

CASE NO.

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BOWATER MERSEY PAPER
COMPANY LIMITED, a body corporate

REGION OF QUEENS
MUNICIPALITY, a body
corporate, continued by the
Municipal Government Act,
S.N.S. 1998, c. 18

(Appellant)

(Respondent)

CA 161734

Halifax, N.S.

CROMWELL, J.A.
(Orally)

[Cite as: **Bowater Mersey Co. Ltd. v. Queens (Regional Municipality),
2000 NSCA 78]**

APPEAL HEARD: June 8th, 2000

JUDGMENT DELIVERED: June 8th, 2000

WRITTEN RELEASE OF ORAL: June 12, 2000

SUBJECT: **Municipal Law - Taxation - Tax Concession Agreement**

SUMMARY: The Municipality signed a tax agreement in 1985 with Bowater which set out the basis upon which its payments on account of taxes would be calculated for a 20 year period. In the tenth year of its operation, the tax agreement ceased to provide tax relief to Bowater and, in the following years, required Bowater to pay more than it would pay by way of taxes absent the agreement. Bowater sought a declaration that the tax agreement was illegal and *ultra vires* to the extent that it provided for payments in excess of what would otherwise be payable by way of municipal taxes. The application was dismissed by the chambers judge and Bowater appealed.

ISSUE: Is the agreement *ultra vires*?

RESULT: Appeal dismissed. There was no dispute the Municipality had the authority to enter into the agreement in 1985. It did not become *ultra vires* because, as events developed, it became unfavourable to the taxpayer. Assuming, as submitted by Bowater, that to be valid such agreements must provide “tax concessions”, an agreement which fixes the manner in which the amounts payable will be calculated for 20 years provides such a concession. Bowater’s submission that the Municipality is not authorized by Statute to collect taxes

in excess of those provided for under the **Assessment Act** was rejected. Tax agreements give the parties the option of, in effect, “contracting out” of the usual tax regime to which they would otherwise be subject. The payments under the agreement are, as the Order-in-Council made clear in this case, payments in lieu of taxes otherwise payable and the amounts are due under the terms of the agreement, not pursuant to the general authority to levy and collect taxes.

This information sheet does not form part of the court’s decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 5 pages.