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Docket: CI 11-01-72733
(Winnipeg Centre)
Indexed as: Western Canada Wilderness Committee
v. Government of Manitoba
Cited as: 2012 MBQB 54

COURT OF QUEEN'S BENCH OF MANITOBA

BETWEEN:

WESTERN CANADA WILDERNESS COMMITTEE,	) COUNSEL:
	)
applicant,	) D.G. Newman, Q.C.
	) for the applicant
- and -	)
	) G. Hannon, I. Wiebe and
THE GOVERNMENT OF MANITOBA,	) J. Koch
	) for the respondent
respondent.	)
	) JUDGMENT DELIVERED:
	) February 15, 2012

SCHULMAN J.

[1] This is a motion claiming a declaration of the meaning of the phrase "logging" as used in s. 15.1(1) of *The Forest Act*, C.C.S.M. c. F150. However, the issue really is whether the authorization for construction of the road described in para. 2 constitutes a "commercial timber cutting right ... that authorizes logging on land in a provincial park," as used in s. 15.1(1).

[2] The Government of Manitoba ("Manitoba") has through the issue of several licences issued under several statutes authorized Tolko Industries Ltd.

("Tolko") to construct an all season road on Crown land, known as Dickstone South Road, through Grass River Provincial Park, for the purpose of transporting logs from Provincial Trunk Highway 39, a location outside of the park to the Chisel Lake railbed, a location outside of the park, and in the opposite direction, for the purpose of its business. The intention is that the road will be used by Tolko and no one else during the months specified in a licence issued to it under *The Environment Act*, C.C.S.M. c. E125. Tolko would control access by virtue of locked gates and gatekeepers employed by them. In order to lay a foundation for the road Tolko must cut down a number of trees and the trees once cut may be used for a series of restricted purposes designed to prevent waste. The approval of the project coincided with a decision by Manitoba to prohibit logging in all provincial parks in Manitoba except Duck Mountain Provincial Park. The prohibition eliminated the timber cutting rights held by Tolko in the park.

[3] The Western Canada Wilderness Committee ("the Committee") is a corporation incorporated in British Columbia and registered in Manitoba. According to an affidavit filed by its Manitoba Campaign Director, it is a public interest environmental citizen group and its mission is "to protect Canada's biodiversity through strategic research and public education and to defend Canada's remaining wilderness and wildlife." For many years it has advocated that there be a ban on logging in provincial parks in Manitoba. When it learned that Tolko was applying for permission to build the road, the Committee sought a legal opinion and asserted that the construction of the road is an activity, which

is prohibited by s. 15.1(1) of the statute. The focus of its position related to the meaning of the word logging as used in the statute and it tried to engage Manitoba in a discussion of the breadth of the meaning of the word logging. It sought an agreement with the province that the correct meaning of the provision be determined in a summary way, however, Manitoba declined to participate and maintained that it has acted correctly within the meaning of the statute.

[4] Generally speaking there had not been prior to 2009 a ban on logging in provincial parks although a study made many years earlier had recommended that a ban be phased in. Beyond question, Manitoba controlled access to and uses made of all provincial parks. In 2009 the Legislature amended *The Forest Act* and *The Provincial Parks Act*, C.C.S.M. c. P20, in order to create the ban. *The Parks Act* begins with its purpose:

> WHEREAS provincial parks are special places that play an important role in the protection of natural lands and the quality of life of Manitobans;
>
> WHEREAS existing and future provincial parks should be managed in a manner consistent with the principles of sustainable development so that representative examples of diverse natural and cultural heritage are conserved and appropriate economic opportunities are provided;
>
> AND WHEREAS a system of provincial parks will contribute to the province's goal of protecting 12% of its natural regions;
>
> THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

In 2009 the statute was amended to provide:

> **Prohibition on logging**
>
> **7(6)** Logging in provincial parks is prohibited in accordance with section 15.1 of *The Forest Act*.

At the same time s. 15.1(1) of *The Forest Act* was amended to provide:

> **No commercial timber cutting rights in parks**
>
> **15.1(1)** No commercial timber cutting right may be issued that authorizes logging on land in a provincial park.

Section 15.1(1) is in Part II entitled TIMBER CUTTING RIGHTS. It is preceded by s. 11 which states:

> **Disposition of cutting rights for Crown timber**
>
> **11(1)** Timber cutting rights shall be granted in such manner, and by such means, as, in the opinion of the minister, secures the maximum benefit to the forest industry of the province; and, without restricting the generality of the foregoing, the minister may offer Crown timber for sale

It is followed by:

> **Withdrawing existing timber cutting rights in parks**
>
> **15.1(2)** Every commercial timber cutting right in existence on the coming into force of this section that authorizes logging on land in a provincial park is hereby amended to remove the land in the provincial park from the timber cutting right.
>
> **Exception for Duck Mountain Provincial Park**
>
> **15.1(3)** This section does not apply to Duck Mountain Provincial Park.
>
> **Definition: "commercial timber cutting right"**
>
> **15.1(4)** In this section, **"commercial timber cutting right"** does not include a timber cutting right that authorizes the holder – on the request and at the direction of government officials – to cut and remove the minimum amount of timber required to achieve any of the following purposes on land in a provincial park, if permitted under *The Provincial Parks Act*:
>
> (a) forest fire threat reduction;
>
> (b) forest pest and disease control;
>
> (c) forest rehabilitation and ecosystem preservation;
>
> (d) forest research;

(e) the development of park infrastructure.

The Forest Act has the following definitions:

> **"forest management licence", "timber sale agreement", "timber permit"**, means any forest management licence, timber sale agreement or timber permit granted under this Act authorizing the cutting and removal of Crown timber;
>
> .....
>
> **"Crown timber"** includes any trees, timber, and products of the forest, in respect whereof the Crown is entitled to demand and receive any royalty or revenue or money whatsoever;
>
> .....
>
> **"timber cutting right"** means a forest management licence, timber sale agreement, timber permit or other authority under which a person is granted a right to cut and remove Crown timber;

SUBMISSIONS

[5] There is no challenge to the Committee's standing to bring the application. There is an issue about the standard of review to be applied. Counsel agree that the principles of interpretation to be applied are that statutory interpretation cannot be founded on the wording of legislation. 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 the legislator: *R. v. Sharpe*, 2001 SCC 2, [2001] 1 S.C.R. 45, and *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27.

[6] Counsel for the Committee argued that the prime focus of the 2009 statutory amendments was to implement the long-sought goal of prohibiting logging in Manitoba's parks, that the word logging has to be given meaning in

s. 15.1(1) and that the word logging has a broad meaning in its ordinary sense and in the context of the statute. He submitted that this court should interpret the prohibition in the Acts to include a prohibition of construction of roads for the purpose of carrying out or furthering Tolko's logging industry or commercial operation. He argued that *The Parks Act* is given prevailing status over *The Forest Act* in relation to the goals of the legislation. He cited the case of *Springfield (Rural Municipality) v. Manitoba (Provincial Municipal Assessor)* (1991), 86 D.L.R. (4th) 692 (Man. C.A.), to support the granting of a declaration of the meaning of a statute. He cited dictionary definitions and the case of *Newfoundland and Labrador Wildlife Federation v. Newfoundland (Minister of Environment and Labour)*, [2001] N.J. No. 125 (Nfld. S.C. (T.D.)), in support of a broad definition to the word logging to include construction of a road in support of a logging operation. He cited dictionary definitions as to the meaning of the word commercial. He argued that Tolko was compensated for elimination of its timber cutting rights, and that s. 15.1(1) provides a very clear prohibition against all aspects of commercial logging in the park unless saved by one of the five exceptions set out in s. 15.1(4), none of which exceptions apply in this case. He attempted on nine grounds to distinguish the case of *Earthroots Coalition v. Ontario (Minister of Natural Resources)*, (2003] O.J. No. 3341 (Ont. Sup. Ct. J. (Div. Ct.)), the principal case relied on by Manitoba and to use the points of distinction as the foundation of his client's argument.

[7] Counsel for Manitoba argued that the facts of this case are very close to the facts of *Earthroots* where the court dealt with the issue as one of judicial review and that this court should give deference to the decisions made by the licensing authorities and apply a standard of review of reasonableness. The principal provision to be considered is s. 15.1(1) of *The Forest Act*, which has three components: firstly, that it restricts a grant of timber rights not activities; secondly, that it restricts commercial as opposed to non-business cutting rights; thirdly, that the rights referred to are linked to logging, not to a forest-related road. He argued that the five exceptions set out in s. 15.1(4) give context to the provision. He sought to distinguish the *Newfoundland* case on the clear wording of its prohibition against logging. He cited dictionary definitions in support of a narrow definition of the word logging.

ANALYSIS

[8] I have considered Manitoba's position on the standard of review to be applied. In the *Earthroots* case, the Minister decided to permit improvements to an existing forest road for use in transporting logs within the forest. The Earthroots Coalition sought a declaration that the proposed clearing, construction or improvement, and use of the road are prohibited by a regulation stating, "Land within a conservation reserve shall not be used for mining, commercial forest harvest, ... or other industrial uses." The Divisional Court held that looked at in isolation, the language of the regulation tends to support the Coalition's position. Blair J. stated, "Arguably, at least, the use of Eye Lake Road for the

transportation of forest products across the ... Reserve is a use for 'commercial forestry harvest' or for 'other industrial uses': see, for example, [the *Newfoundland* case referred to in para. 6]." He stated at para. 20:

> The Minister has an obligation, in the public interest, to balance all of the competing factors that come into play in the course of carrying out the mandate to manage and plan for the use of public lands and forests in the Province. The language of sections 1 and 2 of the Conservation Reserve Regulation cannot be read literally and strictly, and in isolation from the overall legislative framework that governs the Minister's role in this regard. The sections must be considered in the context of and in conjunction with the entire enabling legislative scheme including the Public Lands Act and the Crown Forest Sustainability Act. [Emphasis added]

He also stated at paras. 27-28:

> It is in the context of the foregoing framework and policy rubric that the Minister's discretionary decision and the requirements of sections 1 and 2 of the Conservation Reserve Regulation must be reviewed. When the purposive words "protecting natural heritage areas and natural features on public land" and "preserving traditional public land uses" of section 1, and the limiting words "commercial forest harvest" and "other industrial uses" of section 2 are examined in this light, it is reasonable, in my view, to interpret the Conservation Reserve Regulation as not prohibiting the clearing, construction or improvement, nor the use of existing access routes to and from commercial forest areas for purposes of hauling timber from those areas. Indeed, if the strict and literal interpretation advanced by the Applicant were accepted it might well have the effect of partially defeating the objectives of the forest management plan and related policies put in place in relation to the Minister's responsibilities over the same Crown forests under the Crown Forest Sustainability Act. [Emphasis added]
>
> It follows that in my opinion the exercise of the Minister's discretion in permitting the clearing, construction or improvement, and the use of the Eye Lake Road for its continued purpose as a tertiary logging route to and from the commercial forest areas adjacent to the Bob Lake Conservation Reserve is not unreasonable.

[9] In the *Newfoundland* case, Barry J. granted a declaration in favour of the Wildlife Federation that a provision in *the Newfoundland Provincial Parks Act* that

the word "logging" as used in a provision reading, "a park may not be utilized in any manner for ... logging" is not limited to cutting and includes transportation of logs.

[10] In the *Springfield* case, the Manitoba Court of Appeal refused a declaration of interpretation of the words "real property" for the purpose of *The Municipal Assessment Act.* The court determined the meaning of the words without questioning the appropriateness of making an application for determining the meaning of the words.

[11] In my view, the legislation considered in *Earthroots* is materially different than the legislation before this Court. While in that case the facts bore some resemblance to the facts in this case, the scheme of the statute was different. There the legislation gave the Minister a discretion to determine whether the road should be rebuilt and in exercising his discretion he was required to balance a number of sometimes conflicting factors. From the context the court concluded that it was required to review the discretionary decision and for that the standard of review is reasonableness. The legislation before this court is closer to that in *Newfoundland* and, consistent with the *Springfield* case, I find that the standard of review is correctness or in any event, that it would be appropriate to grant a declaration if it is justified on the merits.

[12] The word "logging" is not defined in *The Forest Act.* I have no difficulty in accepting the submission of counsel for the Committee that in an appropriate context the word "logging" can go beyond the cutting of trees and can include

transport of logs as held in *Newfoundland* and the construction of a road for transportation of logs. However the legislation before this court is materially different from the provision in *Newfoundland*. In *Newfoundland* logging was the focal point of the section and here timber cutting rights are the focal point.

[13] The issue here concerns the 2009 amendment to two related statutes. Section 7 of *The Parks Act* makes it clear that the ban on logging in the parks is defined by s. 15.1(1) of *The Forest Act*. It appears that the draftsman wished to make it clear that the two statutes are to be read together.

[14] Section 15.1(1) forms part of Part II of *The Forest Act*. Part II is entitled "Timber Cutting Rights". The phrase "timber cutting rights" is defined as "... timber sale agreement ... under which a person is granted a right to cut and remove Crown timber." "Crown timber" is defined to include "any trees ... in respect whereof the Crown is entitled to demand and receive any ... money whatsoever." Section 15.1(1) has three elements: firstly, a grant of a timber cutting right; secondly, of a commercial nature; thirdly, that authorized logging on land. Tolko received a timber sale agreement (a lumber cutting right) in this case. The phrase "commercial timber cutting right" is partly defined. Section 15.1(4) tells us what it is not. It tells us that it is not a right that authorizes the holder "to cut and remove the minimum amount of timber required to achieve one of the five purposes stated there. The ban enacted is not on all logging but rather on commercial cutting rights that authorize logging. In this context the

draftsman is talking about cutting and removing, not about construction of roads even if they are designed to assist the hauling of trees.

[15] The authorization to build a road in this case came about through a different part of the scheme of legislation. According to the evidence it was authorized by seven instruments: A Crown Land Permit issued under *The Parks Act*; an *Environmental Act* licence; and three work permits issued under *The Crown Lands Act*; a timber sale agreement issued under *The Forest Act*; and an operating permit issued under *The Forest Act* and regulations.

[16] After reviewing the words used in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act and intention of the legislator, I have reached the conclusion that the authorization for construction of the Dickstone Road did not constitute the grant of a commercial timber cutting right that authorizes logging on land in a provincial park. The application is therefore dismissed. Costs may be spoken to.