

LAND COMPENSATION BOARD  
FOR THE PROVINCE OF ALBERTA

**ORDER NO. 455**

**FILE NOS. 11019.1 and 11020.1**

October 28, 2008

Applications by Notices of Motion, dated December 17, 2007, for an Order to determine the jurisdiction of the Board to decide on a claim pursuant to the *Municipal Government Act*, R.S.A. 2000, Chapter M-26

**BETWEEN:**

PETER CLARK AND ELVIRA CLARK  
and  
PAUL McCULLOCH

Claimants

- and -

LAC STE. ANNE COUNTY,  
SUMMER VILLAGE OF ROSS HAVEN,  
SUMMER VILLAGE OF YELLOWSTONE,  
SUMMER VILLAGE OF CASTLE ISLAND  
and  
NORTH 43 LAGOON COMMISSION

Respondents

**BEFORE:**

THE LAND COMPENSATION BOARD FOR THE PROVINCE OF ALBERTA

- E. Gordon Chapman, Presiding Member
- Brian G. Gifford, Member
- N. Allen Maydonik, Q.C., Member

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**APPEARANCES:**

For the Claimants:       - Donald P. Mallon, Q.C., Prowse Chowne LLP  
                                  - Veronica Alexander, Prowse Chowne LLP

For the Respondents:     - Nick J. Parker, Reynolds, Mirth, Richards & Farmer LLP

**PLACE:**       A joint hearing held in the City of Edmonton in the Province of Alberta on Monday, December 17, 2007, in the offices of the Land Compensation Board.

**ORDER**

**BACKGROUND:**

On or about 2003, North 43 Lagoon Commission (the “Commission”) partially constructed a sewage lagoon on lands adjacent to the lands of the Claimants and which the Commission has operated since that time. The Claimants commenced an Application for Determination of Compensation on March 12, 2007, claiming compensation for the loss of use and the loss of value of the Claimants’ lands due to the presence of the sewage lagoon. On December 10, 2007, the Respondents filed a Notice of Motion for a determination of the jurisdiction of the Board to decide on the claim and agreed statements of facts for McCulloch and Clark were entered as Exhibits 5 and 6 respectively.

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**RELEVANT LEGISLATION:**

*Municipal Government Act, RSA 2000, c. M-26 (the “MGA”)*

***Interpretation***

***1(1) In this Act,***

- (l) “Land Compensation Board” means the Land Compensation Board established under the Expropriation Act;*
- (p) “municipal authority” means a municipality, improvement district and special area and, if the context requires, in the case of an improvement district and special area,*
- (s) “municipality” means*
  - (i) a city, town, village, summer village, municipal district or specialized municipality,*
  - (ii) repealed 1995 c24 s2,*
  - (iii) a town under the Parks Towns Act, or*
  - (iv) a municipality formed by special Act,**or, if the context requires, the geographical area within the boundaries of a municipality described in subclauses (i) to (iii);*
- (y.1) “regional services commission” means a regional services commission under Part 15.1;*

*RSA 2000 cM-26 s1;2005 c14 s2*

***Public works affecting adjacent land***

***534(1) A person having an interest in land that is adjacent to land on which a municipality has constructed or erected a public work or structure is entitled to compensation from the municipality for loss of or the permanent lessening of use of that person’s land caused by the public work or structure.***

***(2) As soon as possible after the construction or erection of the public work or structure is completed, the municipality must publish a notice in a newspaper circulated in the municipality that***

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- (a) identifies the public work or structure,*
- (b) gives the date of completion, and*
- (c) states that claims for compensation under this section must be received within 60 days after the notice is published.*

*(3) A person is entitled to compensation under this section only if the person files with the municipality a claim within 60 days after notice of the completion of the public work or structure has been published in the newspaper.*

*(4) The claim must state the amount claimed and the particulars of the claim.*

*(5) The amount payable as compensation under this section may not exceed the amount of the difference between*

- (a) the appraised value of the claimant's land prior to the construction or erection of the public work or structure, and*
- (b) the appraised value of the claimant's land after the construction or erection of the public work or structure,*

*together with an amount of not more than 10% of the amount of the difference.*

*(6) If the municipality and the claimant are not able to agree on the amount of compensation, the amount of the compensation must be determined by the Land Compensation Board.*

*(7) No compensation is payable for the loss of or the permanent lessening of use of land caused by*

- (a) the construction of boulevards or placement of dividers down the centre of a road for the purpose of channelling traffic, or*
- (b) the restriction of traffic to one direction only on any road.*

*(8) No action or claim based on the loss of or a permanent lessening of use of land because of the construction or erection of a public work or structure by a municipality may be made except under this section.*

1994 cM-26.1 s534

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**Part 15.1  
Regional Services Commissions**

**Interpretation**

**602.01(1)** *In this Part,*

- (d) *“commission” means a regional services commission;*
- (e) *“member” means, in respect of a commission, a municipal authority that is a member of the commission;*
- (f) *“municipal authority” means a municipal authority as defined in section 1(1)(p), and includes a Metis settlement, an Indian reserve and an armed forces base;*

1995 c24 s86

**Establishing commissions**

**602.02(1)** *The Lieutenant Governor in Council, on the recommendation of the Minister, may establish regional services commissions by regulation.*

**(2)** *The regulation establishing a commission must*

- (a) *specify the commission’s name;*
- (b) *identify the municipal authorities that are the members of the commission;*
- (c) *specify the services that a commission is authorized to provide.*

**(3)** *The regulation establishing a commission may*

- (a) *regulate the disposal of assets by the commission, and*
- (b) *deal with any matter respecting the establishment or operation of the commission.*

1995 c24 s86

**Service area**

**602.11** *A commission may provide its services*

- (a) *within the boundaries of its members, and*

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- (b) *outside the boundaries of its members with the approval of the Minister and*
  - (i) *the municipal authority within whose boundaries the services are to be provided, and*
  - (ii) *in the case of services to be provided in a part of a province or territory adjoining Alberta, the authority from that province or territory whose jurisdiction includes the provision of the services in that part of the province or territory.*

*1995 c24 s86;1999 c11 s39*

*Alberta Regulation 181/2003 Municipal Government Act*

***Establishment***

***1*** *A regional services commission known as the North 43 Lagoon Commission is established.*

***Members***

***2*** *The following municipalities are members of the Commission:*

- (a) *Lac Ste. Anne County;*
- (b) *Summer Village of Ross Haven;*
- (c) *Summer Village of Yellowstone;*
- (d) *Summer Village of Castle Island.*

*AR 181/2003 s2;7/2007*

***Services***

***3*** *The Commission is authorized to provide sanitary sewage services.*

***Operating deficits***

***4*** *The Commission may not assume operating deficits that are shown on the books of any of the member municipalities.*

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***Sale of property***

*5(1) The Commission may not, without the approval of the Minister, sell any of its land, buildings or personal property the purchase of which has been funded wholly or partly by grants from the Government of Alberta.*

*(2) The Minister may not approve a sale under subsection (1) unless the Minister is satisfied*

- (a) as to the repayment of grants from the Government of Alberta and outstanding debt associated with that portion of the land, buildings and personal property to be sold,*
- (b) that the sale would not have a significant adverse effect on the services the Commission provides, and*
- (c) that the sale will be properly reflected in the rates subsequently charged to the customers of the Commission.*

***Profit and surplus***

*6 Unless otherwise approved by the Minister, the Commission must not*

- (a) operate for the purpose of making a profit, or*
- (b) distribute any of its surplus to its member municipalities.*

***Conditions***

*7 The Minister may make an approval under section 5 or 6 subject to any terms or conditions that the Minister considers appropriate*

**CLAIMANTS' POSITION:**

The Claimants stated that the term “municipality” as used in section 534 of the Municipal Government Act (the “MGA”) includes the Commission. The Claimants argued in the alternative that section 534 of the MGA should apply to the four municipalities comprising the Commission. The Claimants submitted that the intent of the MGA is not that municipalities could escape responsibility for the construction of

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public works by hiding behind another entity. The Commission is merely a vehicle for the municipalities to construct the lagoons for the benefit of their respective residents without the municipalities directly incurring responsibility for damages caused by that public work.

**RESPONDENTS' POSITION:**

The Respondents argued that there is no ambiguity in section 534 of the *MGA* in referring to a “municipality” and not to a public work constructed by a “commission.” “Commission” is not included in the definition of “municipality.” Further, the Minister has not exercised his discretion to make section 534 applicable to a commission through regulations. He stated that the Legislation did not leave them without a remedy, rather that they had an available remedy in common law of nuisance and negligence. Therefore no liability flows to the members of the Commission through section 534 of the *MGA*.

**FINDINGS OF FACT:**

1. The Commission was established pursuant to Alberta Regulation 181/2003 under section 602.02 of the *MGA*.
2. The four Respondent municipalities are the Members of the Commission.
3. The Commission is the owner of lands (the “Lagoon Lands”) upon which a sewage lagoon (the “Lagoon”) was partially constructed.
4. The Claimants are the registered owners of lands adjacent to the Lagoon Lands.



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5. The construction of the Lagoon commenced in 2003 and it has been operated since that time.
6. No Notice of Completion of a Public Work has been issued by the Commission.
7. The Parties have agreed that there is an injurious affection from the subject public works.

**ISSUES:**

- Do the Respondent municipalities and the Commission fall within the definition of “municipalities” in the *Act*?
- Does the Board have jurisdiction to hear an application by the Claimants for compensation from the Respondents under section 534 of the *MGA*?

**DECISION:**

The Respondent municipalities and the Commission fall within the definition of “municipalities” in the *Act*.

The Board has jurisdiction to hear an application by the Claimants for compensation from the Respondents under section 534 of the *MGA*.

**REASONS:**

**Do the Respondent municipalities and the Commission fall within the definition of “municipalities” in the *Act*?**

Pursuant to the provisions of section 602.02 of the *MGA*, municipalities may establish a commission to perform services within the municipality as stipulated under

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section 602.11. In this case the four Respondent municipalities created the Commission to construct and operate the Lagoon. Section 534 provides a remedy for persons who are entitled to receive compensation from a municipality which has constructed a public work.

The Supreme Court of Canada held, in *Rizzo & Rizzo Shoes Ltd. (Re)*, that "[t]oday there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament." *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21. The Board accepts the Claimants argument that to read the *Act* to mean that the Municipalities are not accountable as municipalities for the effects of or the damages caused by the public work or structure would be inconsistent with the intent of the legislation regarding the creation of the commission. The commission is merely a vehicle for the four municipalities to construct the lagoons for benefit of each of them and their respective residents.

The Supreme Court of Canada also held, in *Montréal (City)* that: "... [i]n interpreting legislation, the guiding principle is the need to determine the lawmakers' intention. To do this, it is not enough to look at the words of the legislation. Its context must also be considered. "*Montréal (City) v. 2952-1366 Québec Inc.*, [2005] 3 S.C.R. 141, at para. 12.

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The Alberta *Interpretation Act*, R.S.A. 2000, c. I-8, s. 10 provides that: "An enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects."

The Board notes that the Claimants based their position on a pre amendment version of the MGA. They argued that it applies as it was in force at the time of the construction of the public works. Counsel for the Respondents indicated that they take no position on the appropriate version of section 534 applicable to this application. The Board accepts the Claimants position that the old version of section 534 (1994) applies as it was in force at the time of construction of the sewage lagoon.

The Board finds that the *MGA* section 534 (1994) is remedial in nature, intending to provide a remedy against a municipality for loss of or the permanent lessening of use of a person's land caused by the public work or structure.

The Board further finds that the legislation must intend to provide the same remedy against a municipality even if a Commission is established by one or more municipalities to provide a service on behalf of the municipality, unless the legislation creating the Commission specifically excludes the Member Municipalities and the Commission from the provisions of section 534. *Alberta Regulation 181/2003 Municipal Government Act*, creating the North 43 Lagoon Commission does not do so. The Respondents raised Section 602.39 of the MGA which states:

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*The Minister may by regulation make provisions of this Act, other than provisions in this Part, applicable with or without modification to one or more commissions.*

The Respondents argued that, because the Minister did not enact a regulation stating that part 534 of the *Act* applies to this commission, the section does not apply. The Board has considered this argument and is not persuaded that it was intended that municipalities could escape this section as Members of the Commission as the Board has determined that this would be a bizarre outcome.

The Board finds that the legislation excludes neither the Commission nor the Municipalities creating it from the provisions of section 534 and, therefore, both the Commission and the Municipalities creating it are municipalities as defined in the *Act*.

In the alternative, should the Board be incorrect in its characterization of Commission as a Municipality, then the Board finds that the Commission was an agent acting on behalf of the Municipalities and that the Respondent Municipalities continue to be Municipalities for the public work construction as provided for in section 534 of the *MGA*.

Based on the above, the Board finds that the Member Municipalities creating the Commission and the Commission are “municipalities” as defined in the *Act*.

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**Does the Board have jurisdiction to hear an application by the Claimants for compensation from the Respondents pursuant to section 534 of the MGA?**

The Board has concluded that the Commission and the Commission Member Municipalities creating it are Municipalities as defined in section 534.

Accordingly, the Board finds that it has jurisdiction to hear the application by the Claimants for compensation from the Respondents pursuant to section 534 of the MGA.

**COSTS:**

The Board will allow the parties to settle costs between them and, if they are unable to do so, to return to the Board for a determination of costs.

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**E. Gordon Chapman, Presiding Member**

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**Brian G. Gifford, Member**