

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Canadian Plastic Bag Association v.
Victoria (City),*
2018 BCSC 1007

Date: 20180619
Docket: S180740
Registry: Vancouver

Between:

Canadian Plastic Bag Association

Petitioner

And

The Corporation of the City of Victoria

Respondent

Before: The Honourable Mr. Justice Smith

Reasons for Judgment

Counsel for the Petitioner:

N. Baker

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Place and Date of Hearing:

Vancouver, B.C.
May 8 and 9, 2018

Place and Date of Judgment:

Vancouver, B.C.
June 19, 2018

INTRODUCTION

[1] The City of Victoria has enacted a bylaw that prohibits businesses from providing single-use plastic bags to customers and requires them to charge a mandatory minimum fee for paper and reusable bags. The petitioner is an organization that represents manufacturers and distributors of plastic shopping bags. It seeks an order setting aside the bylaw, arguing that the City had no power to enact it without provincial approval.

[2] The City's powers are set out in its enabling legislation – the *Community Charter*, S.B.C. 2003, c. 26 [CC] and the *Local Government Act*, R.S.B.C. 2015, c. 1 [LGA]. Those powers include the power to make regulations “in relation to business” and the City says the bylaw was enacted under that authority. The petitioner says the bylaw is in fact, an environmental regulation. Although the CC allows the City to enact bylaws for “protection of the natural environment,” it can only do so with approval or agreement of the provincial government.

BACKGROUND

[3] The Checkout Bag Regulation Bylaw No. 18-008 (“Bylaw 18-008”) comes into force on July 1, 2018, although enforcement through imposition of fines will not begin until January 1, 2019. It defines a “checkout bag” as:

- (a) any bag intended to be used by a customer for the purpose of transporting items purchased or received by the customer from the business providing the bag; or
- (b) bags used to package take-out or delivery of food
- (c) and includes Paper Bags, Plastic Bags, or Reusable Bags;

[4] The key provisions of Bylaw 18-008 are contained in s. 3

- 3 (1) Except as provided in this Bylaw, no Business shall provide a Checkout Bag to a customer.
- (2) A Business may provide a Checkout Bag to a customer only if:
 - (a) the customer is first asked whether he or she needs a bag;
 - (b) the bag provided is a Paper Bag or a Reusable Bag; and
 - (c) the customer is charged a fee not less than

- (i) 15 cents per Paper Bag; and
 - (ii) \$1 per Reusable Bag.
- (3) For certainty, no Business may:
 - (a) sell or provide to a customer a Plastic Bag; or
 - (b) provide a Checkout Bag to a customer free of charge.
- ...

[5] As of January 1, 2019, the fees for paper and reusable bags will increase to 25 cents and \$2 respectively. Those fees do not apply to small paper bags used for items such as bulk foods, meat, bakery goods, and plants.

[6] A preamble to Bylaw 18-008 says:

The purpose of this Bylaw is to regulate business use of single use checkout bags to reduce the creation of waste and associated municipal costs, to better steward municipal property, including sewers, streets and parks, and to promote responsible and sustainable business practices that are consistent with the values of the community.

[7] The process leading to Bylaw 18-008 began in June 2015, when representatives of the Surfrider Foundation (“Surfrider”) contacted the mayor to advise they would be proposing a draft bylaw to ban the use of single-use plastic bags. In a subsequent letter to City council, Surfrider described itself as one of the “largest non-profit grassroots organizations dedicated to the protection of the ocean, waves and beaches.” It said single-use plastic bags pollute and obstruct local waterways and constitute “one of the biggest threats to our marine environment”. Material submitted by Surfrider included a draft bylaw and petition forms with more than 2,500 signatures.

[8] In May 2016, council received a report from the City’s Director of Engineering and Public Works that estimated Victoria businesses distribute more than 17 million single-use plastic bags a year, of which as many as 798,000 are littered and not collected. However, the report conceded there were no reliable statistics on this point. The report said:

Reducing the waste accumulated from single-use shopping bags will prevent litter and its associated downstream environmental, economic and social costs. ...

[9] The report set out a number of possible policy options, including a ban on plastic bags combined with a fee to deter a corresponding increase in the use of paper bags. It said:

...This option is not recommended due to the lack of customer choice and the misalignment in logic caused by banning a bag with less environmental impact. This combination could be supported if the plastic bags were creating a much worse local litter problem, when compared to other bag alternatives, but the evidence to support such a claim has not been identified in the City.

[10] It recommended that, as an initial step, the City work with local businesses to promote a voluntary fee for both plastic and paper bags.

[11] At the same time, the City solicitor said in a report to council, dated May 25, 2016 that the City's power to regulate businesses would allow it to ban the use of plastic bags:

... if it is satisfied that unregulated use of single use plastic bags has negative local impacts such as increased littering, impact on the landfill, clogging City sewers, etc.. On the other hand, if the only concern or reason for regulating or banning single-use plastic bags relates to their alleged global environmental impact, such regulation would most likely fall under the authority to regulate for the protection of the natural environment. Bylaws enacted under this authority require ministerial approval, potentially significantly limiting Council's regulatory power.

[12] On March 23, 2017, council considered a further report from the Director of Engineering and Public Works, reporting on consultations that had taken place with businesses and other interested parties. (The date on the report is March 14, 2016, but its content clearly shows that to be a typographical error). It says, in part:

The volume of single use plastic bags entering the waste stream and escaping collection systems is a growing concern for cities, and should be addressed by improved waste management schemes and more sustainable consumer behaviour. The wholesale adoption of sustainable, re-usable retail bags is considered an ideal outcome, if the bags are fabricated, used and recycled in the manner that minimizes environmental and social impacts. Introducing regulations to promote the reduction of single-use plastics is an

effort to change consumer behaviour to reduce single-use packaging and its impacts on landfills and the surrounding environment.

... It should be noted that single use plastic retail bags out-perform paper bags in most life cycle impact areas, except when they are discarded as litter, which can harm the natural land and ocean environments. Plastic bag litter may persist for several decades may result in ecosystem decline and can harm wildlife.

[13] The report refers to a comment from provincial staff that a bylaw banning plastic bags would fall under the City's power to protect the natural environment, but provincial approval would be required. Other documents indicate the source of that comment to have been an email from a senior policy analyst in the Ministry of the Environment. There is no evidence the City raised the matter with the province at the ministerial level.

[14] Council directed staff to continue consultations and report back with a draft bylaw in October 2017. City staff submitted that draft along with a report dated October 23, 2017.

[15] Like the draft bylaw submitted by Surfrider two years earlier, the draft prepared by City staff prohibited the sale or free provision of plastic bags, subject to certain exceptions. Unlike the Surfrider draft, it allowed businesses to provide paper or re-usable bags for a fee if customers requested them. The report explained:

... The draft bylaw establishes controls necessary to reduce the risk of any corresponding and significant increase in single-use paper bag use, or an excessive use of reusable bags – both of which could have more damaging environmental and local waste management impacts when compared to the corresponding reduction of plastic bags. Although paper bags perform better if littered (i.e. they break down more easily), they require more energy and create more waste and pollution, as compared to a common single use plastic bag. ...

... The free provision of single-use materials represents a systemic business/consumer transaction that privileges short-term convenience over long term sustainability. The current overuse of plastic checkout bags in our community is unsustainable over the long term and has been identified by many in the public to be inconsistent with the values of Victorians. The single-use plastic bag is powerful, ubiquitous example in our community of "throw-away consumerism" and is not merely unsustainable due to the upstream and downstream environmental impacts of plastic waste, but due to the wasteful and prevalent cultural norms that are consuming scarce resources in a manner that is not economically or socially sustainable.

[16] Under the heading “Problem Definition,” the report said:

A large volume of single use plastic retail bags is entering the waste stream and escaping collection systems, and can be addressed by improved waste avoidance schemes and more sustainable business practice and consumer habits....

Introducing regulations to promote the reduction of single-use materials is aligned with universal waste management hierarchical principles to first reduce waste at the source, thereby eliminating the frequent and common instances where consumers are accumulating material that becomes waste after only a few uses. A wholesale and rapid shift away from prominent, single-use materials will reduce the waste-management burden across the chain of collection, transport, and product end-of-life.

[17] The report said that the City’s waste management costs were increasing for a number of reasons and it was difficult to estimate how much could be saved by a ban on plastic bags alone:

More accurate and comprehensive detail across our operational and logistics chains would be required in order to quantify such savings or impacts. That being said, any reduction in waste material can help promote reduced garbage volume and pickup frequency, reduced contamination, litter reduction, GHG savings, human resources implications etc. Reducing the transport of low density material is a benefit. Drastically reducing any mobile plastic film also helps reduce the risk of fouling underground storm water systems, which will be increasingly impacted in seasons with heavy rainfall, that are becoming more frequent/severe in our changing climate.

[18] City staff held further meetings with retail and business representatives between October and December 2017 and received emails from individual members of the public. That resulted in some amendments to proposed Bylaw 18-008. The amended version received three readings on December 14, 2017 and was adopted on January 11, 2018.

ANALYSIS

[19] The petitioner brings its application pursuant to s. 623 of *LGA*, which allows the Court to “set aside all or part of the municipal instrument for illegality”. The application may be made by; (a) an elector of the municipality or; (b) a person interested in a bylaw. The City does not dispute the petitioner’s standing. The

petitioner also relies on the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 [JRPA] to ask the Court to review the City's decision to adopt Bylaw 18-008.

[20] Challenges to municipal legislation may raise two distinct questions that attract different standards of review. The issue raised in this petition is whether the governing legislation gives the City the legal authority to enact Bylaw 18-008. That is a true question of jurisdiction to be reviewed on a standard of correctness: *Nanaimo (City) v. Rascal Trucking Ltd.*, 2000 SCC 13 at para. 33; *Society of Fort Langley Residents for Sustainable Development v. Langley (Township)*, 2014 BCCA 271 [Society of Fort Langley] at para. 10

[21] If a municipality has the power to adopt a bylaw, its decision to do so is reviewable on a standard of reasonableness. The deference owed to municipal decisions in such cases recognizes that municipal councils are elected and accountable to voters: *Nanaimo (City)* at para 35.

[22] That deferential standard is consistent with s. 1(1) of the CC, which reads:

1 (1) Municipalities and their councils are recognized as an order of government within their jurisdiction that

- (a) is democratically elected, autonomous, responsible and accountable,
- (b) is established and continued by the will of the residents of their communities, and
- (c) provides for the municipal purposes of their communities.

[23] This petition seeks a declaration that Bylaw 18-008 is *ultra vires* and so does not raise any issue that attracts a reasonableness standard. I mention that standard only because decided cases must be read with some care to identify which question was before the court. Deferential language used when the court was considering the reasonableness of a municipal action may not be applicable to a question of whether the action fell within the municipality's power.

[24] Section 8(3) of the CC lists a number of matters in relation to which a municipal council "...may, by bylaw, regulate, prohibit and impose requirements...". These include: "(j) protection of the natural environment".

[25] However, s. 9 identifies some of those matters as being ones in which the province has concurrent authority and imposes limitations on the municipal authority:

9 (1) This section applies in relation to the following

...

(b) bylaws under section 8 (3) (j) [*protection of the natural environment*];

...

(3) Recognizing the Provincial interest in matters dealt with by bylaws referred to in subsection (1), a council may not adopt a bylaw to which this section applies unless the bylaw is

(a) in accordance with a regulation under subsection (4),

(b) in accordance with an agreement under subsection (5), or

(c) approved by the minister responsible.

(4) The minister responsible may, by regulation, do the following:

(a) establish matters in relation to which municipalities may exercise authority as contemplated by subsection (3) (a), either

(i) by specifying the matters in relation to which they may exercise authority, or

(ii) by providing that the restriction under subsection (3) only applies in relation to specified matters;

(b) provide that the exercise of that authority is subject to the restrictions and conditions established by the regulation;

(c) provide that the exercise of that authority may be made subject to restrictions and conditions specified by the minister responsible or by a person designated by name or title in the regulation.

(5) The minister responsible may enter into an agreement with one or more municipalities that has the same effect in relation to the municipalities as a regulation that could be made under subsection (4).

...

[26] There is no evidence the City ever sought or obtained approval under s. 9(3)(c) and no evidence of any agreement under s. 9(3)(b). I have been referred to one regulation made under ss. 9(3)(a) and (4), which will be discussed later in these Reasons.

[27] The petitioner says Bylaw 18-008 required provincial approval under s. 9 because City council was responding to the issues raised by Surfrider and was

acting to protect the natural environment, including the ocean environment beyond the City's borders.

[28] The City relies on s. 8(6) of the CC, which says: "A council may, by bylaw, regulate in relation to business."

[29] The term "regulate" is broadly defined in the Schedule to the CC:

"regulate" includes authorize, control, inspect, limit and restrict, including by establishing rules respecting what must or must not be done, in relation to the persons, properties, activities, things or other matters being regulated

[30] Therefore, the City says Bylaw 18-008 falls within its power to regulate business because it simply regulates a specific transaction – the provision of a bag to a customer for carrying goods that have been purchased.

[31] In determining whether municipal legislation authorizes the exercise of a certain power, the Court is required take a "broad and purposive approach". That approach is consistent with the general approach to statutory interpretation, which requires "the words of an Act ... 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": *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19 at paras. 6-8.

[32] That "broad and purposive approach" is codified in s. 4(1) of the CC, which reads:

4 (1) The powers conferred on municipalities and their councils under this Act or the *Local Government Act* must be interpreted broadly in accordance with the purposes of those Acts and in accordance with municipal purposes.

[33] In *Society of Fort Langley*, the Court of Appeal said at para. 18, after referring to s. 4(1):

[18] Frankly, the Court can take the hint – municipal legislation should be approached in the spirit of searching for the purpose broadly targeted by the enabling legislation and the elected council, and in the words of the Court in *Neilson*, "with a view to giving effect to the intention of the Municipal Council as expressed in the bylaw upon a reasonable basis that will accomplish that purpose".

[34] The Court must consider both the purpose and effects of the bylaw. The purpose is determined by examining both intrinsic evidence, such as the preamble or the general purposes stated in the resolution authorizing the measure, and extrinsic evidence, such as that of the circumstances in which the measure was adopted. The effects are determined by considering both the legal ramifications of the words used and the practical consequences of the application of a bylaw. The fact that a measure has merely incidental effects on area within the powers of another level of government does not render the measure *ultra vires*: *Rogers Communications Inc. v. Châteauguay (City)*, 2016 SCC 23 at paras. 36 and 37.

[35] In *International Bio Research v. Richmond (City)*, 2011 BCSC 471, the Court said at paras. 14 and 15 that the purpose of a bylaw must be taken from its wording and the minutes and public submissions surrounding its adoption, with the primary record being the material before council when it made the decision.

[36] In that case, the Court upheld a municipal bylaw that prohibited the sale of puppies and dogs in pet stores. That jurisdiction was found to exist under two of the enumerated powers in s. 8 of the CC – the power to regulate in relation to business and the power to regulate with respect to animals. In relation to the business regulation power, the Court said at para. 37 that municipal regulation of the conduct of a business, including prohibiting certain types of transactions, is an established aspect of valid business regulation.

[37] If the power to regulate business includes the power to regulate what may or may not be sold, it must be broad enough to regulate how those items are packaged after they have been purchased. However, *International Bio Research* did not raise any issues of concurrent jurisdiction under s. 9.

[38] The purpose of s. 9 is to safeguard the provincial interest: *Peachland (District) v. Peachland Self Storage Ltd.*, 2013 BCCA 273 [*Peachland*] at para. 20. In this case, the Attorney General was given notice of the petition but did not appear and the City argues that is an indication that no provincial interest is engaged. In my view, no such inference can be drawn. The province does not appear to have taken

any position in *Peachland*, but the Court of Appeal nevertheless gave effect to what it found to be the provincial interest.

[39] In *Peachland*, the municipality enacted a bylaw limiting the amount of soil that could be removed from any parcel of land in any calendar year. Section 8(3)(m) of the CC allowed a municipality to “regulate prohibit and impose requirements” in relation to the removal and deposit of soil, but s. 9 required provincial approval for a bylaw that went so far as to prohibit soil removal. The issue was whether a bylaw provision purporting to be only a regulation was in fact so restrictive that it effectively prohibited industrial scale soil extraction. The Court found that it was effectively a prohibition and provincial approval was required.

[40] In *Peachland*, there could be no question that the bylaw purported to govern conduct of parties directly engaged in the activity referred to s. 9 – soil removal. In this case, it is necessary to consider what kind of bylaw can be considered one for “protection of the natural environment” within the meaning of the CC.

[41] As said above, I have been referred only one regulation made pursuant to s. 9(4) of the CC. That regulation, made in 2004, is called the *Spheres of Concurrent Jurisdiction – Environment and Wildlife Regulation*, B.C. Reg. 144/2004. Section 2(1)(a) of that regulation says that a municipality may:

...regulate, prohibit and impose requirements in relation to polluting or obstructing, or impeding the flow of, a stream, creek, waterway, watercourse, waterworks, ditch, drain or sewer...

[42] At one point in argument, counsel for the City suggested that if Bylaw 18-008 is one for protection of the environment, it is authorized by the regulation’s reference to sewers, which are also mentioned in Bylaw 18-008’s preamble. I cannot give the regulation that broad an interpretation and it is not necessary to do so.

[43] The primary relevance of the regulation, in my view, is that by specifying the activities a bylaw may regulate for protection of the natural environment, it also provides some guidance as to what kind of activities may be sufficiently similar that any municipal regulation of them would require similar provincial approval. In other

words, it provides assistance in interpreting what the legislation means when it refers to a bylaw for protection of the natural environment.

[44] In addition to the provision referred to above, dealing with pollution and obstruction of waterways, the regulation also permits municipalities to regulate or prohibit, subject to certain exceptions, the application of pesticides. It addresses activities of parties specifically involved in activities that may directly affect the natural environment.

[45] For example, the regulation would permit a municipality to prohibit or impose restrictions on a building project that could obstruct or pollute a nearby stream, to specify what materials may or may not be directly discharged into the sewer system, and to define what form of pesticides, if any, homeowners may apply to their lawns and gardens.

[46] I find that, in order to be considered a bylaw for the protection of the natural environment within the meaning of ss. 8(3)(j) and 9(1)(b) of the CC, a bylaw must similarly regulate the conduct of parties directly engaged in activities that are considered to have a negative environmental impact.

[47] The bylaw at issue addresses the transaction in which a merchant packages the goods purchased by a customer. Although a plastic checkout bag may ultimately find its way into the natural environment, that is the result of subsequent actions by the customer or by others who subsequently come into possession of the bag. It is not the inevitable, direct or immediate result of the transaction that Bylaw 18-008 seeks to regulate.

[48] For that reason, I find that Bylaw 18-008, in its immediate effect, is properly characterized as a business regulation, rather than a bylaw for protection of the natural environment.

[49] If I am wrong in my finding of what constitutes a bylaw for the protection of the environment, I find that any environmental purpose or effect of Bylaw 18-008 is at

most additional to its purpose and effect of regulating a particular business transaction.

[50] In *Peachland*, the Court was interpreting a single municipal power in s. 8 of the CC that was subject to the concurrent jurisdiction in s. 9. There was no suggestion, as in this case, that Bylaw 18-008 was enacted under a different s. 8 power to which s. 9 did not apply.

[51] In that regard, some meaning must be given to s. 8(7)(a), which reads:

(7) The powers under subsections (3) to (6) to regulate, prohibit and impose requirements, as applicable, in relation to a matter

(a) are separate powers that may be exercised independently of one another,

[52] I interpret that to mean that a bylaw properly enacted under one of the enumerated powers is valid whether or not it may also be interpreted as engaging one or more of the others.

[53] Clearly, the initial impetus for Bylaw 18-008 was the submission by Surfrider, which addressed broad environmental concerns that extended far beyond the City of Victoria. Those concerns undoubtedly remained at least part of the motivations of at least some members of council.

[54] However, the initial Surfrider presentation was followed by a process, extending over approximately two years, that included council obtaining further information from City staff. That process identified specific municipal concerns related to matters such as waste collection systems, sewers, drainage, and litter control. Of particular importance, in my view, was the final staff report of October 23, 2017, which was before council when it adopted Bylaw 18-008. That report specifically identified those matters of valid municipal purpose, although it also referred to the broader environment questions.

[55] Where a municipal council may have more than one purpose in adopting a bylaw, the governing principle was stated in *Koslowski v. West Vancouver* (1981),

122 D.L.R. (3d) 440. In that case, the municipality had considered a change to its zoning bylaw that would have had the effect of preventing residential development on a certain property. When the property owners obtained interim injunctions preventing the enactment of that bylaw, the City enacted a bylaw to expropriate the property. The stated purpose of the expropriation bylaw was to acquire the property “for sewerage and drainage purposes”. The City had installed a sewer line running the length of the property some years earlier but had not acquired an easement at that time.

[56] The property owners argued that the expropriation bylaw had not been passed for the stated purpose, but for an “ulterior” purpose and was therefore illegal. Chief Justice McEachern found that council had been “unremitting” in its opposition to residential development and only focused its attention on sewers when the rezoning failed. But, he said, the existence of another purpose in addition to that stated in the bylaw did not render the bylaw illegal:

53 In this case I believe Council was anxious - even determined - to prevent the use of Lot A for residential purposes, and it was also concerned about the security and safety of its existing sewers. If one were to measure Council's concern in some objective way I would say Council was more Concerned about the proposed use of Lot A which Council understandably believed was an undesirable use, but such an objective measurement would also disclose that Council honestly believed, on the basis of professional advice, that the proposed construction and the existing sewer on an easement or right-of-way were incompatible, or nearly incompatible, even though arrangements could be made that would permit them to survive together.

54 In such circumstances, did Council have an "ulterior" or illegal purpose? There is no doubt, as I have said, that Council was determined to prevent the use of Lot A for the construction of a residence. But Council's opposition was not coloured by an ulterior purpose. It was entitled to be concerned about sewers, and the evidence does not satisfy me that such concern was not legitimate, or that it assumed a lawful purpose just to disguise an ulterior purpose. The fact that Council had more than one purpose, and the fact that one of its purposes may have been its predominant purpose, and beyond its power, does not prevent Council from acting lawfully if it also has an honest purpose that is within its statutory powers.

55 Where is the line to be drawn? When there is more than one purpose, as in this case, the test of predominant purpose may not be appropriate to determine legality because it is not always possible to ascertain the predominant purpose, or the scales may be weighted only slightly one way or

the other. In my view legislative action should be upheld in most cases as long as the Court is satisfied that Council does in fact have a lawful purpose and it acts in good faith. In such circumstances good faith is a proper test by which to judge the conduct of Council. If Council acts in good faith, and it has one or more lawful purposes, then its enactments should not be set aside.

(Emphasis added)

[57] *Koslowski* was applied in *International Bio Research*, where the Court said at paragraph 47 that the municipality need have only one proper purpose for the bylaw to be valid, even if members of council had other motivations.

[58] I find no evidence of bad faith in this case. Although some members of council may have been motivated by broad environment concerns, council's attention was properly drawn to ways in which discarded plastic bags impact municipal facilities and services. Council decided that those issues could be addressed by prohibiting a specific form of consumer transaction. It is true that City staff were unable to quantify the degree to which plastic bags impacted those municipal facilities and services, but the question of whether the bylaw was a reasonable response to the identified municipal problem is not before me. The petition seeks only a finding that the bylaw is *ultra vires* and I find it to be a valid exercise of the City's business regulation power.

[59] The petitioner further argues that the City is regulating and/or prohibiting in relation to municipal solid waste, a power it does not have. That submission relies on the *Environmental Management Act*, S.B.C. 2003, c. 53 [EMA], which gives regional districts (rather than individual municipalities), the authority to make bylaws for the management of municipal solid waste in accordance with a provincially approved waste management plan.

[60] However, the EMA defines "management" as including: "...the collection, transportation, handling, processing, storage, treatment, utilization and disposal of any substance".

[61] Bylaw 18-008 does not deal with any of those activities in relation to solid waste. It is aimed at preventing the creation of certain waste and to avoid the need for any management of that waste. As such, I find that the *EMA* has no application.

[62] The petitioner argues in the alternative that the City has no authority to compel businesses to charge a minimum fee for paper and reusable bags. That submission relies on ss. 193 and 194 of the *CC*. Section 193 provides that a municipality must not impose fees or taxes except as authorized by the *CC* or other legislation. Section 194(1) provides that fees may be imposed in respect of:

- (a) all or part of a service of the municipality,
- (b) the use of municipal property, or
- (c) the exercise of authority to regulate, prohibit or impose requirements.

[63] The difference between a fee and a tax is that a fee must bear some relationship to the cost of the service provided, while a tax need not: *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2 at para. 27.

[64] In *Canadian Wireless Telecommunications Association v. Nanaimo (City)*, 2012 BCSC 1017, the Court struck down a bylaw that imposed a fee on telecommunications providers that provided their customers with access to the 911 call answer centre operated by the city. The purported fee was found to be an unauthorized tax. In *Surdell-Kennedy Taxi Ltd. v. Surrey (City of)*, 2001 BCSC 1265, the Court found that an “auction” process for issuing new taxi licences lacked the required connection to the cost of the licencing system.

[65] I do not find either those authorities or the sections of the *CC* that the petitioner relies on to be applicable to the fees mandated by Bylaw 18-008. The defining feature of either a municipal tax or a municipal fee must, in the ordinary meaning of those terms, be that the funds collected are at some point remitted to the municipality that imposed the tax or fee. That is not the case here. Although Bylaw 18-008 requires businesses to charge a fee for paper or re-usable bags, they are not required to remit those fees or any portion of them to the City.

CONCLUSION

[66] For all of these reasons, I find Bylaw 18-008 to be within the City's authority under the CC. The petition must be dismissed.

"Smith J."