether by any animal, vehicle, conveyance, vessel, machinery, equipment, device, or activity.
 - 3. In addition to section 2, the following are specifically prohibited:

- (1) Keeping or harboring any animal which by its frequent calls, cries, or other noise whatsoever disturbs the quiet, peace, rest, enjoyment, comfort, or convenience of any person or persons in the neighbourhood or vicinity;

...

- [5] The petitioner alleges that, since in or about 2008, the respondent Kimberley Anne Bradshaw has been the registered owner of the property located at 6803 Norcross Road, in Duncan, British Columbia, and legally described as:

Parcel Identifier No. 003-786-421

Lot 2, Section 6, Range 6, Somenos District, Plan 2139, Except parts included in Plan 8238 and 9315.

- [6] The petitioner alleges that the respondents Barry Brian Bradshaw and Janice Rosanne Bradshaw have been living on that same property at 6803 Norcross Road, in Duncan, British Columbia ("the property"), since in or about 2008.
- [7] The petitioner alleges that the property is located within the boundaries of North Cowichan and is subject to the bylaws in question.

Have the Respondents been lawfully served with

Notice of the Hearing of the Petition?

- [8] Barry Bradshaw was the only one of the three respondents who appeared on this hearing. He was representing himself only. Mr. Bradshaw raised the issue of whether he, or either of the other two respondents had been properly served. He said that he believed personal service of the Notice of Hearing was required, before lawful service could be effected.
- [9] Counsel for the Petitioner acknowledged that none of the respondents had been personally served with notice of the present hearing, but submitted that lawful service had been effected. Ms. Taylor first pointed out that all three respondents had been personally served with the original petition and supporting Affidavits (filed on October 28, 2010), and that the Response to Petition was filed on June 15, 2011 by counsel acting on behalf of all the respondents. Counsel for the petitioner then established that their former counsel ceased to act for the respondents in January or February 2013, that the former counsel followed the procedure required by the rules of court to withdraw as counsel and that the documents he filed showed the respondents' address for service to be 6803 Norcross Road in Duncan, BC.
- [10] Ms. Taylor then established that the amended petition and three additional affidavits (filed on August 1, 2013) were served on the three respondents on August 7, 2013, by mailing the documents to that address (6803 Norcross Road, Duncan, BC) and by also sending the documents to the respondents by email. The notice of hearing was served on the respondents in the same manner, on November 1, 2013.

- [11] Civil Rule 4-2 permits a party to serve documents on another party by "ordinary service", which includes mailing the document by ordinary mail to the party's address for service.
- [12] I am satisfied that all three respondents were lawfully served with notice of the hearing of this petition.

The Alleged Breach of the Noise Bylaw

- [13] The petitioner alleges that between early 2008 and August of 2013, the respondents owned dogs which they kept on the property, that on numerous occasions during that time period their dogs barked and howled excessively, and that the excessive barking and howling of their dogs disturbed the quiet, peace, rest, enjoyment, comfort and convenience of a number of persons who lived in the neighbourhood or vicinity.

The Evidence

- [14] The following evidence was presented by the petitioner in support of the allegation that the respondents were in breach of the noise bylaw:
- (a) Affidavit of Guy Manuel sworn August 16, 2010. Mr. Manuel and his spouse live at 2734 Fairfield Street, which is located approximately 400 yards from the respondents' property. They have lived there for 36 years (as of August 16, 2010).
 - (b) Affidavit of Patricia Jenks sworn August 18, 2010. She and her spouse live at 2750 Fairfield Street, which is located about 1/2 a kilometre uphill from the respondents' property. They have lived there for 33 years (as of August 18, 2010).
 - (c) Affidavit of Marcel Joseph Roger Fleurie sworn September 1, 2010. He and his spouse live at 6798 Norcross Road, directly across the street from the respondents' property. They have lived there since July 2001.
 - (d) Affidavit of Shirley Van Wieren sworn August 24, 2010. She lives at 2727 Fairfield Street, which is located approximately 500 yards from the respondents' property. She has lived there for 43 years (as of August 24, 2010).
 - (e) Affidavit of Samantha Ainsworth sworn August 26, 2010. She lives at 6780 Westcott Road, which is approximately 1,000 feet from the respondents' property. She lives there with her spouse, James Keith Russell and her adult son. They have lived there since November 2007.
 - (f) Affidavit of James Keith Russell sworn September 2, 2010.
 - (g) Affidavit of James Keith Russell sworn July 8, 2013.
 - (h) Affidavit of Terilyn Leslie Wood sworn July 31, 2013. She lives at 6715 Anzio Road, which is about 500 metres from the respondents' property. She and her partner have lived there since 2011.

- (i) Affidavit of Jane Spencer sworn July 9, 2013. She lives at 6899 Norcross Road, which is adjacent to the respondents' property and has lived there since "approximately 2006."
- [15] Robert Clark, bylaw enforcement officer employed by the Petitioner, swore an affidavit on October 20, 2010. In that affidavit, Mr. Clark outlines what had occurred up to that date, respecting complaints made by neighbours about the respondents' dogs and the steps taken by and on behalf of the petitioner, to address those complaints.
- [16] The evidence presented by the respondents consists of the following:
- (a) Affidavit of Barry Brian Bradshaw sworn June 15, 2011.
 - (b) Affidavit of Rosanne Janice Bradshaw sworn June 15, 2011.
 - (c) Affidavit of Barry Brian Bradshaw sworn December 2, 2013. This affidavit consisted of 26 paragraphs. Counsel for the petitioner objected to the admissibility of this affidavit. I ruled on this objection as follows:
 - i. Paragraphs 1 through 5 were admissible;
 - ii. Paragraph 7 is admissible but little weight should be attached to the last sentence;
 - iii. Paragraph 8 is admissible, except for the two phrases "as advised by the Ministry of Agriculture" and "as this is part of an ongoing case of trespass and harassment," which phrases are inadmissible.
 - iv. Paragraph 11 is admissible, except for the sentence: "We have discovered that our dogs have been the targets of tactical harassment during the day and night," which is not admissible.
 - v. Paragraph 12 is admissible.
 - vi. Paragraph 18 is admissible.
 - vii. All remaining paragraphs of the Affidavit are not admissible.

The Defence to the Noise Allegation

- [17] Mr. Bradshaw admitted (in court, and in his affidavit sworn June 15, 2011) that he and his wife (the respondent Janice Rosanne Bradshaw) lived on the property and that the property was owned by their daughter, Kimberley Anne Bradshaw. (Those facts were also admitted by Mrs. Bradshaw in her affidavit sworn June 15, 2011). He accepted the property was located within the boundaries of North Cowichan, and he did not challenge the authority of the petitioner to make the bylaws that they are seeking to enforce.
- [18] Mr. Bradshaw and his wife admitted that they had kept dogs on the property over the years. They did not deny that their dogs sometimes barked and howled loudly, nor did they deny that the noise made by their dogs may have disturbed some of the neighbours. But they said that the dogs had to bark, to protect their property from geese, beavers and predators. They also said that dogs owned by the neighbours barked quite often, which in turn caused their

dogs to bark. They further stated that their dogs are sometimes harassed by persons trespassing, or stopping at the edge of the property or walking past the property (sometimes throwing rocks at their dogs), causing them to bark. Mr. Bradshaw said (in paragraph 12 of his affidavit sworn December 2, 2013) that sometimes dogs from other parts of the neighbourhood have come onto their property, causing their dogs to bark.

- [19] Mr. Bradshaw deposes (at paragraph 11 of his recent affidavit) that he and his wife have tried to determine why their dogs were barking and have taken measures such as segregating the dogs and putting barking collars on them to deter barking.
- [20] Mr. Bradshaw also pointed out (at paragraph 18) that there had never been a test to determine how high the noise level of dogs barking was, on the decibel scale.
- [21] The earlier Affidavits of Mr. Bradshaw and his wife showed that there has been an ongoing legal dispute between them and the District of North Cowichan, for many years, which seemed to originate from an apparent rise in the water level of Somenos Lake which adversely affected their farm property. Mr. Bradshaw alleges that several governmental authorities are at fault for this rise in the water level, which he said caused hundreds of water birds to come onto their property and ruin the land. Mr. Bradshaw said that for several years, the water birds could be controlled by lawfully hunting and shooting them, but that this was now unlawful because of bylaws enacted by the petitioner. Mr. Bradshaw (and his wife) took the position that the combination of these circumstances (together with problems of beavers building dams) made it necessary for them to keep dogs to chase the water birds (and beavers) away, to prevent them from damaging the land. They say, in effect, that they have no choice but to use dogs, to protect their property.
- [22] Since filing their Response to Petition on June 15, 2011, the respondents have taken the position that the present dispute is inseparably connected with the earlier and ongoing legal dispute they have had with the petitioner. They advanced the defence that the Farm Industry Review Board (pursuant to the Farm Practices Protection (Right to Farm) Act) had jurisdiction to decide the present dispute. The respondents maintained that they have been required to use dogs to protect their farm from water fowl (mainly geese), beavers and predators, and that this use of dogs constitutes "normal farm practice" which cannot be prevented or restricted by North Cowichan's Animal Control Bylaw or its Noise Bylaw. They have said that only the Farm Industry Review Board can decide whether the respondents' use of dogs falls within the definition of "normal farm practice".
- [23] The respondents also say that their property is in a rural area, that their neighbours are quite some distance away from their property and that purchasers of rural property ought to have expected that dogs are kept on farms and that they naturally make considerable noise. With respect to the complaints made by their neighbours, Mr. and Mrs. Bradshaw have each deposed: "I am sympathetic with their complaints."

[24] As a result of the respondents' allegation that the Farm Industry Review Board ("the Board") should be engaged to decide the present dispute, one of the complaining neighbours, James Keith Russell, made a complaint to the Board. The complaint was made through counsel acting on Mr. Russell's behalf, on October 31, 2012. The complaint is attached as exhibit A to Mr. Russell's affidavit sworn July 8, 2013, and the Board's decision and disposition respecting the complaint (which is dated September 17, 2013) is attached as exhibit B to Mr. Russell's affidavit.

[25] The respondents presented submissions to support their case, in the complaint proceedings before the board.

[26] In essence, an officer of the board decided that:

the Act does not apply to either the respondents' pheasant or dog operations. As such, the complaints relating to excessive dog barking are not disturbances that result from a farm operation conducted as part of a farm business and as such the only appropriate outcome is to refuse to refer this complaint to a panel. Given that BCFIRB lacks jurisdiction as the Act has no application to these circumstances, the general law applies meaning that where a dispute cannot be worked out, neighbours can pursue their usual remedies with the municipality or in the courts.

Accordingly, the complaint is dismissed.

[27] No appeal was taken by the respondents from this decision of the Board (counsel for the petitioner sent a copy of the board's decision to the respondents on January 22, 2013, by mail and email).

Findings of Fact

[28] I consider it unnecessary to review the evidence concerning the noise complaints in detail. I make the following findings of fact.

[29] During the period from early 2008 up to the end of July 2013, Barry Bradshaw and Janice Bradshaw have kept dogs on the property, and Kimberley Bradshaw was aware of this. During that time period, many complaints were made by neighbours and persons living in the vicinity of the property, to the effect that dogs on the property were barking and howling frequently, often for extended periods of time, and were causing excessive noise and disturbance at all hours of the day and night.

[30] The petitioner was notified of many of these complaints, and took reasonable steps to bring the complaints to the attention of the respondents and to request that the respondents take measures to remedy the noise problem being caused by their dogs.

[31] The respondents did make some attempts to reduce the noise being caused by their dogs barking and howling, and from time to time those steps were successful in reducing the noise caused by their dogs, to an acceptable level.

- [32] The persons who swore affidavits in this proceeding, making complaints that dogs kept on the respondents' property were causing excessive noise, are "persons in the neighbourhood or vicinity" of the respondents' property, within the meaning of section 2 and section 3(1) of Bylaw No. 2857 (the noise bylaw 1995).
- [33] During the period from early 2008 up to the present time, the respondents Barry Bradshaw and Janice Bradshaw have been "keeping or harbouring" dogs on the property, within the meaning of section 3(1) of the said bylaw.
- [34] During the said time period, the dogs kept or harboured on the property by the said respondents barked and howled frequently, often on a daily basis and often for several hours per day, including the night time. The barking and howling was often very loud and long-lasting.
- [35] The barking and howling of the said dogs made noise that disturbed the quiet, peace, rest, enjoyment, comfort, and convenience of persons in the neighbourhood or vicinity of the property, which persons included Guy Manuel and his spouse, Patricia Jenks and her spouse, Marcel Fleurie and his spouse, Shirley Van Wieren, Samantha Ainsworth, her spouse, James Russell and her son, Myles Dickson, Terilyn Leslie Wood and her partner, and Jane Spencer and her partner.

Conclusions

- [36] I conclude that Barry Bradshaw and Janice Bradshaw have violated the petitioner's noise bylaw as described above, by keeping and harbouring the dogs in question. I find that the respondent Kimberley Bradshaw knew that her parents were keeping dogs on the property, knew that many noise complaints had been made against the dogs over the years and as a consequence, she too (as owner of the property) is in violation of section 2 of the noise bylaw, as being a person who "allowed" the offending noise to be made by the dogs.
- [37] I am also satisfied that the dogs being kept on the property will continue to make excessive noise in contravention of the noise bylaw, unless an injunction is granted to prevent or restrain the respondents from committing further contravention of the noise bylaw. That remedy is permitted by section 274 (1) of the Community Charter, which states in part as follows:

274 (1) A municipality may, by a proceeding brought in Supreme Court, enforce, or prevent or restrain the contravention of,

- (a) a bylaw or resolution of the council .

- [38] Accordingly, I order that the respondents and each of them be restrained from keeping or harbouring any dog which by its frequent barking or howling disturbs the quiet, peace, rest, enjoyment, comfort, or convenience of any person or persons in the neighbourhood or vicinity of the property at 6803 Norcross Road in Duncan, British Columbia.

- [39] I wish to make it clear that the respondents Barry Bradshaw and Janice Bradshaw are being restrained from keeping or harbouring any dog which barks or howls to such an extent as to contravene the noise bylaw; and that all three of the respondents are being restrained from "allowing" excessive noise to be made by any dog kept or harboured on the property, which contravenes the said noise bylaw.

The Alleged Breach of Section 4 of the Animal Control Bylaw 1995

- [40] The petitioner must prove that the respondents are the owners of a dog or dogs over the age of four months and that they have failed to obtain a licence for the said dog or dogs, contrary to section 4 of the animal control bylaw. I think the evidence would permit the inference that Barry Bradshaw and Janice Bradshaw are the owners of any dog that they are keeping on the property (or have kept on the property over the years). But this inference could not be drawn against Kimberley Bradshaw.
- [41] Robert Harris swore an affidavit on October 20, 2010. He is an animal control officer employed by Coastal Animal Control Services of BC Ltd. His employer has been retained by the petitioner to provide animal control services and, as of the date of his affidavit, he had been employed as an animal control officer for approximately five years. Mr. Harris deposed that he attended at the respondents' property on March 11, 2008, in response to a complaint about noise from the respondents' dogs. Mr. Harris described his encounter with Brian Bradshaw at the property. He states that he "observed at least four dogs on the property" and that he "observed that these dogs were unlicensed." (Paragraph 3). He issued a municipal ticket information to Mr. Bradshaw, in which he alleged a breach of section 15 of the Animal Control Bylaw No. 2856, which he described as "no kennel licence." Mr. Harris wrote on the ticket that the indicated fine was \$100. Mr. Harris attached copies of five service call work orders dated between May 12, 2005 and February 3, 2010, as exhibit 3 to his affidavit. Those work orders are not admissible as evidence of the truth of their contents.
- [42] I was not referred to any evidence which addresses the age of any dog or dogs being kept on the property. But I think it is a reasonable inference that, from time to time, the respondents have owned dogs that were "over the age of four months."
- [43] As to the requirement that an owner of any dog over four months old must obtain a licence for the dog, it is my opinion that the evidence is insufficient to prove that the respondents are contravening (or have recently contravened) section 4 of the animal control bylaw. The only evidence presented by the petitioner to prove that the respondents had unlicensed dogs on the property, was given by Robert Harris in his affidavit sworn October 20, 2010 (which I have just summarized). But Mr. Harris issued a ticket to Barry Bradshaw only for a suspected breach of section 15 of the animal control bylaw (keeping more than three dogs without first obtaining a dog kennel licence).

- [44] Mr. Harris did not issue any ticket for an alleged breach of section 4 of the bylaw. That raises the possibility that, when he says that he "observed that these dogs were unlicensed," he may well have been referring to the absence of a collar around the dog's neck to which a licence was attached. That scanty evidence from March 11, 2008 seems to be the only evidence which indicates that the respondents owned dogs that were unlicensed.
- [45] It seems reasonable to infer that the petitioner would keep a record of the names of all persons who owned dogs and who paid fees to obtain a licence for their dogs. The money obtained from the sale of these licences, and who paid the money, would have to be accounted for. The amount paid, the date of issuance of each licence, the duration of the licence and the licence number, would also likely be recorded. I think it would have been a simple matter for an employee of the petitioner to search the records and to give affidavit evidence on the issue of whether the respondents had ever obtained dog licences, and if so, when.
- [46] Moreover, even if I accepted that the respondents Barry Bradshaw and Janice Bradshaw owned one or more dogs that were unlicensed on March 11, 2008, I would not grant an injunction against the respondents on the strength of that stale evidence. I would add that in my view a civil claim for an injunction is not the way to begin an attempt to enforce the dog licensing bylaw. I think that a charge should first be laid (by ticket information) and prosecuted. If the charge was proved (either by the defendant failing to file notice of dispute or by failing to appear in court to defend the charge or by a court finding the defendant guilty after a trial) and a fine was imposed, but not paid, steps could be taken to collect any unpaid fines. But I do not think that the petitioner should start out by seeking an injunction, particularly not for alleged violations which, if prosecuted, would have to be charged within six months after the alleged violation.
- [47] The petitioner's application for an injunction to restrain this alleged contravention, is dismissed.

The Alleged Breach of Section 15 of the Animal Control Bylaw

- [48] The petitioner alleges that the respondents have been keeping or maintaining more than three dogs on the property but have not obtained a dog kennel licence as required by section 15 of the bylaw.
- [49] There is some evidence which indicates that the respondents have contravened section 15 of the animal control bylaw. Robert Harris has deposed that, on March 11, 2008, he saw "at least four dogs on the property". There are other pieces of evidence relevant to this issue scattered through some of the affidavits, which I will outline.
- [50] Mr. Fleurie, in his affidavit sworn September 1, 2010, states (at paragraph 6): "In the past, I have observed in excess of four dogs residing on the property." (Mr. Fleurie has lived near the property since July 2001.)

- [51] In his affidavit sworn September 2, 2010, Mr. Russell states (at paragraph 8): "I have observed between two and four dogs on the property at various times." (Mr. Russell has lived near the property since November 2007.)
- [52] Ms. Wood, in her affidavit sworn July 31, 2013, deposed (at paragraph 4): "I have observed three dogs on the property but I believe that there are three - four more dogs kept out of sight." Ms. Wood states as her grounds for this belief that "on occasions when I have observed three dogs on the property I have had heard other dogs barking as well." (Ms. Wood has only lived near the property since 2011. But I consider this evidence to be weak.)
- [53] Ms. Spencer, in her affidavit sworn July 9, 2013, states (at paragraph 4): "From time to time, I have observed up to 15 dogs on the property." I infer that Ms. Spencer means that she saw up to 15 dogs, at the same time. This appears to be the strongest evidence to support the allegation that the respondents were keeping more than three dogs on the property. But Ms. Spencer has lived next to the property since about 2006 and (like Mr. Fleurie, Mr. Russell and Ms. Wood) she does not give any approximate date or dates on which she saw more than three dogs on the property. In my view, this evidence cannot support the inference that Ms. Spencer saw more than three dogs on the property, between early 2008 and July 2013.
- [54] In my opinion, the evidence on this issue is insufficient to support the conclusion that, within the last three years, it is more probable than not that the respondents have been keeping "more than three dogs" on the property. That being so, an injunction should not be granted. This part of the petitioner's application is dismissed.

Comments on the use of the injunction procedure

- [55] Much of what I have said in paragraph 46 applies to the allegation of keeping more than three dogs without a kennel license. But there are additional reasons why I think it is inappropriate to enforce licencing bylaws by way of injunction.
- [56] There is a fairly comprehensive code of procedure set out in sections 260-272 of the Community Charter for a municipality to enforce its bylaws. It appears that either those procedures, or the procedures set out in the Offence Act, may be used to prosecute persons who have allegedly contravened a bylaw, and to punish them if they are found guilty. It seems obvious that all essential elements of an alleged offence (i.e. contravention of a specific bylaw) would have to be proved to the criminal standard of proof, namely, beyond a reasonable doubt. Obviously, that standard of proof requires proof of essential facts to a degree of certainty that is far higher than the civil standard of proof on the balance of probabilities.
- [57] Here, the petitioner has elected to seek to enforce its bylaws against the respondents, under the court's authority given by section 274 of the Community Charter. That section empowers the court to grant an injunction to restrain the contravention of a bylaw based on proof to the civil standard.

- [58] Another consequence of using the injunction procedure (which I think is undesirable in the case of licensing bylaws) is that a municipality can seek a remedy for alleged violations which occurred more than six months earlier, and so could not be charged or prosecuted in the usual way.

Costs

- [59] The petitioner claims costs in the petition, but costs were not spoken to on the hearing. I would be reluctant to grant costs to the petitioner notwithstanding that I have granted an injunction. I will explain.
- [60] First, the terms of the injunction I have granted are nowhere near the terms of the order that was sought by the petitioner.
- [61] Second, two of the three allegations made against the respondents have been dismissed.
- [62] Third, the petitioner (in paragraph 3 of Part 1) sought an order to restrain the respondents "from using or occupying the property except in compliance with the Animal Control Bylaw 1995 and the Noise Bylaw 1995." I have never seen a request for such a broadly - worded injunction, when the alleged wrongdoing consisted of animal noise or lack of animal licensing. In seeking such an order, the petitioner appears to have been trying to connect the alleged wrongdoing to the residential property of the respondents. It creates the suspicion that the petitioner would attempt to remove the respondents from their residence if they failed to abide by these bylaws. In my opinion, the petitioner was claiming an order that goes far beyond what a court could, or should, order, in the circumstances of this case.
- [63] I note in passing that section 274 (2)(c) says that "the municipality must serve a copy of the originating documents on the Attorney General." I do not know whether that was done in the present case, or not. No evidence was shown to prove that this was done, and it may be arguable that proof of that service is necessary to enable the court to assume jurisdiction to hear the petition. No objection was made on this ground, and I will assume that the Attorney General was properly served and chose to take no part in these proceedings.
- [64] For these reasons, I would be inclined not to award costs to the petitioner, but to leave each party to bear their own costs. If the petitioner does not agree with this, and wishes to speak to costs, that may be arranged through the trial scheduling manager.

Mr. Justice D.A. Halfyard

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