CITATION: Tribute Resources Inc. v. Ontario Energy Board et al, 2017 ONSC 5822
DIVISIONAL COURT FILE NO.: 1605/16
DATE: 20170929

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

BETWEEN:	
TRIBUTE RESOURCES INC. Appellant	J.K. Downing, for the Appellant
– and –	
ONTARIO ENERGY BOARD and MUNICIPAL PROPERTY ASSESSMENT CORPORATION and PROPOSED INTERVENOR ONTARIO PETROLEUM INSTITUTE INC. Respondents	A. Wood, for the Respondent Ontario Energy Board K. Lunau, C. Ho for the Respondent Municipal Property Assessment Corporation C. Patterson, for the Respondent Proposed Intervenor Ontario Petroleum Institute Inc.
	HEARD: September 22, 2017

REASONS FOR DECISION

[1] The Ontario Petroleum Institute (OPI) seeks leave to intervene and to adduce evidence in an appeal by Tribute Resources Inc. (Tribute) to the Divisional Court from a decision of the Ontario Energy Board (OEB) which confirmed a property tax assessment by the Municipal Property Assessment Corporation (MPAC) on gas lines which travel over a Tribute gas field in the County of Norfolk.

[2] For the purpose of these reasons a short description of the gas line network is required. There are over the breadth of the gas field 71 wells. At a low pressure, the gas travels from each well head in a pipeline to a main gathering line which ends at a metering site. The gas beyond the metering site is the property of Union Gas. At the site, the quantity of gas is measured and Tribute's price to Union Gas is determined. In the language of the industry, this is the Delivery Point.

[3] MPAC decided that the gas lines which bring the gas from the well heads to the Delivery Point were liable to assessment as "pipe lines", as defined by Section 25(1) of the *Assessment Act,* R.S.O. 1990, c.A.31. When the Notice of Assessment was delivered, Tribute disputed the assessment and moved before the OEB under s. 25(3) of the *Act.* The decision of the OEB was that Tribute lines were "pipe lines" within that the meaning of s. 25(1) and the assessment was confirmed.

[4] There were two reasons for the decision:

1. The language of s. 25(1) should be given its ordinary, plain meaning. The decision refers to the Shorter Oxford Dictionary definitions of "transportation" and "transmission".

2. The OEB found as a fact that the lines had been designated by Tribute or its predecessor as a "transmission lines".

[5] Tribute's position before the OEB was that the lines are not "pipe lines" but by function only "gathering lines". The terms "transportation" and "transmission" have gas industry-specific meanings. OEB erred in its interpretation of s. 25(1) of the *Act* by choosing not to apply the technical meanings to the language of the subsection.

[6] OPI is a gas and oil industry association of producers and geologists. Tribute is a member. In its material, it offers evidence of reasons why there should be a distinction between "gathering" pipe lines and "transmission" pipe lines. The position of its members is summarized at paras. 30 and 31 of the McIntosh affidavit as follows:

> 30. It is OPI's submission that the OEB's decision in this case which determined that the gas gathering system operated by Tribute is a "transmission line" is in error. It does not consider that the gas gathering system is a closed one and it does not transport or transmit the gas from the producer onward except at the point of the custody transfer metering station. Further, the gas gathering system does not transport or transmit a "gas" product that can be sold. This is to be distinguished from a pipeline operated by an entity regulated by the OEB which transports large quantities of natural gas from producers and storage reservoirs to consumers. The decision also fails to take into consideration that a gas gathering system is an asset with no value apart from its ability to collect and process raw natural gas. The gas is a depleting resource while the assessment of a gas gathering system as a transmission line assumes it has the same value as the day it was constructed based on its size. A true transmission line is an asset that has a constant capacity and product limited only by the demand of its customers.
>
> 31. In my opinion, members of the OPI are adversely affected by this decision which will economically strangle oil and natural gas

producers in the Province of Ontario and will lead to the premature abandonment of oil and gas fields in the province.

Rule 13.01 reads as follows:

> 13.01 (1) A person who is not a party to a proceeding may move for leav to intervene as an added party if the person claims,
>
> (a) an interest in the subject matter of the proceeding;
>
> (b) that the person may be adversely affected by a judgment in the proceeding; or
>
> (c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding.

[7] Beyond the rule, I am instructed by Nordheimer J. in *Trinity Western University v. Law Society of Upper Canada,* [2014] O.J. No. 4490, paras. 4 to 7:

> 4 There does not appear to be any dispute between the various parties as to the relevant principles that are to guide the court's decision whether to grant leave to intervene on this basis. Those principles begin with the decision in *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd.,* (1990), 74 O.R. (2d) 164 (C.A.) where Dubin, C.J.O. said, at p. 167:
>
> > Although much has been written as to the proper maters to be considered in determining whether an application for intervention should be granted, in the end, in my opinion, the matters to be considered are the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties.
>
> 5 Those basic principles were expanded upon somewhat as they apply to cases involving the *Canadian Charter of Rights and Freedoms* by the subsequent decision in *Bedford v. Canada (Attorney General)* (2009), 98 O.R. (3d) 792 (C.A.) where the court said at para. 2:
>
> > Where the intervention is in a *Charter* case, usually at least one of three criteria is met by the intervenor: it has a real substantial and identifiable interest in the subject matter of the proceedings; it has an important perspective distinct

> from the immediate parties; or it is a well recognized group with a special expertise and a broadly identifiable membership base.
>
> 6 I do not view the criteria set out in *Bedford,* though, as overriding the fundamental requirements set out in *Peel.* In other words, it is not sufficient to be granted status as an intervener for a proposed intervener to just satisfy one of the *Bedford* criteria. I reach that conclusion because if the criteria in *Bedford* were to be read literally, since they are stated to be disjunctive as opposed to conjunctive, an organization that was, for example, a well-recognized group with a special expertise and broadly identifiable membership base would gain status as an intervener even though they did not offer a perspective different from that of the parties. That would not be an acceptable result and thus is should be self-evident that something more than just satisfying that one criterion is necessary.
>
> 7 I conclude, therefore, that, even under the principles set out in *Bedford,* a proposed intervener must still satisfy the basic requirement that their participation will result in them making a useful and distinct contribution not otherwise offered by the parties. Concluding that that is a basic requirement is consistent with the principles employed by the Supreme Court of Canada and enunciated by McLachlin J. in *R. v. Finta,* [1993] 1 S.C.R. 1138 at para. 5:
>
> > The criteria under Rule 18 [now rule 57] require that the applicant establish: (1) an interest and (2) submissions which will be useful and different from those of the other parties.

[8] On the strength of the McIntosh affidavit, I am satisfied that OPI has an interest in the subject matter of the appeal; and that its members may be affected adversely by the results of the appeal. The question is whether OPI's submissions will be useful and different from those of its member Tribute.

[9] In my view, OPI will bring to the fore in a wider context than Tribute the following question:

> The decision of the OEB was based on a construction of section 25(1) of the *Assessment Act* which applied the presumption in favour of the ordinary, non-technical meaning of words in legislation. Is this not a case, however, where language in its popular meaning should not give way to the technical or "trade" meaning of the language.

[10] Professor Ruth Sullivan in *Driedger on the Construction of Statutes*, (3rd edn. Butterworths) at pp 19-21 explained:

> *Qualification.* The presumption in favour of the ordinary, non-technical meaning of words is subject to an important qualification. This is explained by Lord Esher in *Unwin v. Hanson:*
>
> > If the Act is directed to dealing with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language. If the Act is one passed with reference to a particular trade, business, or transaction, and words are used which everybody conversant with that trade, business, or transaction, knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning, though it may difer from the common or ordinary meaning of the words.

Similar language was used in a passage endorsed by the Federal Court of Appeal in *Olympia Floor and Wall Tile Co. v. Deputy M.N.R. for Customs and Excise:*

> > I subscribe to the principle that the common meaning of a word must be used in the interpretation of Statutes with the exception that [where] a word [is] generally used in the "trade" and understood to have a consistent meaning within that industry or trade, then that interpretation placed on that word must be used.

Relying on this qualification or exception, courts have adopted a technical meaning of the word "sex" in regulations under British Columbia's Horse Racing Act, the words "ophthalmic dispensing" in Ontario's Opthalmic Dispensers Act, the words "subcutaneous tissues of the human foot" in Ontario's Chiropody Act, the word "earthenware" in a tariff item under the Customs Tariff Act, the word "concentrators" in Ontario's Assessment Act, and the word "pipeline" in the Income Tax Regulations.

Governing principle. At first glance, it appears that the qualification described by Lord Esher in *Unwin v. Hanson* is inconsistent with the holding in the *Pfizer* case. Lord Esher suggests that the presumption in favour of ordinary meaning does not apply where the legislation deals with a particular occupation, business or transaction; Pigeon J. declares that the presumption applied regardless of the subject dealt with . The tension between these cases largely disappears, however, if the legislation is looked at from the point of view of the audience. The key consideration in determining whether words should have their ordinary or their technical meaning is not so much the subject dealt with as the understanding of the audience that has been targeted by the

legislature. As Lord Diplock said in *Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg A.G.*,

> ...the court must give effect to what the words of the statute would be reasonably understood to mean by those whose conduct it regulates.

[11] In short, did the Board err in its construction of s. 25(3) when it chose not to apply the gas industry meaning of "transmission" and "transportation"?

[12] For these reasons, leave is granted but on the following terms:

1. OPI's evidence will be limited to 10 pages.

2. OPI will restrict its written and oral submissions to the statutory definition of "transmission" and "transportation" in light of the objectives of the *Assessment Act;*

3. OPI's factum will be no more than 12 pages in length;

4. OPI may make oral submissions of up to 15 minutes in duration so long as they do not repeat or duplicate any of the submissions made by the appellant; and

5. No costs..

P.B. Hockin J.

Justice P.B. Hockin

Released: September 29, 2017

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Respondents

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