

OCCPS Budget Decision BGT #09-02

REGIONAL MUNICIPALITY OF NIAGARA POLICE SERVICES
BOARD
Applicant

AND

REGIONAL MUNICIPALITY OF NIAGARA
Respondent

Presiding OCCPS Members:

Murray W. Chitra, Chair

Roy B. Conacher, Member

Appearances:

B. Gover and P. Latimer, for Regional Municipality of
Niagara

W.B. McKaig, for Regional Municipality of Niagara Police
Services Board

Heard:

July 31, 2009

Date of Decision:

September 15, 2009

BUDGET DISPUTES - Statutory requirements - Board filed application requesting hearing under s. 39 of *Police Services Act* - Both operating and capital budgets at issue - Municipality asserted Commission had no jurisdiction to hear application since Board failed to submit its estimates in accordance with timetable and format established by Municipal Council - Municipality also asserted that since capital budgets for prior years were approved there was no dispute that could attract application of s. 39 - Failure to

meet Municipality's filing deadlines administrative in nature and not fatal to statutory remedy - Although funds approved for prior budgets, no funds ever disbursed and Municipality refused to approve current year's capital estimates - Section 39 thereby engaged - Preliminary motion dismissed.

BUDGET DISPUTES - Statutory roles - Board filed application requesting hearing under s. 39 of *Police Services Act* - Both operating and capital budgets at issue - Municipal Council approved prior years' budgets but imposed conditions - Board asserted Municipality exceeded its jurisdiction by imposing such conditions - *Police Services Act* assigns specific responsibilities to various parties - Municipality and municipal police services board may not usurp each other's role - Essential question in instant application is adequacy of service in current year - Conditions imposed on expenditure of capital funds in prior years not relevant to essential issue of whether facilities currently adequate - Preliminary motion dismissed.
Summary of Reasons for Decision

On January 28, 2009 the Regional Municipality of Niagara Police Services Board filed an application with the Commission requesting a hearing under s. 39 of the *Police Services Act*. The Board asserted that the capital budget established by the Regional Municipality of Niagara was insufficient to provide adequate facilities for the police service. On March 31, 2009 the Board requested that the Commission also deal with the service's 2009 operating budget. During a pre-hearing conference with the parties it was agreed that the s. 39 hearing would deal with both operating and capital budget disputes.

Each of the parties brought a preliminary motion. The Municipality sought a declaration that the Commission had no jurisdiction to hear the Board's application. The Board sought a declaration that the Municipality exceeded its

jurisdiction by imposing conditions on capital budgets approved for 2007 and 2008.

Section 39 required municipal police services boards to submit annual operating and capital budgets to the municipal council (s. 39(1)), according to the timetable and format as determined by the council (s. 39(2)). In establishing a budget for the police service a municipal council was not obliged to accept a board's estimates, but did not have the authority to approve or disapprove specific items (s. 39(4)). If the board was not satisfied that the budget approved by council afforded sufficient funds to maintain adequate policing services, the board could request that the Commission hold a hearing and determine that question.

The Municipal Council had approved capital budgets for 2006, 2007 and 2008, but had imposed certain conditions on its approval of the 2007 and 2008 budgets. No funds had actually been advanced for any of the three prior years.

With respect to the Municipality's motion, it was asserted that the Board failed to submit its operating and capital estimates in accordance with the Municipality's timetable and format. In addition, the Municipality argued that since prior budgets had been approved, there could be no dispute under s. 39. The Board, in its preliminary motion, argued that a municipal council could not impose conditions on budgetary approval that would effectively give it a veto power over specific estimate items, contrary to s. 39(4).

Held, Preliminary motions dismissed.

The primary objective of the *PSA* was to ensure that all citizens in Ontario received adequate and effective policing. The *PSA* assigned specific responsibilities to various parties in order to achieve this objective. The core issue of any budget dispute was whether the budget established by

municipal council was sufficient to maintain an adequate police service. This issue bore directly on public safety.

With respect to the Municipality's motion, the evidence clearly established that the Municipality historically had been flexible about timelines and annual budgeting practices. Thus to allow delay to bar potential relief would be unfair. In addition, the failure to meet deadlines was administrative in nature. Non-compliance with s. 39(2) was not a precondition to seeking relief. As for the no-dispute argument, the lengthy delay in disbursing funds suggested disagreement with the Board's estimates, notwithstanding formal approval of the budgets. In addition, there had been a clear refusal to approve the 2009 capital estimates. Together these actions were sufficient to engage s. 39.

The Commission endorsed the principle that various parties must observe their assigned statutory roles and responsibilities. However, the imposition of conditions on prior budgets was not relevant to the essential question in this application, being the adequacy of the service in 2009.

Statutes cited

Police Services Act R.S.O. 1990, c.P.15 as amended, s. 39
Police Act, R.S.O., s. 14(2)

Authorities cited

Town of Innisfil (Sept. 30, 1977, OPC)

[Further authorities as submitted by the parties may be found at pp. 4 & 5 of the decision.]