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Robert Anderson provides legal advice on various matters including corporate, commercial, media, environmental, constitutional, criminal, securities, expropriation, and family matters. Rob has also represented clients in both arbitrations and mediations. He has also represented various levels of government and other public bodies including the Provincial Government of British Columbia, the Greater Vancouver Regional District, the City of Vancouver, the Municipality of Richmond and the Motor Carrier Commission of British Columbia.

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MIXED SUCCESS ON CHALLENGES TO MUNICIPAL PROPERTY TAX RATE BYLAWS

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The BC Supreme Court has recently decided several challenges to municipal tax rate bylaws, instigated by companies involved in the forest sector: Catalyst Property Corporation (“Catalyst”) and various TimberWest entities (“TimberWest”).

Catalyst, which largely argued not that the bylaws it challenged were outside municipal authority but that they were illegal on the basis of being “unreasonable”, was for the most part unsuccessful. It has appealed the decisions. In a different factual context, TimberWest prevailed on the basis that the bylaws it challenged were outside the authority of the municipality involved.

In October and December 2009, Mr. Justice Voith of the BC Supreme Court decided the four cases brought by Catalyst (2009 BCSC 1420, 2009 BCSC 1751, 2009 BCSC 1752, 2009 BCSC 1753). Catalyst had sought declarations that the property tax rates for Class 4 (Major Industry) established by bylaws in the communities of North Cowichan, Campbell River, Powell River and Port Alberni (where Catalyst had pulp and paper operations) were unreasonable and thereby illegal. Catalyst pointed specifically in this regard to the fact that its contribution to the municipal tax base far eclipsed its limited consumption of municipal services. The Class 4 rates also substantially exceeded the rates for Class 1 (Residential).

Mr. Justice Voith confirmed that the court could consider whether or not a municipal bylaw is reasonable, and that in such cases there should be some evidence before it to support the rationality of the municipal decision being challenged. However, Mr. Justice Voith also made clear that courts will give considerable deference to policy-based decisions made within municipal authority and on the basis of relevant considerations, and will not revisit the outcomes which a municipal council has determined to be appropriate other than in exceptional circumstances, such as where those outcomes are so aberrant as to enable the court to conclude that no reasonable body could have come to them.

Municipal councils have the power to impose different rates of tax on different classes of property. Mr. Justice Voith held that the essence of a municipality’s right to discriminate in fixing property tax rates is that it can deviate, although for relevant purposes, from a linear relationship between consumption and taxes, or from the need to treat members of different classes in the same way. While a municipal council is likely required to consider information (where it exists) as to the actual levels of municipal services consumed by a given class, it is up to council to determine the significance to be given to such consumption data and to fit that information into its decision-making matrix in the way that it considers appropriate. Other categories of relevant information to be fit into that matrix may include such non-empirical matters as council’s knowledge of the community, the community’s needs and the adequacy of the services provided.

Mr. Justice Voith found that, in part through Catalyst’s own efforts to engage with the involved municipalities in the years before its court proceedings were commenced, the municipal councils had before them many diverse factors relevant to the bylaws and in particular to Class 4 tax rates. The court found the municipalities’ obligation to ensure there was information in



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the record before the court from which it could glean the factors that council had considered in its decision was satisfied, that the bylaws were rationally supported and that the effects or outcomes they created were within the range of permissible outcomes.

Catalyst did succeed in its argument that tax rates set in the Campbell River bylaw for regional district purposes were outside municipal authority (given their departure from specific inter-class ratios required in the regional district context), and those rates were severed from the remainder of the bylaw. In its case, which was also against Campbell River, TimberWest succeeded in a similar argument regarding taxation for regional district services.

More generally, TimberWest sought in its case to set aside municipal bylaws which had the effect of increasing TimberWest's 2009 property tax rate on its managed forest land in Campbell River approximately 10 times compared to the 2008 rate. The change appeared to have been made with a view to forcing TimberWest to withdraw at least a portion of its land from its managed forest lands (with the bylaws making it uneconomical for TimberWest to manage its forest lands in accordance with the provisions of BC's Private Managed Forest Land Act) so that the land could be developed for a non-forestry use which Campbell River desired.

Madam Justice Gerow of the BC Supreme Court concluded (2009 BCSC 1804) that whether Campbell River had the authority to enact the bylaws was to be reviewed on a standard of correctness, and determined that those portions relating to raising taxes on TimberWest's managed forest lands were outside the municipality's powers. Madam Justice Gerow noted that while s. 197 of BC's Community Charter empowers a municipality to use property tax bylaws to raise revenue, it does not confer the power to effect changes in land use. Further, even if taxation powers might be construed to confer a power to regulate, the power to regulate did not give a power to pass a bylaw which has the effect of restricting a forest management activity in contravention of s. 21 of the Private Managed Forest Land Act, which provides that a local government must not adopt a bylaw in respect of land that is private managed forest land that would have the effect of restricting, directly or indirectly, a forest management activity. Madam Justice Gerow set aside (and remitted to Campbell River for reconsideration) a portion of the tax rates bylaw as well as the attendant property tax notices.

In this context, Madam Justice Gerow found it unnecessary to consider whether portions of the bylaws should also be set aside on the basis they were unreasonable, which is the applicable standard of review for the exercise of an authorized municipal action. However, the court did suggest that Campbell River's in camera consideration of the tax increase would have made its decision less worthy of deference on this standard than would ordinarily be the case.
