Nasty neighbours dispute resolved on the public purse: The lessons learned

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The Town of Meaford attracted the ire of the court by wading into a private property dispute between neighbours and spending significant public resources after doing so (*The Corporation of the Municipality of Meaford v Grist et al,* 2011 ONSC 5195 (released September 21, 2011)).

The Town's best argument was problematic – its actions were based on an obscure 1854 by-law hidden away for over 150 years. Equally unfortunate was another of the Town's arguments – it believed that there had been an implied dedication and acceptance of certain property despite the fact there was no evidence to support this belief. The court granted summary judgment against the Town in favour of the defendants.

While commenting on the specific findings in this decision involves a review of complex facts largely unique to the circumstances of this case, in large part because they span over a period of more than 150 years and pre-date Confederation, valuable lessons can be gleaned from an understanding of what happened and why.

The problems began in 1986 when a storm washed out a private driveway that serviced 10 cottage lots owned by the defendants. The driveway ran between the cottages and Georgian Bay. It was approximately 600 feet long and was established by an access easement that was registered on title when the lots were created in 1925. After the storm, the Town refused to fix the driveway, ostensibly because it was a private driveway.

The property owners did not want their access washed out in the future, so they took action. They contacted the owner of a large tract of land immediately behind the 10 cottage lots and, with the Town's permission, severed and purchased a strip of land wide enough to move their access easement to the rear of the properties and away from the water. All of this was completed sometime in 1987. It was a practical solution that must have taken substantial effort, given the number of people involved.

While the easement was moved on consent of all 10 property owners, some of the local area residents (including some who were not owners of the 10 cottage lots) were intent on continuing to walk along the waterfront. And some of the cottage lot owners were intent on prohibiting people from walking across their property. A feud between the local area residents simmered, more or less, from 1987 onward. The Town did not take an active interest in this dispute until 2005 when a local area resident found an 1854 by-law in a random box in the basement of the Town's offices.

The 1854 by-law suggested that a 66-foot-wide road was established along the waterfront of Georgian Bay and extended the length of three concession lots or approximately 6,000 feet. After the by-law surfaced, Town staff warned Council that the road issue was a private dispute; there was no evidence the road was a municipal roadway; there was no evidence that there had been a dedication and acceptance; and Council should seek legal advice.

Rather than take planning staff's advice, the Town commissioned a survey of the property in front of the 10 lots to establish the location of the road. It then passed another by-law in 2007 with almost no notice, which recognized the road over the 600 feet. The Town proceeded to register the 1854 and 2007 by-laws on title to the 10 cottage properties. The Town demanded that the cottage lot owners remove all obstructions and landscaping from the area that was identified as a road. When the cottage owners refused to do so, the Town commenced an action against them.

In a puzzling twist to this case, the Town pursued only 600 of the 6,000 feet and only 10 lot owners. This troubled the court. Before the summary judgment motion was argued, the Town was ordered to add all of the parties that would be potentially affected by a declaration that the 1854 by-law was valid.

A number of defendants brought motions for summary judgment dismissing the Town's action. These motions were successful. While the reasons for the success are in some instances highly technical, the court was troubled by some of the practical problems created by the Town's position.

What can be learned from the Town's mistakes? In short – practical considerations are important, and process and fairness do matter.

Being practical does matter. Stepping back from the details of this case, one wonders why it was important to the Town to enforce a by-law after 150 years. This was a significant consideration to the judge. And why would the Town take sides in an issue that was considered to be a private dispute? The take-away from this case is that it is important to take a step back from technical considerations and ask yourself whether your choices are practical? A judge will be asking the same question.

Process matters. The Town was heavily criticized for failing to give proper notice of meetings at which it was going to consider the ownership interests of the owners of the 10 cottage lots. Notice is a fundamental building block of public law. Why was the Town in such a rush after waiting 150 years? There was simply no reasonable argument for urgency that reduced the need for better notice. Most municipalities do this really well, but others obviously need to be gently reminded of the importance of process. While following the proper process would not have assisted the Town in this case, process would have removed an obvious and embarrassing criticism of the Town's conduct.

Be fair. This is important and intricately related to process. In the case of a public body, it is critical not only to be fair, but to be seen as being fair. If a public body errs, it should own up to that mistake and not take advantage of a situation – as in this case when the 150-year-old by-law came to light. A reasonable observer could see that it was unfair for the Town to charge forward. It is critical to any municipal employee or councillor with decision-making authority to ask whether his or her actions will be perceived to be fair. This is not to suggest that it is unfair to enforce the law; it actually may be unfair not to enforce it. Rather, the actions should not be heavy handed and trample a person's rights, especially where they pit one private party against the other. Again, these are things a judge would consider.

At the end of the day, the Town lost. The taxpayers lost. Even the defendants lost – they spent more than they ever are likely to recover. It will take the neighbourhood decades to heal. Could this have been avoided if the Town had been more practical, followed proper procedures and was fair? While a judge carefully reviews these and other considerations in every case, the facts will be scrutinized more closely wherever a public body is involved. Municipalities have tremendous power, accompanied by significant responsibilities. It is always easier to discharge those responsibilities by being practical, following proper processes and being fair.

About the author

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Raivo Uukkivi has a broad municipal, planning and development law practice focused on advocacy. He acts for a broad range of public and private sector clients. He provides advice on decisions or actions that are impacted by municipal law or otherwise arise from the development, use and ownership of land. He is regularly engaged in construction- and infrastructure-related litigation, specializing in matters involving municipalities. Raivo appears before all levels of court in Ontario, including the Court of Appeal, and before various Ontario tribunals with emphasis on advocacy before the Ontario Municipal Board.

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