

ROSCOE, J.A.:

This appeal concerns the authority of the Halifax City Council to attempt to change traffic patterns by the erection of barriers on a city street.

On July 30, 1992 the City Council decided to try to alleviate the traffic conditions on Allan Street by passing a resolution approving of the narrowing of Monastery Lane by use of a physical impediment to northbound traffic. The intended impediment would prevent cars from travelling north on Monastery Lane past the entrance to Quinpool Centre. It would also obstruct cars from turning south on exiting Quinpool Centre.

Canada Trust, which has a branch on the corner on Quinpool Road and Monastery Lane objected to the resolution of Council and brought an application in the Supreme Court for an injunction, a declaration and an order in nature of *certiorari*. The order granted precluded the City from acting on the resolution and declared it to be null and void.

The City appeals from that decision.

Richard, J. found that the City was attempting to control traffic flow and initially proceeded with a public meeting on the basis that they would be closing off the street but retreated from that position slightly and decided to proceed with the concrete island idea. He found that the City did not follow its statutory procedures in adopting this course of action. He said that the City should have had a further public meeting to discuss the partial closure or amended Ordinance 180, the streets ordinance to provide for this type of control mechanism.

The City argues that the authority to proceed as it did is provided in s. 348 (1) of the **Halifax City Charter**:

" Every street in the City shall be under the direction, management and control of the Council for the public use of the City."

Section 348 is a general introductory section and is followed by several specific sections dealing with streets.

It is submitted by the appellant that since s. 348 does not specify the manner in which the City can exercise its power that s. 139(2) of the **Charter** applies:

" The Council may exercise any of its powers and duties by resolution, except where an administrative order or an ordinance is required by the provisions of this Act."

It is necessary to characterize the City's proposed traffic plan to determine whether it had the statutory authority to proceed as it did by resolution. If the construction of a concrete island is a street closure, then Council is governed by s. 350 of the **Charter** which requires Ministerial approval. If the plan was to temporarily alter or obstruct a street, Ordinance 180 delegates that power to the Director of Works and Engineering. If the change to the street is an alteration in, a diversion of, or an encroachment upon, a street then s. 349 of the **Charter** applies. That section requires an ordinance. In my opinion, the proposed changes did not constitute a closure, a temporary alteration or an alteration, diversion or encroachment and therefore none of these sections of the **Charter** are applicable.

I agree with the argument of the respondent that s. 348 of the **Charter**, because of its generality, must be read subject to the other more specific sections which follow it. If all powers related to management and control of the streets were conveyed by this general section, there would be no need for further provisions, for example the power given in s. 352 to name and number the streets.

In my view Council's decision was clearly intended to control traffic flow in and around the Allan Street area. This is plainly evident from the excerpts of Council and Committee minutes filed with the Court. The issue then is, did the

City have the jurisdiction to act in the manner it did to effect the traffic flow and volume.

Traffic is a matter within the jurisdiction of the Traffic Authority of the City, a person appointed to the position by the City pursuant to section 86(6) of the **Motor Vehicle Act**, R.S.N.S., 1989 c. 293 which is as follows:

"The council of a city or a town may, from time to time, appoint the city or town manager, the chief of police, or some other official of the city or town, to be the traffic authority for the city or town."

Subsections (11) and (12) of section 86 are also relevant and are as follows:

" (11) The Provincial Traffic Authority shall have, with respect to all provincial highways and highways within a city or town for which there is no traffic authority and no deputy traffic authority, all the powers conferred upon a traffic authority by or under this Act.

(12) Subject to subsection (13), the traffic authority for a city or town shall have, with respect to all highways within a city or town, all the powers conferred upon a traffic authority by or under this Act."

The definition of "highway" in s. 2 of the **Motor Vehicle Act** is sufficiently broad to include all lanes and streets within the City of Halifax. Section 86(10) provides that the Minister may cancel the appointment of a municipal traffic authority if he is not carrying out his duties or performing his functions under the Act.

Section 89(1) of the **Motor Vehicle Act** states:

" Subject to such authority as may be vested in the Minister, the Registrar or the Department, traffic authorities in regard to highways under their respective authority may cause appropriate signs to be erected and maintained designating business and residence districts and railway grade crossings and such other signs, markings and traffic control signals as may be deemed necessary to direct and regulate traffic and to carry out the provisions of this Act."

Section 90 of the **Act** gives the traffic authority the power to establish and designate intersections, safety zones, traffic lanes and one-way streets. It also provides the traffic authority with the power to erect signs prohibiting turns.

The City is a creature of statute and does not enjoy inherent powers. All its powers are derived from the statute and can only be exercised if specifically conferred by the statute. (See Canadian Municipal and Planning Law, S. Makuch, 1983, Carswell, pp. 114-115.) In my view the Legislature has specifically conferred the power to regulate traffic and to designate intersections and one-way streets to the traffic authority pursuant to the **Motor Vehicle Act**. If there is a conflict between the general provision in the **City Charter** and the specific sections in the **Motor Vehicle Act**, the latter must prevail.

The traffic authority for the City of Halifax did not approve of the proposed changes to Monastery Lane. In fact he and other city staff were opposed to the plan on the basis that it was doubtful that it would improve the situation, it would impede snow removal, garbage pick-up and fire department response time in the neighbourhood and would have detrimental effects on other residential areas. In addition, the plan was not in accordance with previously approved city policy. Staff had never agreed that the traffic on Allan Street was a problem.

The City Council, in my opinion, did not have the authority or jurisdiction to usurp the powers of the traffic authority duly appointed under the **Motor Vehicle Act**. The resolution of July 30, 1992 is therefore of no force and effect. I would dismiss the appeal without costs.

Roscoe, J.A.

Concurred in:

Freeman, J.A.

Pugsley, J.A.