Court of Queen's Bench of Alberta

Citation: Byron Hills Resources Ltd. v. Alberta (Sustainable Resource Development), 2009 ABQB 292

Date: 20090515
Docket: 0501 10848,0501 10849, 0501 10850
Registry: Calgary

Between:

Docket: 0501 10849

Byron Hills Resources Ltd.

Plaintiff

- and -

Her Majesty the Queen In Right of Alberta, As Represented by the Minister of Alberta Sustainable Resource Development, the Minister of Municipal Affairs, and the Minister of Forestry and Natural Resources

Defendants

- and -

Attorney General of Alberta

Intervener

Docket: 0501 10848

William Kovach and Isabelle Kovach

Plaintiffs

- and -

Her Majesty the Queen In Right of Alberta, As Represented by the Minister of Alberta Sustainable Resource Development, the Minister of Municipal Affairs, and the Minister of Forestry and Natural Resources

Defendants

- and -

Attorney General of Alberta

Intervener

Docket: 0501 10850

McGillivray Land Development Corporation

Plaintiffs

- and -

Her Majesty the Queen In Right of Alberta, As Represented by the Minister of Alberta Sustainable Resource Development, the Minister of Municipal Affairs, and the Minister of Forestry and Natural Resources

Defendants

- and -

Attorney General of Alberta

Intervener

Reasons for Judgment
of the
Honourable Madam Justice C.S. Phillips

Introduction

[1] This is an Application pursuant to Rule 221 of the *Alberta Rules of Court*, AR 390/68 to determine whether the Plaintiffs are entitled to compensation from the Defendants pursuant to s. 19(3) of the *Disaster Services Act*, R.S.A. 2000 c. D-13, amended in 2007 to the *Emergency Management Act*, R.S.A. 2000 c. E-6.8. As this incident occurred in the summer of 2003 and therefore prior to 2007, the *Disaster Services Act* as it existed in 2003 applies. The Plaintiffs' claim arises from damages suffered as a result of back burn fires lit by the Alberta Government on or near the Plaintiffs' Lands on or about August 2, 2003. The Plaintiffs seek an order declaring that they are entitled to compensation from the Crown pursuant to s. 19(3) of the *Disaster Services Act*.

The Parties

[2] There are several parties involved in this action: the Plaintiff Byron Hills Resources Ltd. is an Alberta corporation that carries on business in the Province of Alberta. It owns lands near Hillcrest, Alberta that are legally described as:

> North ½ 8, Pt. NW 17 (127 acres), Pt. NE 18 (113 acres), West ½ 18
> Township 7
> Range 3
> W5M

[3] The Plaintiffs William Kovach and Isabelle Kovach (the "Kovachs") are individuals who reside near Hillcrest, Alberta. They are the owners of lands near Hillcrest, Alberta legally described as:

> South half of S17
> Township 7
> Range 3
> W5M

[4] The Plaintiff McGillivray Land Development Corporation is an Alberta corporation that carries on business in the Province of Alberta. It is the owner of lands near Hillcrest, Alberta legally described as:

> SW 8
> Township 7
> Range 3
> W5M

The lands owned by the abovementioned Plaintiffs will hereafter be collectively referred to as "the Plaintiffs' Lands".

[5] Her Majesty the Queen in the Right of Alberta is the Defendant in this action, as represented by the Minister of Sustainable Resource Development (who is responsible for the prevention and control of wildfires and the management of forests and natural resources at all material times), and the Minister of Municipal Affairs (who is responsible for the *Disaster Services Act* as amended, and is given the authority to develop an emergency response framework and to provide compensation in certain circumstances as defined in the *Disaster Services Act* and the *Disaster Recovery Regulation* AR 51/94) (hereinafter referred to collectively as the "Crown").

[6] An *Alberta Bill of Rights*, R.S.A. 2000, c. A-14 argument is raised with respect to the Plaintiffs Kovachs. The Attorney General of Alberta has intervened only with respect to the Bill of Rights issue.

Facts

[7] The parties filed an Agreed Statement of Facts, marked as Exhibit 1 at trial. The agreed pertinent facts relating to this matter are as follows:

> 11. Prior to August 1, 2003, the Plaintiffs' Lands were comprised of mature timber.
>
> 12. On or about July 23, 2003, a fire commenced in or around a campground near Lost Creek, Alberta on Crown lands owned and managed by the Alberta

Government (the “Lost Creek Fire”). The Lost Creek Fire ultimately burned more than 51,000 acres (21,163 hectares) of land before it was extinguished.

13. In the days following July 23, 2003, the Lost Creek Fire continued to spread, and began to approach the towns of Hillcrest and Blairmore, located in Southern Alberta.

14. On July 25, 2003, the Municipality of the Crowsnest Pass, (the “Municipality”) a municipal corporation located in Southern Alberta, declared a State of Emergency pursuant to Section 21 of the Disaster Services Act, c. D-35, RSA 2000. The State of Emergency was renewed by the Municipality on August 2, 2003, August 9, 2003, and August 23, 2003. The State of Emergency was lifted by the Municipality on August 26, 2003.

15. During the Lost Creek Fire, significant resources and personnel were deployed to fight the fire. On August 2, 2003, there were 842 persons under the jurisdiction of Alberta Government Department of Sustainable Resource Development fighting the fire. In addition, there were 34 air tankers, 21 helicopters, 54 water trucks, 12 bulldozers, 7 excavators, and 29 skidders that were in use to fight the Lost Creek Fire on August 2, 2003.

16. At no time did the Lieutenant Governor in Council declare a state of emergency pursuant to s. 18 of the Disaster Services Act RSA 2000 c. D-13 in relation to the Lost Creek Fire.

17. In addition to significant resources and personnel, significant monies were spent fighting the Lost Creek Fire. By August 2, 2003, it was estimated that $11.9 million dollars had been spent by the Alberta Government to fight the Lost Creek Fire.

18. By the morning of August 2, 2003, the Lost Creek Fire was approximately 15,023 hectares in size.

19. On or about August 1, 2003, the Alberta Government began to take steps to bulldoze fire lines and place fire retardant on or near the Plaintiffs’ Lands.

20. On or about August 2, 2003, the Alberta Government also started a series of fires (the “Alberta Government Fire”) to burn the mature timber on the Plaintiffs’ Lands, in order to create a “back burn” area between the Lost Creek Fire and the town of Hillcrest. The purpose of the back burns was to create a substantial area between the Lost Creek Fire and the town of Hillcrest so that if and when the Lost Creek Fire reached the area, it would stop at the area that had already burned.

> 21. The Lost Creek Fire was ultimately extinguished. However, the Alberta Government Fire that was started on or near the Plaintiffs' Lands did destroy mature timber on the Plaintiffs' Lands, and all of the Plaintiffs have thereby suffered damages.

Issues

[8] (1) Does the *Disaster Services Act* or the *Forest and Prairie Protection Act*, R.S.A. c. F-19, as am. S.A. 2003, c. 20 apply?

(2) Are the Plaintiffs entitled to compensation under the applicable Act?

(3) If so, who is to pay compensation?

Position of the Parties

The Plaintiffs' Position

[9] The Plaintiffs argue that (1) they are entitled to compensation pursuant to s. 19(3) of the *Disaster Services Act*; and (2) that the *Forest and Prairie Protection Act* does not apply.

The Disaster Services Act

[10] Section 19(3) of the *Disaster Services Act* states:

> If the Minister acquires or utilizes real or personal property under subsection (1) or if any real or personal property is damaged or destroyed due to an action of the Minister in preventing, combatting or alleviating the effects of an emergency or disaster, the Minister shall cause compensation to be paid for it.

[11] The Plaintiffs are aware that, in making their claim for compensation, although s. 24 of the *Disaster Services Act* empowers the Municipality to exercise the same authority as the Minister under s. 19, s. 24 is silent as to whether the other subsections of s. 19 apply, including s. 19(3) which deals with compensation. Specifically, it is not explicit whether, where a local state of emergency is declared by a Municipality (as was the case here pursuant to s. 21 of the *Disaster Services Act*) and where real or personal property has been destroyed to combat or alleviate the effects of an emergency or disaster (i.e., due to the Alberta Government starting the Alberta Government Fire in order to create a back burn), the Minister is to pay compensation.

[12] Section 24 states:

> On the making of a declaration of a state of local emergency and for the duration of the state of local emergency, the local authority may do all acts and take all necessary proceedings including the following:

> (a) cause any emergency plan or program to be put into operation;
>
> (b) exercise any power given to the Minister under section 19(1) in relation to the part of the municipality affected by the declaration;
>
> (c) authorize any persons at any time to exercise, in the operation of an emergency plan or program, any power given to the Minister under section 19(1) in relation to any part of the municipality affected by a declaration of a state of local emergency.

[13] Authority to create the back burn for the Crown and for the Municipality is found in s. 19(1) and s. 24 respectively of the *Disaster Services Act*. Section 19(1) of the *Disaster Services Act* reads in part:

> On the making of the declaration and for the duration of the state of emergency, the Minister may do all acts and take all necessary proceedings including the following:
>
> ...
>
> (c) acquire or utilize any real or personal property considered necessary to prevent, combat or alleviate the effects of an emergency or disaster;
>
> ...
>
> (i) cause the demolition or removal of any trees, structures or crops if the demolition or removal is necessary or appropriate in order to reach the scene of a disaster, or to attempt to forestall its occurrence or to combat its progress;..

[14] The Plaintiffs submit that it would be absurd to interpret the *Disaster Services Act* as affording compensation to property owners whose property is damaged in cases where a provincial state of emergency is declared by the Lieutenant Governor in Council pursuant to s. 18(1) of the *Disaster Services Act*, but not in cases where a local state of emergency is declared by the local authority of a municipality pursuant to s. 21(1) of the same Act. This is especially so where, as in this case, the Alberta Government's Ministry of Sustainable Resource Development provided the forest fire fighting personnel and equipment during this local State of Emergency.

[15] Sections 18(1) and 21(1) of the *Disaster Services Act* state:

> 18(1) The Lieutenant Governor in Council may, at any time when the Lieutenant Governor in Council is satisfied that an emergency exists or may exist, make an order for a declaration of a state of emergency relating to all or any part of Alberta
>
> ....

> 21(1) The local authority of a municipality may, at any time when it is satisfied that an emergency exists or may exist, by resolution or, in the case of the Minister responsible for the *Municipal Government Act*, the Minister responsible for the *Special Areas Act* or a park superintendent of a national park, by order, make a declaration of a state of local emergency relating to all or any part of the municipality.

[16] The Plaintiffs point to the Supreme Court of Canada's decision in *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27, where it was affirmed that it is a well established principle of statutory interpretation that legislatures do not intend to produce absurd consequences. Further, the Plaintiffs point to R. Sullivan, *Sullivan on the Construction of Statutes* (5th ed.) (Ontario: Lexis Nexis Canada Inc., 2008), in which Sullivan explains at 313:

> From the earliest recognition of the golden rule, contradiction and internal inconsistency have been treated as forms of absurdity. Legislative schemes are supposed to be coherent and to operate in an efficient manner. Interpretations that produce confusion or inconsistency or undermine the efficient operation of a scheme may appropriately be labelled absurd.

[17] Given the absurdity, the Plaintiffs submit to this Court that it has the jurisdiction to correct the ambiguity as discussed by Sullivan at 173:

> The jurisdiction to correct drafting errors arises when the court has reason to believe that the text of legislation does not express what the legislature meant to say. This failure to communicate is generally signalled in one of the following ways
>
> - the words chosen by the drafter are meaningless, contradictory, or incoherent, or
>
> - the provision as drafted leads to a result that cannot have been intended.

[18] In order to avoid the absurdity, the Plaintiffs submit that the *Disaster Services Act* must be read as follows:

> ... section 19(3) of the *Act* is applicable in circumstances where a local authority exercises those powers given to the Minister under s. 19(1) pursuant to section 24(1) of that Act.

[19] The Plaintiffs assert that such an interpretation would be consistent with: (1) the intention of the Alberta Legislature, as evidenced by legislative debate; (2) the statutory interpretation principle that expropriated land should be compensated unless the legislation expressly authorizes otherwise; and (3) with the protections afforded to property owned by individuals under the *Alberta Bill of Rights*.

The Intention of the Alberta Legislature

[20] The Plaintiffs submit that the Legislature's intent, when enacting s. 19(3) of the *Disaster Services Act*, was to compensate property owners whose real or personal property is acquired or utilized, damaged or destroyed, by government officials in their attempt to prevent, combat or alleviate the effects of a disaster or emergency. Compensation is warranted regardless of whether that disaster or emergency is declared by the Lieutenant Governor in Council or by the local authority of a municipality.

[21] The Plaintiffs point to Hansard evidence, which the Supreme Court of Canada recognised in *Rizzo Shoes* at para 35 to play

> ... a limited role in the interpretation of legislation. Writing for the Court in R. v. Morgentaler, [1993] 3 S.C.R. 463, at 484, Sopinka J. stated:
>
> > ... until recently the courts have balked at admitting evidence of legislative debates and speeches.... The main criticism of such evidence has been that it cannot represent the "intent" of the legislature, an incorporeal body, but that is equally true of other forms of legislative history. Provided that the court remains mindful of the limited reliability and weight of Hansard evidence, it should be admitted as relevant to both the background and the purpose of the legislation.

[22] The Plaintiffs submit at paragraphs 67-68 of their written brief that the legislative debate surrounding the *Disaster Services Act* (then Bill 57) should be taken into consideration when interpreting the *Disaster Services Act*. Specifically, the following should be considered:

> ... the Minister introducing Bill 57, Dr. Horner, addressed specific concerns raised by other members of the Legislature in relation to civil liberties and the government's ability to "acquire" and "utilize" real and personal property by reassuring the Legislature that once the government utilized property, real or personal, that "the person is entitled compensation for that utilization." In fact the Bill was amended after legislative debate to include the provision for compensation. It should be noted that although Bill 57 also allowed the local authority to exercise the powers given to the Minister to "acquire" or "utilize" real or personal property during a state of local emergency, the Members of the Legislature did not limit their comments about compensation to circumstances where a provincial state of emergency was declared.

> The legislative debate shows that Bill 57 was only passed on the understanding that property owners would be compensated for property loss where the *Crown* damaged, destroyed, utilized or took their property (emphasis added).

Expropriated Land Should be Compensated Unless Legislation States Otherwise

[23] The Plaintiffs argue that burning the mature timber on the Plaintiffs' Lands amounted to a taking or expropriation on the part of the Crown. They point to the Supreme Court of Canada's decision in *Manitoba Fisheries Ltd. v. The Queen*, [1979] 1 S.C.R. 101, in which the Court affirmed at 118 citing Lord Atkinson in *A.G. v. De Keyser's Royal Hotel* Ltd., [1920] A.C. 508 (H.L.) at 542 that "unless the words of the statute clearly so demand, a statute is not to be construed so as to take away the property of a subject without compensation."

[24] The Plaintiffs submit:

> ... the Crown's utilization of the Plaintiffs' Lands by burning the mature timber thereon was the equivalent to a taking of their property as the Alberta Government Fire rendered the once valuable mature timber on the Plaintiffs' Lands less valuable at the very least, if not completely valueless. As such, the Crown's burning of the mature timber was an expropriation.

As there are no express words in the *Disaster Services Act* disentitling property owners to compensation where property is damaged or destroyed in a case such as this, the Plaintiffs assert that they are entitled to compensation. In addition, the Plaintiffs stress that, given the success of the Alberta Government Fire in abating the Lost Creek Fire (which was ultimately extinguished), thereby rendering a significant benefit to the Crown and the public, the Plaintiffs should not have to bear the cost of this public service.

Infringement of the Alberta Bill of Rights

[25] This argument applies to the Plaintiffs Kovachs only, referred to as "the Plaintiffs" for the purposes of this section. They argue that, to interpret the legislation as permitting the Alberta Government to destroy an individual's property without compensation is contrary to the Plaintiffs' right to the enjoyment of property, and the right not to be deprived thereof, except in accordance with due process as set out in ss. 1(a) and 2 of the *Alberta Bill of Rights*. The Plaintiffs argue they have been deprived of their property without due process: their timber was destroyed and they were not compensated for this destruction of their property despite the absence of legislation denying them compensation.

[26] Sections 1(a) and 2 state:

> 1. It is hereby recognized and declared that in Alberta there exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely:
>
> > (a) The right of the individual to liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;...
>
> 2. Every law of Alberta shall, unless it is expressly declared by an Act of the Legislature that it operates notwithstanding the *Alberta Bill of Rights*, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared.

[27] The Plaintiffs submit that, at the time the *Alberta Bill of Rights* was enacted, there existed a common law right to compensation for the expropriation of property, and a right not to be deprived thereof except by the express words of a statute. This rule of statutory interpretation was later recognised by the Supreme Court of Canada in *Manitoba Fisheries*. "Due process" thus requires that the *Disaster Services Act* expressly take away the Plaintiffs' right to compensation. The *Disaster Services Act* does not expressly exclude compensation to property owners where a local state of emergency is declared; rather, the *Disaster Services Act* is silent.

[28] In addition, the Plaintiffs note that the *Disaster Services Act* does not invoke a notwithstanding clause with respect to the *Alberta Bill of Rights*, as permitted by s. 2 of the *Alberta Bill of Rights*. Given the absence of a notwithstanding clause, the Plaintiffs argue that the *Disaster Services Act* must not be construed to abrogate, abridge or infringe an individual's enjoyment of property and the right not to be deprived thereof except by due process of law.

[29] Finally, the Plaintiffs submit that, the *Disaster Services Act* should be interpreted so that it does not offend the *Alberta Bill of Rights*. As such, the *Disaster Services Act* must be interpreted to compensate individuals regardless of whether a state of emergency is declared by the local authority of a municipality under s. 21(1) of the *Disaster Services Act* or by the Lieutenant Governor in Council under s. 18(1) of the *Disaster Services Act*.

The Forest and Prairie Protection Act

[30] The Plaintiffs submit that, although the *Forest and Prairie Protection Act* does not oblige the Crown to pay compensation for any property destroyed or damaged by a fire or as a result of fighting a fire, the Crown does have such an obligation under the *Disaster Services Act* pursuant to s. 19(3). Moreover, the *Forest and Prairie Protection Act* does not apply in the instant case, given that the *Forest and Prairie Protection Act* does not apply to land within the boundaries of an urban municipality, set out in s. 2:

> This Act applies to all land within Alberta except

> (a) land within the boundaries of an urban municipality where there is no specific provision in this Act to the contrary.

[31] An "urban municipality" is defined in s. 1 of the *Forest and Prairie Protection Act* as "a city, town or village (including a summer village)." At the time of the Lost Creek Fire and the declared local State of Emergency by the Municipality of Crowsnest Pass, Crowsnest Pass was designated as a town. As the Plaintiffs' Lands were (and still are) located within the municipal boundary of the town of Crowsnest Pass at the time of the Lost Creek Fire, the Plaintiffs argue that the *Forest and Prairie Protection Act* does not apply.

[32] The Plaintiffs point out that s. 6 of the *Forest and Prairie Protection Act* permits the Minister of Sustainable Resource Development to enter into a fire control agreement with urban municipalities; however, it is unknown from the Agreed Statement of Facts whether such an agreement existed with the Municipality of Crowsnest Pass in 2003, and no such agreement has been disclosed by the Crown. As I have no evidence on this point, I cannot consider it in my final analysis.

[33] I note that s. 9(1) of the *Forest and Prairie Protection Act* permits the Minister to

> ... fight a fire within a municipal district or an urban municipality where it appears to the Minister that satisfactory action to control and extinguish the fire is not being taken by that municipality and that the fire might damage public land.

No evidence was raised by either party as to whether the requirements of s. 9(1) were met. As I do not have any evidence on this point either, I cannot consider it in my final analysis.

[34] The Plaintiffs argue in the alternative that, if they are in error and the *Forest and Prairie Protection Act* does apply, the Crown did not have authority under the *Forest and Prairie Protection Act* in the circumstances to enter onto the Plaintiffs' Lands and start the Alberta Government Fire.

[35] Authority to enter private property and initiate fires for control purposes is found in s. 29 of the *Forest and Prairie Protection Act*:

> Notwithstanding anything in the Act, a forest officer may, for the purpose of protecting timber, reducing fire hazards or managing wildlife habitat or for any other purpose relating to the administration of this Act, start a fire or cause a fire to be started under the forest officer's direction
>
> (a) on any Crown land, or
>
> (b) on any other land if, in the forest officer's opinion, the exigencies of the situation require such a fire.

[36] "Forest officer" is defined in s. 1 of the *Forest and Prairie Protection Act* as "a forest officer under the *Forests Act*." The *Forests Act*, R.S.A. 2000, c. F-22 as am. S.A. 2002, c. F-16 defines "forest officer" as follows:

> **Definitions**
>
> 1 In this Act,
>
> ...
>
> (e) "forest officer" means
>
> (i) a forest officer appointed under section 2, and
>
> (ii) a person who is a forest officer under section 3;
>
> ...
>
> **Forest officers**
>
> 2(1) There may be appointed in accordance with the *Public Service Act* forest officers as required for the purposes of this Act and the regulations.
>
> (2) In addition to the forest officers appointed pursuant to subsection (1), the Minister may appoint as a forest officer any employee of the Government.
>
> **Forest officers by virtue of appointments to other offices**
>
> 3 The following individuals are forest officers by virtue of their appointments to the offices respectively referred to, namely individuals appointed as
>
> (a) members of the Royal Canadian Mounted Police,
>
> (b) conservation officers, under section 1 of Schedule 3.1 to the *Government Organization Act*, and
>
> (c) wildlife officers, under section 1.1(1) of the *Wildfire Act*.

[37] The Plaintiffs submit that the Alberta Government Fire started on or about August 2, 2003 on the Plaintiffs' Lands was not started by a "forest officer" as defined under the *Forests Act*. Neither the Plaintiffs nor the Agreed Statement of Facts indicate which specific ministry started the fire. The Plaintiffs suggest, however, that the fire "was started under the authority of the Municipality pursuant to its declaration of a local State of Emergency." I infer from this that the Plaintiffs are arguing that authority for starting the Alberta Government Fire stemmed from the declared local State of Emergency by the Municipality.

[38] The Plaintiffs also argue that the Alberta Government Fire was not started for the purpose of protecting timber, reducing fire hazards, or managing wildlife habitat pursuant to s. 29 of the *Forest and Prairie Protection Act*, but rather to combat the Lost Creek Fire and prevent it from reaching the town of Hillcrest.

[39] Finally, the Plaintiffs argue that, should this Court find that both the *Disaster Services Act* and the *Forest and Prairie Protection Act* apply, the statutory interpretation principle of *generalia specialibus non derogant* (the implied exception rule) should be applied. That is, where two provisions are in conflict, the provision that deals most specifically with the matter in question is to be applied to the exclusion of the more general one; the specific prevails over the general, it does not matter which provision was enacted first.

[40] In the instant case, the Plaintiffs submit that the *Disaster Services Act* is the more specific Act, as it applies specifically to emergencies and disasters, such as where a forest fire has been declared a provincial or a local state of emergency. Comparatively, the *Forest and Prairie Protection Act* applies generally to the prevention and control of forest fires; it does not require a declared provincial or local state of emergency. Applying therefore the implied exception principle, the Plaintiffs argue that s. 19(3) of the *Disaster Services Act*, which requires the Minister to pay compensation in cases of this sort, should be applied to the exclusion of s. 5 of the *Forest and Prairie Protection Act*, which would not impose an obligation on the Crown to pay compensation.

[41] Ultimately and in summary, the Plaintiffs argue that s. 24(1) and s. 19(3) should be read together: just as s. 19(1) of the *Disaster Services Act* applies to the Minister of Municipal Affairs and through s 24(1)(b) to the local authority (i.e., the Municipality), who under s. 24(1)(b) can exercise any power given to the Minister under s. 19(1), so too should s. 19(3) of the *Disaster Services Act* apply to both the Minister and the local authority. In the alternative, the Plaintiffs argue that, as the back burn was started by the Alberta Government, it can be inferred under s. 19(3) that the property was damaged or destroyed due to an action of the Minister in combatting the Lost Creek Fire, thus the Minister is required under s. 19(3) to cause compensation to be paid for the damage suffered by the Plaintiffs. The Plaintiffs conclude that this is consistent with the intention of the Alberta Legislature pursuant to the Hansard evidence.

The Crown's Position

[42] The Crown's argument is threefold: (1) the *Forest and Prairie Protection Act*, being the more specific Act in this instance, applies to the exclusion of the *Disaster Services Act*, and therefore the Crown does not have an obligation to pay compensation to the Plaintiffs pursuant to s. 5(b) of the *Forest and Prairie Protection Act*; (2) in the alternative, if the *Disaster Services Act* applies, the Plaintiffs' losses were not the result of the actions of the Minister of Municipal Affairs (the Minister responsible for the *Disaster Services Act*) and thus the Crown is not obliged to pay compensation under s. 19(3); and (3) the *Disaster Services Act* does not render the Minister of Municipal Affairs responsible for the exercise by the Municipality of the powers accorded to it under s. 24 of the *Disaster Services Act*.

The Forest and Prairie Protection Act Applies to the Exclusion of the Disaster Services Act

[43] The Crown argues that the Lost Creek Fire was fought pursuant to the *Forest and Prairie Protection Act*. Specifically, s. 9 states that

> (1) The Minister may fight a fire within a municipal district or an urban municipality where it appears to the Minister that satisfactory action to control and extinguish the fire is not being taken by that municipality and that the fire might damage public land.
>
> (2) Where the Minister incurs costs and expenses as a result of fighting a fire within a municipal district or urban municipality under subsection (1), that municipality shall on demand reimburse the Minister for the entire cost or such part of it as the Minister directs.

[44] It should be noted that the Plaintiffs have not provided any evidence suggesting that the fire did not enter the Municipal District of Crowsnest Pass. However, on the other hand, the Crown has not offered any evidence that the Ministry of Sustainable Resource Development was in receipt of information that satisfactory action to control and extinguish the Lost Creek Fire was not being taken by the Municipality and that the said fire might damage public land. In the absence of such evidence, s. 9 of the *Forest and Prairie Protection Act* would not apply. But for purposes of discussion and analysis, I proceed on the basis that the Lost Creek Fire had burned into the Municipal District of Crowsnest Pass and was not being controlled and extinguished to the Ministry's satisfaction, and thus s. 9 could apply.

[45] The Crown argues that, assuming the fire was fought under the *Forest and Prairie Protection Act*, the Crown is entitled to the protection of s. 5(b) of the *Forest and Prairie Protection Act*. Subsection 5(b) states:

> Nothing in this Act imposes any obligation on
>
> (a) the Minister to fight fires on any land, or
>
> (b) the Crown to pay compensation for any property destroyed or damaged by a fire or as a result of fighting a fire.

[46] The Crown submits that s. 5(b) of the *Forest and Prairie Protection Act* is a clear and express statement that the Crown has no obligation to pay compensation for losses associated with the fire or the fighting of the fire. The Crown admits that s. 19(3) of the *Disaster Services Act* obligates the Minister of Municipal Affairs to cause compensation to be paid for property used or damaged in combatting or preventing an emergency or disaster. That said, as the *Forest and Prairie Protection Act* is the more specific Act in this case, the rules of statutory

interpretation require that the *Forest and Prairie Protection Act* (the more specific Act) is to be applied to the exclusion of the *Disaster Services Act* (the more general Act).

[47] The Crown asserts that the *Forest and Prairie Protection Act* is the more specific Act in this case for the following reasons: the losses were occasioned by a forest fire; the Crown was fighting a forest fire; and the *Forest and Prairie Protection Act* authorizes the Crown to fight the forest fire.

[48] The Crown argues that the *Disaster Services Act* on the other hand is a much broader Act. The definitions of "disaster" and "emergency" in the *Disaster Services Act* could include a forest fire, but are broad enough to include floods, tornados, and hailstorms. Furthermore, the nature of the powers in the *Disaster Services Act* is much broader than those afforded the Minister of Sustainable Resource Development under the *Forest and Prairie Protection Act*.

[49] In sum, the Crown submits that, given that the *Forest and Prairie Protection Act* is the more specific Act, s. 5(b) of the *Forest and Prairie Protection Act* applies, thus immunizing the Crown from the payment of compensation to the Plaintiffs.

[50] Notably, although the Crown made this argument in its written brief, it did concede during oral argument that the operative piece of legislation was the *Disaster Services Act* and not the *Forest and Prairie Protection Act*. The Crown acknowledged that the right of the Alberta Government to be on the Plaintiffs' Lands, which were within the Municipality, arises from the Municipality's declared local State of Emergency pursuant to s. 21(1) of the *Disaster Services Act*.

If the Disaster Services Act applies, the Plaintiffs' Losses Were Not Caused by the Minister of Municipal Affairs

[51] The Crown suggests that the damage to the Plaintiffs' Lands was caused

> ... pursuant to either of 3 situations: (a) by [the Minister of Sustainable Resource Development] in the course of fighting their forest fire, or (b) by the local municipality pursuant to declaration of the local state of emergency and the powers in section 19, or (c) by the actions of the Minister of Municipal Affairs.

[52] The Crown submits that there is no evidence that the Minister of Municipal Affairs authorized the damage or destruction of the Plaintiffs' Lands. Nonetheless, it is admitted in the Agreed Statement of Facts that it was the Alberta Government which started a series of fires to burn the mature timber on the Plaintiffs' Lands in order to create a back burn area between the Lost Creek Fire and the town of Hillcrest. As such, either the Minister of Municipal Affairs or the Minister of Sustainable Resource Development was responsible for starting the Alberta Government Fire.

[53] Although not explicitly mentioned in the Crown's brief, it would appear that the argument the Crown intended to make from the above submissions is the following: if the Minister of Municipal Affairs was not responsible for the Alberta Government Fire, and the Minister of Municipal Affairs is responsible for the *Disaster Services Act*, the Minister cannot be obliged to pay compensation to the Plaintiffs under s. 19(3) of the *Disaster Services Act*. This is because s. 19(3) requires the Minister of Municipal Affairs to pay compensation where the Minister of Municipal Affairs damages or destroys real or personal property to prevent, combat, or alleviate an emergency or disaster. Section 19(3) does not oblige the Minister of Municipal Affairs to pay compensation for the actions of the Minister of Sustainable Resource Development.

[54] Again, I stress that the Agreed Statement of Facts provides me with no information as to who specifically started the Alberta Government Fire, other than that it was the Alberta Government. Moreover, I do not have any evidence as to under whose authority the Alberta Government Fire was started.

The Disaster Services Act Does Not Render the Minister of Municipal Affairs Responsible for the Actions of the Municipality of Crowsnest Pass

[55] The Crown submits that the Minister of Municipal Affairs is not responsible for the actions of municipalities under the *Disaster Services Act*. It notes that municipalities are not agents of the Crown; they are distinct entities. The *Disaster Services Act* recognises the distinctive roles of the Crown and municipalities, and thus does not render the Minister of Municipal Affairs responsible for the actions of municipalities under the *Disaster Services Act*. The Crown explains in its brief that:

> The *Disaster Services Act* is clear in s. 19(3) that if the Minister acquires or damages property the Minister shall pay compensation.
>
> The *Disaster Services Act* is equally clear by virtue of silence that in similar circumstances when a municipality exercises the powers of s. 19(1) it is not statutorily obligated to pay compensation because s. 19(3) of the *Disaster Services Act* is not specifically included in s. 24.

[56] The Crown recognizes that such an understanding of the statute creates the result that compensation is warranted where a provincial state of emergency is declared, and not warranted where a local state of emergency is declared. Nonetheless, the Crown points to the Alberta Court of Appeal's decision in *Alberta (Minister of Public Works, Supply and Services) v. Nilsson*, 2002 ABCA 283, 320 A.R. 88, in which the Court held that, unless the governing statute requires otherwise, compensation is payable when property is taken by statutory authority. The Crown argues that, in the instant case, if the legislature intended for the municipality to pay compensation in this case, "they could have easily included reference to s. 19(3)" in s. 24.

The Intervener Attorney General's Position

[57] The Attorney General submits that proper legal authority was clearly given to the Defendants by the *Forest and Prairie Protection Act* to destroy the mature timber on the Plaintiffs' Lands to prevent the spread of the Lost Creek Fire. The Attorney General argues that the *Disaster Services Act* "did not specifically provide such authority."

[58] We know this is not the case, as subsections 19(1)(c) and 19(1)(i) of the *Disaster Services Act* permit the Minister of Municipal Affairs for the duration of the state of emergency to acquire or utilize any real or personal property considered necessary to prevent, combat, or alleviate the effects of an emergency or disaster, as well as authorizes the Minister to demolish or remove any trees if necessary to forestall the occurrence, or combat the progress, of a disaster. Furthermore, we know through the Agreed Statement of Facts that it was the Alberta Government who started the Alberta Government Fire in order to create a back burn area between the Lost Creek Fire and the town of Hillcrest and that this was done during the State of Emergency declared by the Municipality pursuant to section 21 of the *Disaster Services Act.*

[59] If, however, the *Disaster Services Act* is the applicable Act, the Attorney General argues that the *Alberta Bill of Rights* due process clause cannot be interpreted to require legal compensation from the Ministries under the *Disaster Services Act*, as they did not declare the State of Emergency:

> The *Bill of Rights* due process clause cannot require either Minister to pay for the exercise by the local municipality of its powers under s. 24 of the *Disaster Services Act*. If that Act or the *Bill of Rights* due process clause requires compensation, it cannot require it from a legal actor, who did not declare the emergency.

[60] In addition, the Attorney General notes that even if the Crown is found to owe "a general legal or statutory duty" to compensate the Plaintiffs Kovachs under s. 19(3) of the *Disaster Services Act*, that duty is negated by s. 5(b) of the *Forest and Prairie Protection Act*, as this is the more specific Act in the circumstances.

[61] The Attorney General's argument focusses on the *Forest and Prairie Protection Act* being the applicable Act, noting that the Plaintiffs fail to overcome the clear and applicable provision in the *Forest and Prairie Protection Act* which denies compensation. The Attorney General concludes that the provisions of the *Forest and Prairie Protection Act*

> ... are meant to apply to the specific situation of fire fighting, not to the more general declaration of an emergency under the *Disaster Services Act* by a non-party municipality. Absent a declaration by the municipality, the latter Act would not be considered.
>
> [It should be noted that this is in direct conflict with the Crown's concession at paragraph 44 of its brief (discussed in more detail below) that the Minister of

> Municipal Affairs can be liable for compensation even if a state of emergency is not declared]
>
> Nothing in the *Bill of Rights* or its interpretation would suggest that a requirement on the Crown to compensate can be triggered by an action of another legal actor.
>
> It is submitted that dismissing the Plaintiffs' *Bill of Rights* arguments accords with public policy and the purpose of the *Forest and Prairie Protection Act* as it would not discourage the province from fighting fires on their lands, whether or not they declare an emergency.

Analysis

[62] Before proceeding with my analysis, I stress that I have been provided with no evidence in the Agreed Statement of Facts as to which government body authorized the Alberta Government Fire, nor any evidence with respect to which Alberta Government Ministry started the Alberta Government Fire. The only evidence provided in the Agreed Statement of Facts in this respect is that the Alberta Government started the Alberta Government Fire to burn mature timber on the Plainitffs' Lands in order to create a "back burn" area between the Lost Creek Fire and the town of Hillcrest, and that the Alberta Government Fire destroyed mature timber on the Plaintiffs' Lands and all of the Plaintiffs thereby suffered damages. The Agreed Statement of Facts is the only accepted evidence I have on this matter and this agreement is binding on the parties: *R. v. Hunt*, 2002 ABCA 155, 303 A.R. 240.

[63] I also note that at all material times the Minister of Sustainable Resource Development was responsible for the *Forest and Prairie Protection Act* and the prevention and control of wildfires and the management of forests and natural resources. The Minister of Municipal Affairs was responsible for the *Disaster Services Act*, as amended, and had the authority to develop an emergency response framework and provide compensation in certain circumstances pursuant to the *Disaster Services Act* and the *Disaster Recovery Regulation*.

Does the Disaster Services Act or the Forest and Prairie Protection Act Apply?

[64] Sullivan states that, [w]hen two provisions are applicable without conflict to the same facts, it is presumed that each is meant to operate fully according to its terms": Sullivan at 327. "Conflict" is deemed to occur where two provisions cannot stand together and operate without interfering with one another: *Tabernacle Permanent Building Society v. Knight*, [1892] A.C. 298 (H.L.) at 302, cited in Sullivan at 265. The Supreme Court of Canada has held that provisions that deal "somewhat differently with the same subject-matter" are not considered "'inconsistent' unless the two provisions cannot stand together": *Toronto Railway Co. v. Paget* (1909), 42 S.C.R. 488 at 499, cited in Sullivan at 328. Where two provisions are in conflict, the implied exception doctrine or *generalia specialibus non derogant* applies. That is, where two provisions

are in conflict, the more specific provision – i.e., the provision that deals more specifically with the matter at hand – applies: Sullivan at 343-48. In effect, the more specific provision carves out an exception to the general one (*Ibid.*).

[65] In determining which provision is specific and which is general, the Ontario Court of Appeal has stressed that the analysis requires "a careful examination of the overall schemes of the two pieces of legislation to determine Parliament's intention": *R. v. Greenwood* (1992), 7 O.R. (3d) 1 (C.A.) at 7. Sullivan explains that,

> [w]hen one of the conflicting provisions is specifically addressed to the matter in question and deals with it in a detailed or comprehensive way while the other is broader or operates at a more general level, the question may be easy to answer: at 344.

Yet in less obvious cases, Sullivan notes that the legislation must be examined in relation to the facts and issues of the particular case.

[66] In the instant case, I must determine whether there is, in fact, a conflict between s. 19(3) of the *Disaster Services Act* and s. 5(b) of the *Forest and Prairie Protection Act*. On the one hand, s. 19(3) of the *Disaster Services Act* obligates the Minister of Municipal Affairs to cause compensation to be paid for any real or personal property that the Minister acquires, utilizes, damages, or destroys in preventing, combatting, or alleviating the effects of an emergency or disaster. This includes, *per* s. 19(1)(i), where the Minister causes the demolition or removal of any trees where necessary or appropriate to attempt to forestall the occurrence of a disaster or combat its progress, where there has been a declared state of emergency by the Lieutenant Governor in Council. It also includes damage due to an action of the Minister in preventing, combatting, or alleviating the effects of an emergency or disaster; the latter of which I have interpreted to include a State of Emergency as was declared by the Municipality in this case.

[67] On the other hand, s. 5(b) of the *Forest and Prairie Protection Act* states that nothing in the *Forest and Prairie Protection Act* obliges the Crown to pay compensation for property destroyed or damaged by a fire or as a result of fighting a fire.

[68] The apparent conflict lies in whether compensation is required to be paid to the Plaintiffs whose timber was burnt in order to create a back burn between the Lost Creek Fire and the town of Hillcrest. This conflict is resolved however, by a careful reading of s. 5(b) of the *Forest and Prairie Protection Act*. It states that "[n]othing *in this Act* imposes any obligation on (b) the Crown to pay compensation for any property destroyed or damaged by a fire or as a result of fighting a fire" (emphasis added). Thus, although the Crown is not mandated to pay compensation to the Plaintiffs through the *Forest and Prairie Protection Act*, it does not prevent the Plaintiffs from being compensated under other Acts, such as the *Disaster Services Act*. That is, the *Forest and Prairie Protection Act* does not completely bar the Plaintiffs from compensation, it merely states that the Crown is not obligated to pay any compensation.

[69] It cannot be said, *per Toronto Railway Co.*, that these two provisions cannot stand together. In fact, they can. Compensating the Plaintiffs under s. 19(3) of the *Disaster Services Act* does not affect s. 5(b) or, to use the words of Sullivan, carve out an exception to s. 5(b) in any way. Section 5(b) is still enforced, in that compensation is not obligated to be paid under the *Forest and Prairie Protection Act*, but rather compensation is paid under the *Disaster Services Act*. In other words, the *Forest and Prairie Protection Act* does not take away from any rights conferred by any other legislation, such as the *Disaster Services Act*.

[70] If I am wrong, and a conflict exists between the two provisions, I conclude that the *Disaster Services Act* is the more specific Act in the circumstances of this case. It is true the provisions of both *Acts* address the initiation of fire for control purposes, such as a back burn.

[71] The Crown argues in its written brief that the *Forest and Prairie Protection Act* is the more specific Act because the damage to the Plaintiffs' Lands was the result of a forest fire; the Crown was fighting that forest fire; and the *Forest and Prairie Protection Act* gave the Crown the authority to fight the forest fire. It argues that the *Disaster Services Act* is broader, dealing not only with forest fires but other disasters as well, such as floods, tornadoes and hailstorms, and that for these reasons the *Forest and Prairie Protection Act* is the more specific Act.

[72] The fact that the *Disaster Services Act* deals with disasters beyond forest fires does not, in my opinion, render the *Disaster Services Act* more general in the circumstances of this case. The *Disaster Services Act* specifically deals with instances in which the Minister of Municipal Affairs acquires, utilizes, damages, or destroys real or personal property in order to prevent, combat, or alleviate the effects of an emergency or disaster. Merely because the type of disaster is not specified in the *Disaster Services Act* does not render the provision more general than s. 29(b) of the *Forest and Prairie Protection Act*. In fact, it renders the provision more specific, in that it deals with the declaration of a state of emergency, as is the case here, and it deals with instances where the Minister damages real or personal property in order to prevent, combat, or alleviate disaster, also the case here. Moreover, the *Disaster Services Act* addresses instances where the demolition or removal of trees is necessary to forestall or combat the progress of a disaster.

[73] Subsection 29(b) of the *Forest and Prairie Protection Act* does not go into such detail. As such, *per* Sullivan discussed above, an examination of the legislation in relation to the facts and issues of this particular case indicates that the *Disaster Services Act* should apply as it is the more specific statute. In fact, as noted earlier, in oral argument the Crown conceded this to be the case.

Are the Plaintiffs Entitled to Compensation Under the Applicable Act?

[74] Having established that the *Disaster Services Act* is the applicable Act, it must now be determined whether the Plaintiffs are entitled to compensation under s. 19(3). The facts are clear that the Plaintiffs' mature timber was destroyed by the Alberta Government as it was agreed in the Agreed Statement of Facts that it was the Alberta Government which started the Alberta

Government Fire in order to combat or alleviate the effects of the Lost Creek Fire during this period of the State of Emergency, declared by the Municipality of Crowsnest Pass.

[75] The Plaintiffs acknowledge that in making their claim for compensation under s. 19(3), the damage they suffered arose from a State of Emergency declared by the Municipality and not by the Lieutenant Governor in Council. The Plaintiffs note that, while s. 24 of the *Disaster Services Act* authorizes municipalities with the same powers as the Minister of Municipal Affairs under s. 19(1), s. 24 is silent as to whether the other subsections of s. 19, including compensation under s. 19(3), apply. The question, therefore, is whether the Plaintiffs are entitled to compensation under s. 19(3) as a result of the Alberta Government destroying their mature timber, despite the fact that the State of Emergency was declared by the Municipality and not the Minister of Municipal Affairs.

[76] I find that the silence in s. 24 with respect to compensation does not preclude the Plaintiffs from receiving compensation for the damages they have suffered. The source of the declared State of Emergency should not determine compensation. To award the Plaintiffs compensation had this State of Emergency been declared by the Lieutenant Governor in Council under s. 18(1) of the *Disaster Services Act*, yet deny it because it was declared by the Municipality, would be absurd. This is in keeping with the Supreme Court of Canada's decision in *Re Rizzo*, in which the Court affirmed that it is a well established principle of statutory interpretation that legislatures do not intend to produce absurd consequences.

[77] This conclusion is also in keeping with the longstanding principle that, where the government expropriates property, the government will compensate the owner of that property unless a statute explicitly states otherwise: *Manitoba Fisheries*. It is true that the *Forest and Prairie Protection Act* explicitly imposes no obligation on the Crown to pay compensation *under the Forest and Prairie Protection Act*. This is of no consequence here, however, as it has been established that the applicable Act in the instant case is the *Disaster Services Act*. Nowhere in the *Disaster Services Act* is compensation explicitly denied where property is expropriated, as is the case here, in that the Alberta Government Fire did destroy mature timber on the Plaintiffs' Lands and all of the Plaintiffs thereby suffered damages.

[78] With respect to the Plaintiffs Kovachs, I find that to deny them compensation in the absence of express language in the *Disaster Services Act* would offend the *Alberta Bill of Rights*. That is, the Kovachs' right to enjoy property and not be deprived thereof except by due process of law would be violated. The Supreme Court of Canada affirmed in *Curr v. The Queen* (1972), 26 D.L.R. (3d) 603 (S.C.C.) at 607 that 'due process', as used in the *Canadian Bill of Rights*, amounts to "the legal processes recognised by Parliament and the Courts in Canada" at the time the *Canadian Bill of Rights* was enacted. The Alberta Court of Appeal extended this understanding to the *Alberta Bill of Rights* in *R. v. Pennington* (1981), 63 C.C.C. (2d) 343 (Alta. C.A.). When the *Alberta Bill of Rights* was enacted in 1972, express statutory wording denying compensation in cases of expropriation was a recognized rule of statutory interpretation: *Manitoba Fisheries*. As such, due process of law in the instant case would require express statutory wording denying the Kovachs' compensation. There is no such language in the

Disaster Services Act, thus denying the Kovachs' compensation is tantamount to infringing their s. 1(a) right under the *Alberta Bill of Rights*.

[79] The Crown argues that, had the legislature intended for the municipality to pay compensation in this case, "they could have easily included reference to s. 19(3)" in s. 24. I infer from this that the Crown is asserting that silence equals an explicit denial of compensation. I reject the Crown's assertion as the case law runs contrary to this argument. As discussed above, it is trite law that unless the words of the statute clearly so demand, a statute is not to be construed so as to take away the property of a subject without compensation. Furthermore, the Alberta Court of Appeal decision of *Nilsson* confirms this at para. 47 where it is stated: "... in the absence of an expressly contrary statute, compensation must be paid when the state expropriates a subject's property."

[80] Given the above, I accept the Plaintiffs' submission that s. 19(3) of the *Disaster Services Act* must be understood to include compensation to them where a local authority declares the state of emergency and actions are taken by the Alberta Government resulting in the damage or destruction of their property. To conclude otherwise would achieve an absurd result and would be contrary to the Supreme Court of Canada's decision in *Manitoba Fisheries* and the Alberta Court of Appeal's decision in *Nilsson* with respect to compensation in the event of expropriation.

[81] It should be noted that the Crown concedes at paragraph 44 of their brief that, under s. 19(3)

> ... the Minister can be liable for compensation even if a state of emergency is not declared. Use of the word "or" suggests two situations of liability, exercising powers under s. 19(1), which powers only come about on the declaration of a state of emergency "or" if any real or personal property is damaged or destroyed due to an action of the Minister in preventing, combating, or alleviating the effects of an emergency or disaster, the Minister shall cause compensation to be paid for it.

[82] If the Crown is conceding that s. 19(3) can be understood to hold the Minister of Municipal Affairs liable for compensation where the Minister damages real or personal property to prevent, combat, or alleviate an emergency or disaster in the absence of a declared state of emergency, I query why they should be absolved of liability simply because a state of emergency is declared by a municipality.

[83] Finally, the Crown submits that, even if s. 19(3) of the *Disaster Services Act* applies, "the losses were not suffered at the actions of the Minister of Municipal Affairs." The Crown suggests in its brief that it was under the authority of the Municipality that the Plaintiffs' Lands were destroyed. There is no evidence on this point. To reiterate, the Agreed Statement of Facts, states that the Alberta Government started the Alberta Government Fire, but not under whose authority the fire was started:

> On or about August 1, 2003, the Alberta Government began to take steps to bulldoze fire lines and place fire retardent on or near the Plaintiffs' Lands.
>
> On or about August 2, 2003, the Alberta Government also started a series of fires (the "Alberta Government Fire") to burn the mature timber on the Plaintiffs' Lands, in order to create a "back burn" area between the Lost Creek Fire and the town of Hillcrest.

[84] It is at best unclear under whose authority the Alberta Government Fire was started. As discussed above, if the fire was started under the authority of the Minister of Municipal Affairs then the Plaintiffs are most certainly eligible for compensation under s. 19(3). Yet are they eligible for compensation if the Alberta Government Fire was started under the authority of the Municipality or the Minister of Sustainable Resource Development, who on August 2, 2003 had deployed 842 persons under his jurisdiction to fight the Lost Creek Fire?

[85] I am of the view that the Plaintiffs should be compensated, regardless of under whose authority the Alberta Government Fire was started, for those same reasons as set out above. First, it would be an absurd result if the Plaintiffs were compensated on the one hand if the Minister of Municipal Affairs authorized the start of the Alberta Government Fire, but not compensated on the other hand merely because the Municipality or the Minister of Sustainable Resource Development authorized the start of the Alberta Government Fire. The Legislature's intention, in enacting s. 19 of the *Disaster Services Act*, was that compensation be paid to a property owner when his real or personal property was acquired or utilized, damaged or destroyed by government officials in their attempts to prevent, combat, or alleviate the effects of a disaster or emergency.

[86] In any event, under s. 19(3) of the *Disaster Services Act*, the pertinent question is not under whose authority the Alberta Government Fire was started but whose actions resulted in the damage or destruction of property suffered by the Plaintiffs. In this case, I conclude that the best evidence I have is from the Agreed Statement of Facts that it was the Alberta Government – and notably, not the Municipality – which started the Alberta Government Fire on or near the Plaintiffs' Lands that led to the destruction of the mature timber on the Plaintiffs' Lands and the resulting damages suffered by the Plaintiffs. It is therefore the Alberta Government's responsibility, not the Municipality's, to compensate the Plaintiffs for their damages under s. 19(3) of the *Disaster Services Act*.

[87] The Alberta Legislature's intention to compensate is evidenced in s. 2 of the *Disaster Services Act* which states "[t]his Act binds the Crown", as well as in the Hansard excerpts provided by the Plaintiffs. For example, in the second session of the 17th Legislature, Mr. Ludwig and Dr. Horner note the following with respect to compensation under the proposed *Disaster Services Act*:

> Mr. Ludwig:

> I'm not clear yet because when you talk about acquiring by expropriation, that is not a simple procedure...

Dr. Horner:

> I know that.

Mr. Ludwig:

> ... even if the procedure were simplified.
>
> But I'm sincerely concerned about the fact that there must be some way of acquiring property, for instance, and I'm not trying to create an obstacle, but I want to know. People who will ask us about this bill, people who are sincerely concerned, will want to know, what is the actual procedure?
>
> How are we going to acquire, for instance, if there were a bush fire. Will you tell some fellow, you get cut [*sic*] of here because we need to burn your house down. We want a sort of fire barrier. This is just an instance, but the minister wants authority to acquire property and now that "confiscate" and "expropriation" is out, will we have the right to do exactly what he did before without the words, the offensive words, being in the section?

Dr. Horner:

> It's primarily as we consider it, Mr. Chairman, a question of utilization. I can't imagine, frankly, any area in which you would want, in fact, to expropriate property, but that could be done. I appreciate that's a legal process and would be done, if you like, later on. But primarily it's a question of utilization in making sure that compensation is paid for that utilization. To me the attempt here is to soften the clause and to make it abundantly clear that once we utilize that property, real or personal, the person is entitled to compensation....

[88] Second, there is nothing in the *Disaster Services Act* that explicitly denies the Plaintiffs compensation. As such, *per Manitoba Fisheries*, the Plaintiffs are entitled to be compensated for their loss, regardless of which Ministry of the Alberta Government was, in fact, responsible for starting the Alberta Government Fire.

[89] Ultimately, it seems to me that the focus of the Alberta Legislature in incorporating compensation into the *Disaster Services Act* was just that: compensation. Whether compensation should be withheld depending on the Ministry responsible for the act giving rise to compensation was not, in my opinion, at the forefront of the legislative discussions that took place prior to the *Disaster Services Act* becoming law. Moreover, to absolve the Crown on the basis that it was the

Minister of Sustainable Resource Development and not the Minister of Municipal Affairs that authorized and started the fire would be tantamount to absolving the Crown on the basis of a technicality.

Who is to Pay Compensation?

[90] Having established that the Plaintiffs are entitled to compensation under s. 19(3) of the *Disaster Services Act*, I must now determine whether the Minister of Municipal Affairs or the Minister of Sustainable Resource Development should pay the compensation. As discussed above, I have been provided with no evidence as to which Ministry started the Alberta Government Fire, or under whose authority the fire was started, other than it is clear and agreed to that it was the Alberta Government which started the Alberta Government Fire. That said, as I have found that the *Disaster Services Act* applies in this instance, and the Ministry of Municipal Affairs is responsible for the *Disaster Services Act*, I infer and I find that the Minister of Municipal Affairs was responsible for the Alberta Government Fire, either by authorizing the fire itself, or delegating that authority to the Minister of Sustainable Resource Development, whose department presumably had the equipment and personnel to fight a fire of this magnitude. On this point, the Plaintiffs pointed to s. 21(1) of the *Interpretation Act*, R.S.A. 1980, c. I-8 in oral argument:

> Words in an enactment directing or empowering a Minister of the Crown to do something, or otherwise applying to the Minister by the Minister's name of office, include
>
> (a) a Minister acting for another Minister or a Minister designated to act in the office;...

[91] This section makes it possible for the Minister of Sustainable Resource Development to act under the authority of the Minister of Municipal Affairs, whether such actions arise under s. 19(1) or s. 19(3) of the *Disaster Services Act*. That is, the Minister of Sustainable Resource Development may perform any of the acts that the Minister of Municipal Affairs is authorized to do under s. 19(1) where the Minister of Sustainable Resource Development is acting for the Minister of Municipal Affairs. This includes acquiring or utilizing any real or personal property considered necessary to prevent, combat or alleviate the effects of an emergency or disaster *per* s. 19(1)(c), and causing the demolition or removal of any trees if the demolition or removal is necessary or appropriate in order to forestall or combat the scene of a disaster *per s.* 19(1)(i). *Per* the latter part of s. 19(3) of the *Disaster Services Act*, it also includes any actions of the Minister of Sustainable Resource Development, where any real or personal property is damaged or destroyed due to an action of that Minister in preventing, combatting or alleviating the effects of an emergency or disaster, as was the case here.

[92] Furthermore, I note that s. 13 of the *Disaster Services Act* permits the Crown to recoup expenditures that were for the benefit of a municipality:

> When an expenditure with respect to a disaster is made by the Government within or for the benefit of a municipality, the local authority, other than a park superintendent or an Indian band council, shall, if so required by the Lieutenant Governor in Council, pay to the Provincial Treasurer the amount of the expenditure or the portion of it as may be specified in the order, at the times and on the terms as to the payment of interest and otherwise that the order may require.

[93] This section suggests that the Minister of Municipal Affairs may recover from the local authority (i.e., the Municipality) some or all of the compensation it is ordered to pay to the Plaintiffs for destroying the mature timber on their lands. As I have not been asked to determine the amount of compensation to be paid to the Plaintiffs, that matter must be reserved for another day.

Disposition

[94] In the result, I order that the Plaintiffs are entitled to compensation from the Minister of Municipal Affairs, pursuant to s. 19(3) of the *Disaster Services Act*, for the destruction of the mature timber on the Plaintiffs' Lands as a result of the Alberta Government Fire started by the Alberta Government on or about August 2, 2003. The amount of this compensation has yet to be determined.

[95] If the parties are unable to agree to costs by June 26, 2009, they may arrange a time mutually convenient to all parties to settle the matter of costs before me.

Heard on the 6th day of April, 2009.
Dated at the City of Calgary, Alberta this 15th day of May, 2009.

C.S. Phillips
J.C.Q.B.A.

Appearances:

Natasha Bazant
for the Plaintiffs

Christopher D. Holmes
for the Defendants

Don Padget
for the Intervener