

NEW MUNICIPAL TAX RECOVERY, SIMILAR PROBLEMS: ALBERTA'S BILL 77

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Background

In proposing amendments to Alberta's Municipal Government Act ("MGA"),^[1] [Bill 77](#) (the *Municipal Government (Restoring Tax Accountability) Amendment Act, 2021*)^[2] aims to address the growing tension between Alberta municipalities and a small minority of oil and gas companies who are delinquent in paying their municipal taxes. This cohort, estimated at less than five percent of all oil and gas companies in the province, are disproportionately impacting the finances of Albertan municipalities, especially in rural areas.^[3]

According to a survey from the Rural Municipalities of Alberta, oil and gas companies owe approximately \$245 million in unpaid taxes across 69 Alberta municipalities, triple the amount owed as of 2019.^[4] Alberta municipalities – who must balance their budgets each year – are feeling the trickle down effects of these financial hardships, including delayed infrastructure projects and lay-offs because of large tax debts owed that remain outstanding.^[5]

Virginia Hills

Compounding this tax recovery situation is the 2019 Alberta Court of Appeal decision in *Northern Sunrise County v Virginia Hills Oil Corp.*^[6] The Court interpreted the tax recovery provisions under the MGA and held that there were no special liens for oil and gas wells, pipelines and other "linear property" under the MGA. As a result, municipalities face a significantly limited set of remedies when collecting tax arrears on linear property.

Currently in Alberta, if a company with outstanding taxes becomes insolvent, municipalities have to wait in line behind other secured creditors, often with little to nothing left to recover once those other creditors have been paid out.

Changes in Bill 77

Bill 77 legislatively reverses the decision in *Virginia Hills*. The main change to the MGA is the addition of section 348.1, which explicitly states that taxes due to a municipality on linear property, machinery or equipment, take priority over the claims of every person except the Crown.^[7] Municipalities will now have the power to place a

special priority lien on linear property (e.g. pipelines and wells) against both owners and operators of companies with outstanding taxes.

Under the amended section 331 of the MGA, owners and operators of linear property become jointly and severally liable for unpaid taxes, meaning the owner or the operator could be liable for paying the full amount regardless of fault.^[8] Bill 77 also establishes a 120 day period for payment in respect of taxes imposed on linear property, machinery and equipment, after notice from the municipality.^[9]

Shortcomings of Bill 77

While Bill 77 seems like a clear win for municipalities, it is not without its flaws.

Notably, the Bill is limited in its geographic scope. The amendments to the MGA only give municipalities the ability to place a special lien over the debtor's assessable property that is located within that municipality.^[10] If a debtor company has assets outside of that municipality's boundaries, then the municipality will have no ability secure a lien over them. Given that companies frequently have wells or other assets spread across various locations in Alberta, this restricted opportunity for recovery lessens the positive impact of Bill 77's amendments.

Some municipalities view Bill 77 as the wrong tool to address the tax collection issues and would rather see further action by the Alberta Energy Regulator ("**AER**"). There are calls for increased scrutiny by the AER when it comes to determining licensing eligibility. While companies are assessed on their financial capacity and ability to withstand liability obligations, unpaid municipal taxes do not automatically result in rejection of a licensing application.^[11] Point being that without the AER's assistance, municipal tax arrears may continue rising because of license approvals or transfers to companies that become insolvent shortly afterwards.

Conclusion

While Bill 77 has yet to become law and remains subject to change, its quick movement through the Legislature so far suggests that municipalities should be preparing to enact bylaws in response to the MGA amendments contained in the Bill. In turn, companies with outstanding taxes owing to municipalities may be prompted to begin repayment discussions.

McMillan's Municipal Law Group would be pleased to assist municipalities in understanding the implications of Bill 77 and preparing for its forthcoming passage.

[1] [ps2id id='1' target=''][Municipal Government Act](#), RSA 2000, c M-26.

[2] [ps2id id='2' target='']Bill 77, *Municipal Government (Restoring Tax Accountability) Amendment Act, 2021*, 2nd Sess, 30th Leg, Alberta, 2021 (as passed Committee of the Whole November 22, 2021) [Bill 77].

[3] [ps2id id='3' target=""]Jamie Malbeuf, “[Bill to make Alberta oil and gas companies pay outstanding taxes falls short, municipalities say](#)” November 11, 2021, CBC.

[4] [ps2id id='4' target=""]Rural Municipalities of Alberta, “[Rural municipalities continue to struggle as unpaid tax amounts owed by oil and gas companies increase](#)”, February 18, 2021 [RMA].

[5] [ps2id id='5' target=""]Tony Seskus, “[Cash-strapped rural Alberta 'can't wring money' from struggling oil and gas firms, premier says](#)”, January 21, 2020, CBC.

[6] [ps2id id='6' target=""][Northern Sunrise County v Virginia Hills Oil Corp.](#), 2019 ABCA 61.

[7] [ps2id id='7' target=""]Bill 77, *supra* note [2](#), cl 5 (new s 348.1(2)(a)).

[8] [ps2id id='8' target=""]Bill 77, *supra* note [2](#), cl 3 (amending s 331).

[9] [ps2id id='9' target=""]Bill 77, *supra* note [2](#), cl 7 (new s 437(b)).

[10] [ps2id id='10' target=""]Bill 77, *supra* note [2](#), cl 5 (new s 348.1(2)(b)).

[11] [ps2id id='11' target=""]Malbeuf, *supra* note [3](#); RMA, *supra* note [4](#).

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