

Court OKs process for Surrey civic centre expropriation

In its August 2010 decision in Dales Property Ltd. v. City of Surrey, the Supreme Court of British Columbia provided some welcome flexibility in respect of local government adherence to complex expropriation processes. In Dales, the City began its expropriation process by way of a resolution directing an expropriation, but which omitted any reference to the municipal purpose for the expropriation. The primary challenge to the legality of the process was the lack of a stated purpose. In earlier cases, a statement that an expropriation was “for municipal purposes” was struck down as being too vague and uncertain. The same municipality redid its bylaw, stating the purpose was “for pleasure, recreation and community uses of the public.” This, too, was struck down as disclosing no definite purpose in the originating resolution.

In *Dales*, the Court held that Council’s originating resolution was not invalid for failure to include a proper purpose if subsequent steps (in particular the notice of expropriation) contained a clear statement of the purpose. The Court, relying on an earlier authority, held that “the various steps in an expropriation can be done in any order although all must be adhered to before the expropriation can be said to be com-

plete.” Obviously, if the statute requires a particular sequence or order, the judicial rule must give way, but in *Dales* there was

Various steps in an expropriation can be done in any order although all must be adhered to before the expropriation can be said to be complete.

no reason why “the purpose” had to be disclosed in the resolution authorizing staff to commence the expropriation so long as a proper purpose was set out in the expropriation notice received by the

property owner. Thus, the Court reasoned that the resolution was an instruction to

City staff to commence the process they did by following the requirements of the *Expropriation Act*. In giving the statutory notice, the City did put in a proper purpose sufficiently definite to satisfy the *Thorcon* test against overly vague statements.

Interestingly, prior to the Court hearing, Council met and passed a new resolution confirming the “purposes” that staff had put into the expropriation notice. The Court held that even if the original resolution was defective for want of a purpose, the subsequent ratification by further resolution was acceptable to cure any defect.

The Court also addressed two other issues. Firstly, Dales Property challenged whether the City’s plans for a new civic centre were reasonable. The Court rejected this challenge on the basis that it was not for the Court to second guess the substance of the City’s plans unless it could be clearly said that such plans were so absurd that no reasonable City Council could ever have developed them. Lastly, the Court rejected a bare assertion that because the civic

centre development also envisioned some private sector participation, the plan constituted assistance to business. The Court rejected this argument as speculative absent clear evidence of how any private sector participant might be benefited or assisted.

Raymond Young ✍

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What's the big deal about Arkininstall? * (* Or how to stop worrying and obtain your own entry warrant)

When the British Columbia Court of Appeal expanded the scope of Mr. Justice Smart's October 2008 decision in Arkininstall v. City of Surrey, in which he found that administrative warrants (we know them as entry warrants) are required to conduct regulatory inspections when the inspection team is accompanied by police officers, municipal inspectors were understandably puzzled as to how this new decision affected their procedures.

While it is true that *Arkininstall* may impact the advice we provide with respect to entry rights under s. 16 of the *Community Charter*, it has had no impact on the actual practice recommended when entry with consent is not possible.

Although it is not the purpose of this article to dissect *Arkininstall*, in order to comprehend the new inspection environment it is important to note that the five judge panel that heard the appeal substantially altered the regime for warrantless regulatory inspections that has existed since the B.C. Court of Appeal's 1986 decision in *R. v. Bichel*. In *Bichel*, the Court expressly found, in the context of an inspection to determine compliance with a municipal zoning bylaw, that a search warrant was not required. All the inspector was required to do was to give reasonable notice, provide some form of identification, and conduct the inspection at a reasonable time. This was the approach taken with respect to all municipal inspections for many years.

In finding that portions of the *Safety Stan-*

dards Act offended the right to be free from unreasonable search and seizure guaranteed by the *Canadian Charter of Rights and Freedoms*, the Court in *Arkininstall* noted that the greater the reasonable expectation of privacy and the more intrusive the search would be, the more likely a warrant would be required. It noted that the decision in *Bichel* was based on the Court's conclusion that the inspection was "minimally intrusive" despite the fact that it occurred in a dwelling, which implies a reasonably high expectation of privacy. It also noted that in *Bichel* the inspection carried very little stigma, unlike that which would be found in the case of a criminal investigation.

In a controlled substance investigation, every room in the house is usually subject to a detailed inspection and the actions of the inspection staff raise, in the Court's words, the "spectre of criminality". Accordingly, the Court concluded that in these circumstances warrantless searches offended the *Charter*.

In our view, were *Bichel* heard again the

result would not change. Zoning inspections would still be minimally intrusive, especially when 24 hours notice is provided as required by the *Community Charter*. But the municipal world *has* changed. Municipal inspectors were not doing controlled substance inspections in 1986 when *Bichel* was decided.

Rarely were they required to bring police officers along on routine inspections. Now they may do both and *Arkininstall* has told them, in no uncertain terms, that in those situations a “judicial arbiter” is required where consent is not obtained.

In many municipalities and regional districts, inspection staff do not do controlled substance inspections. Many do not employ the local police force or the R.C.M.P. when they conduct routine business licence, zoning or building bylaw inspections. Even in the local governments that do both, this work makes up a relatively small percentage of what they do day-to-day. So what does *Arkininstall* mean to them, in the context of the more routine work they do?

Arkininstall tells us that we must consider, on a case-by-case basis, whether a high expectation of privacy exists, whether the search itself would be considered more than minimally intrusive and whether the inspection would carry significant stigma. Taken together, it may then be determined

whether an administrative warrant is required.

It all sounds a little uncertain.

As mentioned, *Arkininstall* has had no impact on our recommended practice when

a request for reasonable entry is refused. In the context of controlled substance inspections, we have always recommended that an entry warrant be obtained under s. 275 of the *Community Charter*. Even

There are a number of very tangible benefits flowing from the use of an entry warrant.

in the case of relatively routine inspections, we have recommended inspectors obtain warrants, especially where there is the potential for violence. There are a number of very tangible benefits flowing from the use of an entry warrant.

First, where police are reluctant to accompany a municipal inspector, a warrant is usually required. Now it is necessary if it is determined that police are required for staff protection or to keep the peace. Second, the warrant lets the inspectors set their own time and date for the inspection. Third, prior warning of the time and date of the inspection is not required, although some Judicial Justices of the Peace (JJPs) may insist on this if surprise is not necessary to obtain the information sought. Finally, the use of a warrant shows that the municipality means business.

Ironically, if anything is intrusive and carries a stigma, it would have to be a municipal inspector showing up at someone's door with two police officers and a locksmith, armed with an entry warrant.

The process for obtaining an entry warrant is not all that complicated, although it may seem daunting, and even frustrating, when approached for the first time. Here are some tips:

Prepare an information

An information must be prepared that sets out the reason(s) the warrant is required and the grounds for belief that a contravention of a bylaw or act is taking place. The "evidence" need only establish reasonable grounds, not the civil standard of proof on a balance of probabilities as it is understood that the purpose of the warrant is to gather that evidence. The information should set out the proposed time and date of entry and who is to conduct the inspection and who is to accompany the inspectors. If a locksmith is required, the warrant should authorize his or her attendance. The information should also establish that reasonable attempts have been made to gain entry without a warrant.

Prepare a warrant

A warrant should be prepared that mirrors the requests made in the information with

respect to time and date of inspection and the identity of who will conduct the inspection. The province did not prescribe forms for an entry warrant (or an information to obtain an entry warrant). We have created forms by modifying *Offence Act* search warrants, and they are now widely used and accepted in court registries across the province.

Call the court registry

After the information and warrant have been prepared, the local provincial court registry should be contacted to determine whether an appointment is required. JJPs do not always sit in all registries every day and often they are in court. Clearly indicate that it is an entry warrant, not a search warrant, which is required. Refer to s. 275 of the *Community Charter*. Be prepared to send the registry staff background

information because not all registries, and certainly very few registry staff, are familiar with the process. Be aware that no provision has been made for telewarrants, so personal attendance will be required.

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Appear before a JJP

You may be directed to appear just after the registry opens in the morning, before the JJP becomes involved in his or her usual judicial activity. The JJP will swear the information and consider it. You may not even see the JJP, although if it re-

fused the JJP may appear to explain why. If the warrant is refused, redraft the information to address the deficiencies raised by the JJP and re-attend to try to obtain the warrant again. In the revised information you must include a new paragraph that advises the next JJP that a previous application was refused and why.

That's it. Of course, the first time you may want to work with counsel, and that is what we are here for, but eventually the process should become fairly routine.

Don Howieson ✍

Outdated procedures lead to potential pitfalls

The B.C. Court of Appeal recently ruled on an appeal involving a challenge to the process by which the City of North Vancouver enacted OCP and zoning amending bylaws. For reasons which differed somewhat from those of the Supreme Court judge, the appellate court dismissed the appeal in Virdis v. City of North Vancouver and found that the bylaws were validly adopted.

Until 1993, the *Municipal Act* required that a proposed municipal bylaw be reconsidered before it was adopted. Further, it was necessary that there be a separate reconsideration resolution. Although the current legislative regime does not require reconsideration after third reading, the City maintained a practice of reconsidering bylaws before adoption.

Council voted 4 to 3 against the OCP amending bylaw at its December 3, 2007 meeting. The agenda described the item as "Reconsideration and Adoption" and was similarly introduced with that description by the clerk. Following discussion, a member of council moved reconsideration and after comment by the mayor to the effect that the votes didn't seem to

be there for the matter to pass, the clerk confirmed the nature of the motion as being for reconsideration of the OCP bylaw. On his review of the discussion amongst council members, the lower court judge concluded that the vote related to both reconsideration and adoption of the bylaw. Virdis argued that the Development Procedures Bylaw therefore barred the City from considering the bylaw for one year.

The Court of Appeal considered that the content of the discussion on the motion for reconsideration was irrelevant. There was no evidence, it held, that the vote was in respect of something other than a motion to reconsider the bylaws. As the motion at third reading in November 2007 had carried 4 to 2 "subject to reconsideration", the

Court reasoned that neither of the bylaws had actually passed third reading as a consequence of the failed reconsideration motion.

While the City’s position on the failed vote was vindicated, retaining a separate reconsideration vote before adoption appears to have created an unnecessarily confusing process for bylaw adoption.

At its next meeting on December 17, 2007 Council voted unanimously to refer the developers’ presentation to the Community Development Department for further discussion with residents in the area. Subsequently there were discussions between City staff and the developers resulting in an open house, changes to the application and submission of a staff report in April 2008 recommending that the bylaws be referred to a public hearing. The public hearing was held in May and the bylaws were adopted in June.

The Court of Appeal did not accept the lower court’s characterization of the December 17th referral motion as an exercise of the mayor’s authority under either s. 131 of the *Community Charter* or the Council Procedure Bylaw to bring a matter back for reconsideration. At best, that authority could do no more than allow for reconsideration of the defeated December 3rd motion. It could not provide a basis for a

referral to the Community Development Department.

Although the Court of Appeal found the lower court erred in invoking the mayor’s reconsideration power to justify the De-

December 17th proceedings and what followed, the Court accepted that any procedural deficiencies did not render the bylaws invalid. While accepting Virdis’ contention that Council had not invoked any prescribed procedure

for reconsideration of the two bylaws, the Court found that Council had not breached or acted contrary to its procedural bylaws. It characterized the motion for referral as simply permitting further consideration of an application.

The Court followed a well developed line of authority that in the absence of a breach of a statutory provision or natural justice or a finding of bad faith, the procedure adopted by council is a matter within its jurisdiction and the courts will not interfere in the exercise of council’s broad discretion on procedural matters. In concluding that procedural rights were not compromised, the Court of Appeal properly upheld the validity of the bylaws.

Barry Williamson ✍

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Local services—do they service everyone?

There have been a number of interesting cases over the years that have considered local service boundaries, charging properties within the boundaries, and the extent of the benefit enjoyed by various properties within the boundaries.

In the 2007 case of *Yoo (c.o.b. Pita Wrapbit) v. Cranbrook (City)*, Cranbrook established a local service area for the purpose of providing a backage road to the rear of certain commercial properties on Cranbrook Street. Unlike other owners on that street, these owners' property did not extend to the backage road. They argued their property should not have been included in the local service area because they did not obtain any benefit from the service. The Supreme Court disagreed:

Logically, by more traffic being directed to the backage road, there will be less traffic on the frontage road and thus less congestion and probably easier and more efficient access from the frontage road to the [owners'] property. The regulation of traffic in the service area is surely for the benefit of all the properties located within the service area, even though the [owners] will not enjoy as direct and immediate a benefit as their neighbours.

Legal principle: To be properly charged a parcel tax, a property does not need to enjoy all the same benefits as other properties within the service area.

This year, in *Ridley Bros. Development*

Co. Ltd. v. Colwood (City) the issue arose whether (i) a municipality could establish broad local service boundaries, but then charge only those parcels that have the opportunity to be provided with the service, or (ii) whether a municipality must include within the boundaries only those properties that have an opportunity to be served. The Court chose proposition (i):

... a municipality must have some flexibility in establishing the boundaries, to include parcels that may not yet have the opportunity to be provided with the service. While such properties may be included in the area, there would be no authority to tax them unless and until they had the opportunity to be provided with the service.

Legal principle: A municipality can include within a local service area, but not charge, properties that will not yet have the benefit of the service. Certainly this ought to be done rather than create a "swiss cheese" service area. However, if substantial areas will not yet have the benefit of the service, these areas likely ought to be included in the service area at a later time by extension of the area.

In a 1974 B.C. Court of Appeal case, *Re Cam-Ker Developments Ltd. and District of Abbotsford*, the Court ordered the extension of the municipal water system to the developer's subdivision. The municipality had inherited, on incorporation, the local service (then called a specified area service). Although this case has unique facts, the Court's comments about a municipality's obligation to service all properties within a service area are noteworthy. The Court acknowledged that the water system was not a "public utility" such that the municipality had an obligation under utility statutes to supply the water. However, it found that the municipality was obligated to supply the water under the service bylaw:

The water system in question was established pursuant to [a bylaw] to serve a specified area including the lands now comprising the Cam-Ker subdivision. There is nothing in that particular by-law specifying terms and conditions for the provision of water to the inhabitants of the [specified area] nor does it in so many words make mandatory the provision of water at all to such inhabitants. But, in that its stated objective and undertaking is to serve a specified area, it is implicit in the by-law that the municipality has a self-imposed obligation or duty to connect up and provide water to each and every inhabitant who is lawfully there.

Legal principle: If a property is included within a service area, even though it is not being charged, the inclusion of the prop-

erty within the service area may create a legal duty on the municipality to eventually extend the service to that property.

Finally, the courts have recognized that, for a large project, a property may be taxed on the basis that it has the opportunity to use the service even though the service has not yet been extended to that property. In *Thiessen v. Abbotsford (District)*, a 1980 decision of the B.C. Supreme Court, the owner was not entitled to a refund of taxes paid for a sewage collection system. Although this was not the basis of the Court's decision, the Court acknowledged that the municipality had a system of gradually extending the service throughout the area, it was extensive and costly work, and the properties would be serviced that same year:

It goes without saying that the construction of a sewer system requires a period of time and that some areas receive the benefits of the sewer prior to others.

Legal principle: A municipality may be able to charge a property which does not yet have the service during the reasonable time necessary to construct the service.

Patricia Kendall 

BCCA confirms no conflict of interest in Spallumcheen

In our September 2009 newsletter, we reported on the B.C. Supreme Court's decision in Fairbass v. Hansma, a petition commenced by 39 residents of Spallumcheen seeking to have the Mayor disqualified from office for participating in a March 2008 bylaw amendment that would allow subdivision of parcels into lots no smaller than 2.5 acres. The trial court dismissed the petition, finding no direct pecuniary interest because the Mayor's own parcel, at four acres, could not be subdivided. The trial court also found no evidence of indirect pecuniary interest arising from the Mayor's sons' larger land holdings.

Although the issue was largely moot (there being an intervening election in November 2008), the Court of Appeal considered it important to weigh in on the issue given the seriousness of the accusations against the Mayor and the fact that the issue is a common one in local governance. Upholding the trial decision, the Court agreed that there was no direct pecuniary interest and stressed the fact that the petitioners provided no evidence to support a finding of indirect pecuniary interest. The Court also disagreed with the petitioners' argument

that an indirect interest could be conditional upon the occurrence of some future event (in this case the speculation that the Mayor might consolidate his parcel with his sons' parcels, the Mayor's parcel might increase in size by accretion, or that future bylaw amendments might be adopted to reduce the minimum parcel size even further).

Stephanie James ✍

Manufactured home update

There have been a number of recent cases dealing with manufactured home parks, particularly with respect to compliance with municipal zoning bylaws and non-conforming use.

In *Bahry v. Lindell Beach Holiday Resort Ltd.*, the plaintiffs tried to back out of a contract for the purchase of a holiday home unit at the defendant's Resort Park. They argued that since the location of the holiday home

unit under the Resort's site agreement constituted an illegal use under the Regional District's bylaws, they were entitled to rescind the purchase contract.

Lindell Beach is an area located within the Regional District of Fraser-Cheam. According to the Regional District’s bylaws, holiday parks may have campsite units, as well as areas designated for holiday homes and park model trailers, which are usually left in place year round. For those designated areas, the Regional District’s bylaws require greater spaces between units and greater safety and service requirements than are stipulated for campgrounds. Although it had areas designated for holiday homes, the defendant’s facility did not conform with the holiday park designation, and the Regional District notified the defendant of this as far back as 2003. Although the Regional District had not prosecuted the defendant for its failure to comply with the Regional District’s bylaws, it refused to approve a Phase II development of the park unless efforts were made to comply with the bylaws in respect of Phase I.

The Court found that the Resort’s package offerings of a holiday home, pad site, and use of the resort and amenities contravened the Regional District’s bylaws and constituted a serious defect in its implied warranty that it had the legal right to operate the facility. This was clearly a breach. And since the plaintiffs intended to purchase, and the Resort intended to sell, the advantages of this particular setting, the

fact that the use did not comply with the Regional District’s zoning bylaw was, in the Court’s view, a failure to deliver what was intended by the contract. This failure entitled the purchasers to rescind the contract and have their money refunded.

The facts in *Petrelli v. Lindell Beach Holiday Resort Ltd.* are nearly identical to those in *Bahry*. Also arguing the zoning non-conformity constituted a fundamental breach

entitling them to rescind the contract, the plaintiffs noted that the very same issues were judicially considered in *Bahry*, and therefore argued it was an abuse of process for the Resort to maintain its defence to the plaintiffs’

Lawful non-conforming use protection does not allow the replacement of a pre-existing structure and thus ... replacement with new units that do not comply with all current and applicable municipal regulations and requirements is not permitted.

claim and re-litigate the issues. The Court agreed that there was no basis for re-litigating the issues after *Bahry* and, since the contract involved in *Bahry* was identical in its material provisions to the plaintiffs’ agreement with the Resort, it was an abuse of process to proceed with a defence.

In *Stroshin Family Trust (Trustee of) v. Parksville (City)*, the petitioners rented manufactured home sites on their properties and provided associated services for over 40 years. Several “pads” were located on the properties, upon which tenants would place their manufactured homes. The City agreed that the operation of the manufac-

tured home park on the properties constituted a lawful non-conforming use of land, and the City routinely issued building permits to authorize the removal of older homes from the pads and their replacement with newer homes. However, when the properties were first used as a manufactured home park, manufactured homes were customarily 12 feet in width, while newly constructed homes are either 14 or 27 feet wide. Since 2005, the City took the position that the *Local Government Act* only allows the replacement of a home if the new home does not exceed the width of the one being removed, and so the City refused several permit applications to remove 12 foot homes and replace them with 14 foot homes. The petitioners brought this application for a declaration that they be permitted to replace a manufactured home on any existing pad, or alternatively that the City may not decline to issue permits solely because of the greater width of a replacement home.

The City argued that the replacement of a wider manufactured home was an increase in the "scale or extent or degree" of the non-conforming use, and thus was not permitted by ss. 911(1) and 911(6) of the *Local Government Act*. While the petitioners argued that their non-conforming use was the general use of the property as a manufactured home park, which had not changed, the City argued that "use" specifically relates to the precise usage and physical layout of the property at the time of the non-conforming use. The Court agreed with the petitioners that the "use" of land that was relevant for the purposes of ss. 911(1) and 911(6) was the broad

purpose for which the land was historically used, not its precise physical layout. Changes to the layout or configuration of a property that do no more than continue the historical usage of land with minor physical changes will not constitute an increase in the extent or scale or degree of use, which would take the use of land outside the scope of s. 911.

However, the Court found that lawful non-conforming use protection does not allow the replacement of a pre-existing structure and thus, if manufactured homes are in fact "structures", replacement with new units that do not comply with all current and applicable municipal regulations and requirements is not permitted. The Court concluded that the manufactured homes located on the petitioners' property were "structures" for the purposes of s. 911 as they were clearly not vehicles or any other type of transient object, their purpose was not for the conveyance of persons or goods, and a reasonable person would characterize them as "structures". The Court considered their "mobility" to be ancillary to their fundamental purpose, which is to provide places within which people reside. Thus, since the Act did not provide the petitioners with a right to replace non-conforming structures, the petition was dismissed. The City was not obliged to issue permits unless all current and applicable bylaws and requirements were satisfied.

Joanna Track 

***Lovely* reminder to maintain safe municipal sites**

*The recent decision of the British Columbia Court of Appeal in *Lovely v. Stantec Consulting Ltd.* emphasizes that a municipality has an ongoing duty to maintain safe municipal premises.*

A failure to uphold a standard of reasonable care resulted in the City of Kamloops being held predominantly responsible for a personal injury at its transfer station, despite the fact that both the designer and the user of a piece of dangerous equipment were found at fault as well.

In *Lovely*, the Court of Appeal upheld a lower court finding that Kamloops was 55% liable for damages Mr. Lovely suffered when he fell from an unloading platform. Kamloops was liable under the *Occupiers Liability Act*, which requires persons controlling premises to maintain them for reasonably safe use by anyone entering. Mr. Lovely used the unloading platform at the

waste transfer station to move a wood frame from his pick-up truck to a steel collection bin. While doing so, he mis-stepped onto a debris plate and fell. The unloading platform did not have a guardrail on the edge facing the bin, and much of

the reasoning behind the apportionment of liability turned on the parties' knowledge of the risk that the lack of a guardrail presented.

The Court of Appeal decided not to change the lower court's finding that the design-

ing engineer, Stantec Consulting Ltd., was negligent in its design of the unloading platform. Stantec remained liable for 35% of the damages as it did not meet its duty of care to users when it designed an unloading platform without adequate fall protection. Kamloops, who bore greater liability, had directed Stantec not to include a guardrail in its design, despite City

staff knowing that platforms in other facilities had such safety devices. Kamloops also failed to install clear warnings of the unguarded edge on the platform.

Mr. Lovely was found liable for the remaining 10% of

the damages as he knew prior to his fall that the platform did not have a guardrail and that it would be dangerous to get too close to the edge.

While the Court of Appeal was not asked to rebalance the apportionment of liability

Just because an engineer "signs off" on a design of a municipal facility, the engineer will not necessarily bear all the liability if the design proves to be negligent.

between Kamloops and Stantec, this decision nonetheless shows that just because an engineer “signs off” on a design of a municipal facility, the engineer will not necessarily bear all the liability if the design proves to be negligent. Kamloops’ exposure was increased in this case because it guided Stantec to approving a guardrail-less design. The reliance that Kamloops may have placed on Stantec to address safety concerns at the design stage was clearly not sufficient for it to absolve itself of liability under the *Occupiers Liability Act*. Similarly, while the risk of falling from the platform was recognized by Mr. Lovely before he fell, that danger was also obvious to the City. The City’s continuing tolerance of the hazard in light of its statutory duty to

keep premises safe consequently made it difficult to assert that it was Mr. Lovely who was the more reckless party.

Lovely emphasizes that local governments should constantly ensure that their premises are maintained in a safe condition for users and that any unavoidable hazards are clearly signposted. Personal injury claims often involve multiple defendants, and a local government’s expectation that facilities will be safely designed or that users will be safe will not necessarily translate into a deflection of all liability for negligence.

Michael Moll ✍

Tragic reminder to maintain safe workplaces

Charges were recently laid under the Workers’ Compensation Act with respect to an industrial accident at a mushroom farm and composting plant in which three men died and two others were seriously injured. Both employers and a supervisor were charged under the provisions of the Act that require employers, owners and supervisors to provide a safe workplace. If convicted, the companies and individual charged could face substantial fines and up to six months in jail.

The accident occurred in a confined space as a result of a gas leak. While no criminal charges have been laid, the employers and supervisor face a substantial penalty. This case is a reminder that catastrophic accidents can happen in the workplace and that employers must take the necessary

steps to ensure they are meeting their obligations under the Act and the Occupational Health and Safety Regulations.

Carolyn MacEachern ✍

Ontario makes workplace harassment unlawful

Ontario recently extended protection to workers against workplace harassment through amendments to its occupational health and safety legislation. Workplace harassment is defined in the legislation as engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome. This broad definition therefore includes significantly more types of misconduct than currently prohibited under human rights legislation.

Under the new legislation, employers are now required to prepare a policy on workplace harassment and review it at least annually. This policy is required regardless of the size of the workplace or the number of workers. Employers are also required to develop and maintain a program to implement the workplace harassment policy. This program must include measures and procedures for workers to report incidents of workplace harassment to supervisors and for investigating and resolving incidents.

While British Columbia's Occupational Health and Safety Regulation already contains provisions that address violence in the workplace, there are no provisions regulating workplace harassment. The

change to Ontario's legislation may be a signal of future changes in British Columbia.

Although local governments are not currently required to implement policies and programs to address workplace harassment, we recommend that they do so. The purpose of workplace harassment policies is to clearly set out what is inappropriate workplace conduct and to provide a mechanism for employees to internally address harassment issues early on. If employers provide such a mechanism, they are less likely to face complaints to the Human Rights Tribunal, grievances under the collective agreement and constructive dismissal claims.

Carolyn MacEachern ✍

Councillor's defamatory conduct costs District

In the recent case of *Hunter v. Chandler*, the B.C. Supreme Court found that a North Saanich councillor defamed a local rec-

reation consultant when he made various statements questioning the consultant's credentials. At \$15,000, the Court-ordered

damage award is relatively small (compared to, for example, the \$100,000 awarded to a school board trustee in *Newman v. Halstead* or the nearly \$300,000 awarded to a former regional director in *Clark v. East Sooke Rural Association*), but some of the most surprising—and expensive—repercussions come from outside the courthouse. The costs associated with defending the councillor were covered by the

municipality's insurance policy, so other than its deductible, the municipality did not pay any direct costs associated with the litigation. Its financial plan took a substantial hit, however, when the insurer advised the municipality that its annual insurance premiums will increase by \$144,000 over the next eight years.

Stephanie James 

News from the firm

The firm congratulates **Bill Buholzer**, who was elected to the Canadian Institute of Planner's College of Fellows, an honour the Institute describes as "given only to those Members who exhibit the highest professional attainment."

Ray Young will be a busy man in the upcoming months. Not only is he returning to Georgia State University next spring where he will teach Growth Management, but he has also been invited to present a session on conditional land use approvals and water and energy conservation objectives at the Rocky Mountain Land Use Institute's annual conference in Denver, Colorado in March and to chair a Continuing Legal Education (CLE) seminar on approving officers' powers and discretions this November in Vancouver. **Christina Reed** will be joining Ray as a guest speaker at the November CLE.

Approving officers' authority is also the subject of **Bill Buholzer's** upcoming work as a guest speaker at LGMA's inaugural week-long School for Statutory Approving Officers. Bill and **Alyssa Bradley** will be speaking about local government responses to climate change at the Ambrosia Centre in Victoria in October at a conference organized by Simon Fraser University and the Planning Institute of British Columbia.

Stephanie James will be teaching the labour and employment session for the Capilano University public administration program's municipal law course in Kelowna in October.

Parvinder Hardwick is currently pursuing pro bono activities, having volunteered with the Canadian Bar Association's Young Lawyers International program. She will spend six months at the Human Rights Legal Resources Centre in Johannesburg, South Africa.

Young Anderson's annual client seminar will be held in Vancouver on **December 3, 2010** and in Victoria on **January 28, 2011**. Stay tuned for more details.