

## **Business Licences and the Duty of Procedural Fairness**

### **Background**

In issuing (or not issuing) business licences, municipalities must follow the procedures prescribed by their bylaws, as well as the *Community Charter*. Beyond that, though, a decision of council or a delegate to suspend or revoke a business licence must be made in a procedurally fair manner.

The duty of procedural fairness is a judicial doctrine requiring decision-makers to give interested parties a fair opportunity to participate in the decision-making process before any action is taken that is detrimental to their rights or interests. It has no fixed content. Rather, what the duty of procedural fairness will require in each case is highly variable and context specific.

The Supreme Court of British Columbia's most recent decision on municipal business licencing, contrasted with a previous case from the same municipality from 2021, illustrates how this duty of procedural fairness can impact a municipality's ability to grant, deny, renew, or revoke a business licence.

### ***M. Weiss Masonry Inc. v. Kelowna (City), 2021 BCSC 1946 ("Weiss Masonry")***

In the older case, *Weiss Masonry*, the Court concluded that the City had failed to afford the licensee sufficient procedural fairness.

In this case, the petitioner was a company engaged in a masonry business in the City of Kelowna. The ten-acre property out of which it operated was also where the petitioner's sole owner and operator lived. The petitioner's business licence, which it had held since 1995, required that "no aspects of business operations shall be detectable from outside the property".

Beginning in 2015, City bylaw inspectors observed various pieces of equipment on the property that were indicative of commercial business activities being conducted on it. The City subsequently issued offence notices under the Zoning Bylaw. While there were some discussions with the petitioner about bringing the property in compliance with the bylaws, the City continued to renew the petitioner's business licence each year, through 2020.

In late 2020, the City wrote the petitioner advising that its business licence would not be renewed for 2021, as it had not complied with the licence's conditions. This letter was sent before licence renewal applications were open for 2021, so the petitioner did not have the opportunity to submit any such application.

The judge held that the City had not fulfilled its duty of procedural fairness. He characterized the City's 2020 letter as coming "out of the blue". In his view, the petitioner had held a business licence for 25 years, and the City was "obliged to make no determination regarding a revocation of the licence until the petitioner had

been given a fair and ample opportunity to state its case and make answer to any concerns the respondents had". As such, he considered that there "was a breach of the most basic principles of procedural fairness".

In ordering the City to renew the petitioner's business licence, the judge also found that the City's business licensing manager had exceeded his delegated authority and acted unreasonably.

***Hildebrand v. Kelowna (City), 2026 BCSC 71 ("Hildebrand")***

In the recent case of *Hildebrand*, the petitioner operated a rental business out of his three-storey, seven-unit building located in the City of Kelowna. Since purchasing the building in 2010, the petitioner used it for short-term rentals. Though he held a business licence for a boarding and lodging house during that time, short-term rental was not permitted as part of that type of business and also was contrary to the uses permitted by the City's Zoning Bylaw in that area.

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The petitioner failed to pay the renewal fee for his 2022 business licence during the renewal period in early 2022. The City had sent a renewal notice to his email, but the petitioner claimed that he had been struggling with health issues and so had not been monitoring his email. The City's Business Licence Bylaw provided that licences not renewed as required by the Bylaw (i.e., by payment of the fee before the deadline) would be terminated.

Toward the end of that year, the City received complaints about the ongoing short term rental use and sent the petitioner violation notices

for operating without a business licence. When the petitioner received them, he advised the City that he had been unaware of the outstanding renewal fee for the boarding and lodging house licence and wanted to pay it. The City told him that he must apply for a new licence and also bring the business actually

being carried on into conformity with the Zoning Bylaw.

The petitioner challenged this decision as being procedurally unfair. He argued that the

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City should have been required to send him a reminder notice when he did not pay his licence fee in early 2022, given the significant impact of a licence cancellation on a business. The judge disagreed. He found that the City had acted in accordance with the *Community Charter* and its bylaws.

The judge went on to observe that the renewal notice had provided the petitioner with all reasonably necessary information regarding the requirements and deadlines for renewal, and the potential consequences of failing to do so. Given that paying the renewal fee was straightforward, and that a lawful business could simply reapply for and obtain a new licence if the former one was terminated, the consequences of cancellation were relatively limited and there was no need for a reminder notice, especially when considered in light of the evidence that sending such reminder notices for every licence would have been a significant burden for the City. There was also no evidence the petitioner was treated differently than anyone else in a similar position.

In this case, there was no basis for imposing procedural obligations on the City which did not appear in the *Community Charter* or in its bylaws.

The petitioner’s subsequent attempts to reapply for his business licence were unsuccessful, because the Court found that the City had reasonably determined that its Zoning Bylaws did not permit the use of the building for short-term rental accommodations, and the petitioner had not successfully established a right to a

lawful non-conforming use.

Procedurally speaking, the main difference between *Weiss Masonry* and *Hildebrand* was that in the former case, the City purported to cancel a licence without allowing the holder the opportunity to renew in the normal course. In the latter case, the licence was cancelled by

operation of the terms of the Bylaw itself, when the petitioner failed to meet the conditions of the Bylaw for renewing his licence by the applicable deadline.

**Takeaways**

When considering cancelling or refusing a business licence, municipalities

should be clear on the applicable procedural requirements of both their own bylaws and the *Community Charter*. Termination of existing licences for cause will trigger the requirement for reasons, if requested, and an opportunity for reconsideration by Council. However, *Hildebrand* confirms that not every closure of a licence account is a termination for cause – where a former licence holder fails to meet the terms and conditions of a bylaw for renewal, the licence can end simply by operation of the bylaw itself and without the need for significant procedures in order to be fair.

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*Elizabeth Anderson & Piers Fibiger* ✍️



# Property Rights and some Property Wrongs: *Westcoast Association for Property Rights v. British Columbia*, 2025 BCCA 467

*On December 30, 2025, the BC Court of Appeal released reasons in Westcoast Association for Property Rights v. British Columbia, 2025 BCCA 467, affirming the decision of the BC Supreme Court to dismiss a petition proceeding brought by the Westcoast Association of Property Rights (the “Association”). The Association had sought declaratory relief intended to minimize the impacts that the Short-Term Rental Accommodations Act (the “Act”) on its members. Alternatively, the Association sought compensation from the Province, arguing that the Act amounted to a constructive taking which deprived the owner/operators of the reasonable use of their properties for short-term rental accommodations and amounted to a de facto expropriation.*

The decision of the BC Court of Appeal signals that pre-emptive challenges to the Act on the basis of anticipated financial loss or business impacts that may be experienced by owner/operators of properties used for short-term rental accommodations will not succeed in the absence of concrete evidence which demonstrates: (1) actual enforcement action taken by the Compliance and Enforcement Unit against an owner/operator pursuant to the statutory authority conferred to this enforcement agency under the Act; and (2) evidence of actual losses flowing from such decisions.

## **Background**

The Provincial Government enacted the Act for the purpose of addressing concerns with housing supply. By limiting the ability of owners of residential property to use that property as a short-term rental, the Act sought to increase the

inventory of long-term rental accommodations available throughout the Province. The Act prohibits property owners, in most communities in British Columbia, from providing short-term rental accommodations of less than 90 days, if the owner of the property does not use it as a principal residence. Additionally, it renders inapplicable the non-conforming use provisions under the *Local Government Act* and *Vancouver Charter* that would have permitted owner/operators of existing short-term rentals to continue this use in properties that were operated as short-term rentals prior to the Act coming into force.

## **BC Supreme Court**

The Association was formed in response to this legislation to advocate for short-term rental owner/operators and brought a petition before the BC Supreme Court. The petition was dismissed on the basis that the relief sought

was premature, the petition constituted an improper interference with the legislature’s exclusive authority to enact laws and amounted to an improper attempt to seek an advisory opinion of the court. In coming to this decision, the chambers judge concluded that there was no foundation to obtain the declaratory relief sought through the *Judicial Review Procedure Act* because the

enactment of the Act by the Legislature did not constitute a statutory power that is subject to judicial review. For a judicial review to be available, it was necessary for enforcement action and a decision to be rendered against the petitioner for their operation of a short-term rental by the enforcement agency.

**BC Court of Appeal**

The Association appealed on a number of grounds, namely that the chambers judge failed to have regard for the court’s inherent jurisdiction to grant declaratory relief, incorrectly characterizing the issues raised on the petition as hypothetical or speculative, and for incorrectly finding no foundation for declaratory relief concerning the claim for constructive taking.

The Court of Appeal affirmed the BC Supreme Court’s decision, holding that declaratory relief pursuant to *Judicial Review Procedure Act* is only available where a public body exercises its functions based on a statutory power. Because enforcement action had been taken against the owner/operators, and no decision rendered by the Compliance and Enforcement Unit on the operation of a short-term rental, a judicial review was not available in the circumstances.

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Accordingly, the Association’s case amounted to an abstract challenge to legislation. The Association’s argument that the Court should rely on its inherent jurisdiction to grant an advisory declaration on the validity or impact of the Act was not accepted. The Court found that doing so would amount to issuing a hypothetical opinion rather than resolving a real justiciable

controversy grounded in an actual exercise of a statutory power by an administrative decision-maker. On the question of the constructive taking, the BC Court of Appeal affirmed the BC Supreme Court’s finding that a claim for compensation for a constructive taking was not available

upon a judicial review and such a claim should be commenced through an action seeking damages.

**Takeaways**

The dismissal of this appeal reinforces the longstanding principle that, to seek judicial review, an affected party must point to an administrative decision that affects their rights. Courts will avoid issuing advisory or hypothetical rulings and, therefore, those opposed to the Province’s regulation of short-term rentals will need to wait until enforcement action or decisions are rendered under the Act before seeking the review. This underscores a key tension in administrative law between policy grievances and legal rights: courts are not forums for generalized policy complaints about legislation.

For owner/operators of short-term rentals, the Court’s ruling means that challenges to the Act must await an enforcement decision being rendered that directly affects an owner/

operator's ability to operate a short-term rental before a judicial review can be advanced. Presumptive challenges to the Act on the basis of anticipated financial loss or business impacts will not succeed in the absence of an actual administrative decision and concrete evidence of business losses and other damages flowing from such a decision.



David Giroday 

## Land Disposition: Understanding Public Notice Obligations

*Municipalities are required under section 26 of the Community Charter, and regional districts under section 286 of the Local Government Act, to provide public notice before agreeing to dispose of land or improvements. Public notice requirements for land disposition are often associated with the sale of land; however, the scope of what constitutes a "disposition" is broader than a sale alone.*

Although the *Community Charter* and *Local Government Act* do not define the term "dispose", it is interpreted broadly under the *Interpretation Act* to capture a transfer by any method, including selling, granting, charging, conveying, or leasing land or improvement. Accordingly, a disposition is not limited to a transfer of ownership. Where a local government leases land or improvements or grants another interest in land or improvements, public notice requirements are triggered even if title remains with the local government.

The content of the public notice depends on whether the land or improvements will be available for acquisition by the public. If the property is available to the public, the notice must include a description of the land or improvements, the nature and term of the disposition (for example, sale, lease, or other disposition), and the process by which the land and improvements may be acquired, such as a public auction or other competitive process. If

the property is not available to the public, the notice must identify the land or improvements, the person or public authority acquiring the interest, the nature and term of the disposition (such as sale, lease, or other disposition), and the consideration to be received by the local government (for example, purchase price or rent).

For regional districts, section 285 of the *Local Government Act* provides that land or improvements must generally be made available for acquisition by the public. There are, however, specific statutory exceptions, including dispositions to a not-for-profit corporation, to a public authority, to a person who, as part of the consideration for the disposition, will exchange land or an improvement with the regional district, to a person under a partnering agreement that has been the subject of a process involving the solicitation of competitive proposals, or a disposition of land to an owner of adjoining

land for the purpose of consolidating the lands.

Regardless of whether the disposition involves a municipality or regional district, the notice of disposition must be published in accordance with section 94 of the *Community Charter*. Section 94 requires that notice be published using the applicable method and posted in the local government’s public notice posting places and permits council to provide additional notice by any means it considers appropriate.

Unless a bylaw under section 94.2 of the *Community Charter* has been adopted, notice must be published in a newspaper distributed at least weekly in the area affected, once each week for two consecutive weeks. Where newspaper publication is not practicable, alternative methods may be used. If a bylaw under section 94.2 has been adopted, notice must be published using the alternative

methods specified in that bylaw and within the prescribed timeframes.

Public notice requirements must be observed before the local government agrees to dispose of property. A local government may enter into an agreement to dispose of property before publishing the notice if completion is made conditional on final council approval to be given after the public notice requirements have been observed.



Alexandra Greenberg 

## Animal Control Refresher: Aggressive Dogs

### ***Animal Control Authority***

Under the *Community Charter*, municipalities in BC have the authority to regulate, prohibit, and impose requirements in relation to animals. This authority is further defined to include the ability to establish different classes of animals on the basis of sex, age, size, or breed.

There is no express provision for designating and imposing requirements upon “aggressive dogs” in the *Community Charter*, unlike “dangerous dogs” described in section 49. Nevertheless, many municipalities in BC have adopted animal control bylaws for the purpose of exercising the powers set out above, and they commonly have a designation and licencing regime for aggressive dogs that are not quite “dangerous”. The authority to do so flows from the general ability to adopt a system of licences,

permits, or approvals when regulating an issue that is within a municipality’s jurisdiction.

### ***Aggressive Dog Designations***

The definition of “aggressive dog” varies from bylaw to bylaw, but generally deals with a dog that has attacked a person or domestic animal in a manner that falls short of the “dangerous dog” definition. Once a dog is designated as “aggressive”, there are usually additional requirements imposed, which may include: leashing and muzzling in public places, spaying or neutering, enclosure requirements while on the owner’s property, signage requirements, and potentially a requirement to obtain insurance in relation to the dogs, among other things.

Some dog owners can be shocked by what

they feel are onerous requirements. They may question the scope of a municipality's authority to make such a designation, or protest that the designation was made unfairly. The latter formed the basis of an aggressive dog owner's petition for judicial review in *Madi v. North Vancouver (District)*, 2024 BCSC 2539, and the appeal of that decision, *Madi v. North Vancouver (District)*, 2025 BCCA 369.

In the underlying incident for these two decisions, the petitioner's dog, Solo, bit another dog, Koda, while in a park, and then bit Koda's owner when they tried to intervene. Neither injury was serious, but upon receiving a report from Koda's owner regarding the incident, the District of North Vancouver's Animal Control Officer emailed the petitioner, Mr. Madi, to inform him that the District was investigating to determine whether Solo was an aggressive dog.

The Animal Control Officer's email set out an interim management plan for Solo, and invited Solo's owners to provide their own account of the incident. Mr. Madi stated that it was "completely unjustified to call Solo an aggressive dog", and explained that Solo only bit Koda when he "butted in" while Solo was playing with another dog. He further stated that they would "make sure it never happens again." After reviewing Mr. Madi's account of the incident, the animal control officer determined that Solo was an aggressive dog and informed Mr. Madi of the decision.

Solo's owners requested a reconsideration of the animal control officer's decision. While the District's animal control bylaw did not provide for reconsideration of those decisions, the

District's Chief Bylaw Officer did review the decision on a "good faith" basis to ensure it was procedurally fair. The Chief Bylaw Officer upheld the decision. Mr. Madi petitioned for a judicial review of this determination, on the basis that it was unreasonable and procedurally unfair.

In the Supreme Court, the chambers judge upheld the District's determination, finding that the District's decision was reasonable and procedurally fair. On appeal, Mr. Madi again argued that the District's decision was unreasonable and procedurally unfair. The Court of Appeal found that the District's determination that Solo was an aggressive dog was reasonable and specifically stated that it was reasonable to make the decision on the basis

of the two statements that had been collected from Koda and Solo's owners in relation to the incident.

More interesting were the Court's procedural fairness findings. In particular, Mr. Madi argued that when the Chief Bylaw Officer reviewed the Animal Control Officer's determination that

Solo was an aggressive dog, he was not given notice or the opportunity to participate in the review process.

The Court of Appeal rejected the notion that the Chief Bylaw Officer's review was an appeal or rehearing of the matter that would afford procedural rights to Mr. Madi, instead characterizing it as an "informal exercise to consider and address the 'procedural fairness concerns'" raised by Mr. Madi. Given that Mr. Madi was provided an opportunity to "set out his side of the story", the Court agreed that the District's determination in relation to Solo

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*... it is essential that municipalities ensure that dog owners are afforded the opportunity to make submissions before a decision is reached regarding whether a dog is aggressive.*

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was procedurally fair. As such, the appeal was dismissed.

We can draw two conclusions from this case. First, it is essential that municipalities ensure that dog owners are afforded the opportunity to make submissions before a decision is reached regarding whether a dog is aggressive. This step was essential to the Court finding that the District’s decision was both reasonable and procedurally fair, because it afforded the Animal Control Officer the opportunity to review a fulsome account of the incident that occurred between Koda and Solo, and it gave Solo’s owners the opportunity to be heard during the decision-making process.

Second, the Court expressly states that the Chief Bylaw Officer’s review of the Animal Control Officer’s decision was not a formal appeal or reconsideration, nor was any such

appeal or reconsideration required to satisfy the District’s procedural fairness obligations in the circumstances. An individual’s rights to procedural fairness are contextual, and dependent both upon the nature of the decision and the individual’s reasonable expectations in relation to the procedure that is to be followed. A key factor here is that the District’s animal control bylaw did not provide for any reconsideration process. It may go without saying, but if your animal control bylaw provides for reconsideration of an animal control officer’s decision, the opportunity to seek reconsideration should be provided, with clear deadlines and procedures to be followed.



Nate Ruston 

## Do the Due Diligence

*When local governments wish to strike a deal with landowners to purchase a piece of land it is important that certain steps are undertaken to ensure that the land, buildings, and the sale in general are what the local government has bargained for. This is what we solicitors refer to as due diligence. It is a step that if left unchecked could prove very costly to the local government.*

While the circumstances of the sale will dictate the full list of items to review, the following are several due diligence items that a prospective buyer will want to turn their mind to before proceeding with a real estate purchase:

### 1. Title Review.

A critical step is reviewing title of the property the local government intends to purchase. A title search contains information about its owner and the parcel description. That

information may lead to further searches, such as confirming that a corporate landowner still exists as a legal entity or reviewing the survey plan(s) for the property to confirm what is being purchased.

A buyer will also want to review the legal notations and registered charges shown on the title search, as they may restrict or otherwise affect what can be done with the land. For example, there may be an easement registered against title that grants access over the land

to a third-party. In such a situation, it would be important to review the exact terms of the easement and understand what the buyer will be obligated to permit over the easement. Such notations or charges may ultimately affect the purchase price of the property or even whether the local government still wishes to proceed with the purchase.

## **2. Condition of Buildings/Improvements.**

A prospective buyer will want to consider whether any buildings or other improvements exist on the property, and, if so, consider investigations into their condition. For example, are any of the buildings derelict, and at risk of causing injury? Is there asbestos in any of the materials, and does the local government intend to do work that would disturb the asbestos? Further investigations or remedial steps before committing to purchase the property may be necessary.

## **3. Occupants.**

Are there tenants or other occupants on the property, and if so, what will happen with those occupants upon completion of the purchase? Depending on the terms of an occupancy, there can be considerable costs associated with forcing an occupant to vacate the premises.

## **4. Environmental Considerations.**

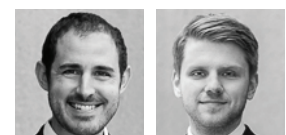
These considerations are relevant not only for purchasers of land but also for sellers. Environmental liability can pose extremely significant costs. Parties to land transactions will want to consider investigations of the lands and any buildings and other improvements to determine if there is any contamination (or underground storage tanks) on the land or migrating from the land, or within any building or improvements (such as asbestos or urea formaldehyde).

As a starting point, local governments may wish to consider past uses of the property, as that may be informative as to the likelihood that contamination is present on the lands. Beyond that, it may be advisable to engage an environmental consultant to prepare a phase 1, or perhaps a phase 2 or more comprehensive environmental site assessment, depending on the context of the transaction and preliminary findings.

Most of the considerations that local governments should take into account when acquiring land also apply to transactions such as road dedications, and when obtaining rights through charges such as a statutory right of way or easement. For example, if a local government wished to obtain a statutory right of way for utility works, it would be crucial for the local government to ensure that the rights it wishes to obtain do not conflict with, for example, an existing charge on title or a lease to an existing tenant.

The results of these due diligence practices will ultimately influence the drafting of the purchase and sale agreement. This may include a requirement on the part of the seller to remove unwanted charges prior to the completion date to ensure clear title is being transferred, or preconditions such as the removal of structures on the property or environmental reports confirming the absence of environmental contaminants. Ultimately, due diligence will help ensure the local government knows what it is acquiring and prepare a purchase and sale agreement to accurately reflect the transaction.

*Jacob Lewin & Serge Grochenkov* 



# When the Price is *Not* Right: Legal Developments in Community Amenity Contributions

*Community amenity contributions (“CACs”) have become an important means for local governments to work with rezoning applicants and developers in creating healthier cities.*

*However, new caselaw demonstrates the limit of CACs, and their applicability to the rezoning process.*

It is trite to note that throughout our day, activities and items we purchase have a price. Be it a five-dollar drink from your favourite café, or the fee required to swim at a local pool, our actions, and in turn our wellbeing are often influenced by the time and resources we put towards them. This is also, of course, the case for local governments, where investments in amenities, such as parks and plazas have a direct impact on a community’s social fabric. But who pays for these amenities, and what happens when they say no? This article covers how CACs have become an important avenue in a local government’s toolkit to pay for amenities, and the limits of CACs in light of the *Lorval Developments Ltd. v. Langley (Township)*, 2025 BCSC 1148 (“*Lorval*”) decision.

## **(1) What is a CAC?**

CACs are contributions made by developers applying for rezoning. Funds collected by CACs are in turn spent by local governments on amenities used by local residents, which may include, but are not limited to parks, community centres, libraries, and cultural spaces. CACs serve a unique role because unlike Development Cost Charges, they are not compulsory fees levied by bylaw enacted under the *Community Charter* or *Local Government Act*. Moreover, they are used for purposes beyond the capital costs of providing, constructing, altering, or expanding sewage, water, drainage,

fire protection, police, highway, solid waste, and recycling facilities. To formalize the CAC process, many local governments have enacted policies to guide CAC requests, and to provide transparency to rezoning applicants.

While not mentioned specifically in the *Community Charter* or the *Local Government Act*, CACs find their unique basis through what both statutes leave silent. Per section 193(1) of the *Community Charter*, “a municipality may not impose fees or taxes except as expressly authorized under [the *Community Charter*] or another statute”. In addition, section 462 of the LGA expressly prohibits fees as a condition of a rezoning application. Notwithstanding these prohibitions, it is generally seen as a lawful exercise of legislative discretion to rezone a parcel of land *with the knowledge* that the rezoning applicant has promised to provide financial assistance or resources that will help local governments accommodate changes brought about by proposed developments. Despite the introduction of Amenity Cost Charges in the LGA, CACs still exist and still operate in many local governments.

Given that CACs are voluntarily provided, and that they may only colour the decision of a council, there is no legal basis to make the payment of a CAC a required precondition of rezoning. This is based on the principle that municipalities must not zone in exchange

for amenities absent statutory authority, as articulated in *Pacific National Investments Ltd. v. Victoria (City)*, 2000 SCC 64. Given the silence of both the *Community Charter* or *Local Government Act* on CACs, municipalities have not been given the power to impose, by bylaw or policy, mandatory charges of this kind. As a result, local governments must not (a) present CACs as if they must be paid in exchange for rezoning to proceed, and (b) adopt policies that could be construed as presenting CACs as non-negotiable.

## (2) What Happened in *Lorval*?

In 2018, the Township of Langley adopted a CAC policy, which set targets for CAC pricing and formalized how the Township was to negotiate CACs from those seeking to rezone commercial, industrial, and residential lands. This formalization included amenity contribution targets and guidelines tied to certain geographic areas within the Township. Beginning in 2018, a property developer purchased 70 acres of land in the Williams Neighbourhood of the Township of Langley for the purpose of developing a business park. It also acquired a minority stake in agricultural lands and applied to have the lands removed from the Townships of Langley's "Agricultural Land Reserve".

In response, the Township amended its CAC to include a \$550,000 per acre target contribution for lands within the Williams Neighbourhood and passed a CAC policy amendment that introduced CACs for agricultural and "other" conversions. The developer rejected these actions, leading to the Township stating that they could "just sit if they were not interested in a community-oriented thought process". Furthermore, the Township made compliance with the CAC policy a condition of the rezoning application obtaining a fourth reading.

As a result, the British Columbia Supreme Court ruled that the CAC policy, when read as

a whole, indicated a mandatory fee regime. This is because, notwithstanding wordage such as "target" and "guideline" the terms of the CAC policy suggested that specified contributions would be required to secure zoning approval. This was made more manifest given that the Township's CAC policy stated that it would require developers to make a "fair contribution" to community amenities in exchange for rezoning. This statement demonstrated an intention on the part of the Township to require CACs in exchange for rezoning.

## (3) Key Takeaways.

The Court has clearly signalled that CACs are to be voluntary contributions that can be used by developers and rezoning applicants to assuage the concerns of council during the rezoning process. Given their voluntary nature, in addition to a general prohibition on local governments from imposing charges absent statutory authority, CACs must not be construed as a condition for rezoning approval. Finally, the decision in *Lorval* offers a cautionary example of how an overly muscular CAC policy may be unlawful and thus disputed.

In the final analysis, when local governments and rezoning applicants collaborate, CACs offer an invaluable means of securing services that benefit everybody. Thus, if local governments get the price just right, and avoid an overly muscular CAC, they may invest in things that are truly invaluable to the health and wellbeing of residents.

Peter Mate 



# Meetings with Indigenous Governing Bodies

*Recent updates to the Community Charter provide broader scope for municipalities to hold closed meetings when negotiating and sharing information with Indigenous governmental entities.*

Recently, amendments to section 90 of the *Community Charter* – which sets out the bases upon which a local government may close a meeting to the public – came into force. These new provisions permit, or in some cases require, local governments to close council meetings in certain situations relating to “Indigenous entities”. Generally, these will fall into two categories: (1) meetings where information is shared that would be protected under section 18.1 of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”); and (2) government-to-government negotiations between a municipality and an Indigenous governmental entity.

## Information Protected by FIPPA

Under the new Section 90(1)(i.1) of the *Community Charter*, part of a council meeting may be closed to the public (but is not required to be), if the subject matter being considered relates to “information that is prohibited, or information that if it were presented in a document would be prohibited, from disclosure under section 18.1 of the *Freedom of Information*

*and Protection of Privacy Act*”. Section 18.1 of FIPPA prevents the disclosure of information “if the disclosure could reasonably be expected to harm the rights of an Indigenous people to maintain, control, protect or develop any of the

following with respect to the Indigenous people:

- (a) cultural heritage;
- (b) traditional knowledge;
- (c) traditional cultural expressions;
- (d) manifestations of sciences, technologies or cultures.

It appears, for example, that this provision would allow a council to choose to close a meeting to discuss how a proposed development may impact an Indigenous cultural site, to prevent the exact location of the site becoming known to the general public.

The prohibition on disclosure in Section 18.1 of FIPPA does not apply if the Indigenous people

has consented in writing to the disclosure of the information. Therefore, if the Indigenous people has consented in writing to the disclosure, the disclosure cannot be used as a reason to close the meeting under Section 90(1)(i.1) of the *Community Charter*.

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*The amendments to the Community Charter allow (and in some cases, require) municipalities to close meetings where information is being shared by or negotiations are taking place with Indigenous entities.*

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Section 90(1)(i.1) of the *Community Charter* creates a discretion to close the meeting but does not require closure. However, local governments should be aware that Section 18.1 of FIPPA is mandatory and provides that a

public body must refuse to disclose the types of information in this section, and council should take this into consideration when exercising its discretion to close a meeting under Section 90(1)(i.1).

### Government-to-Government Meetings

Section 90(2)(b) provides that a council meeting must be closed to the public if the subject matter being considered relates to the consideration of information received and held in confidence relating to negotiations between:

- (a) the municipality and a provincial government or the federal government, or both, or between a provincial government or the federal government, or both, and a third party;
- (b) the municipality and another local government or between another local government and a third party, or
- (c) the municipality and a First Nation or a prescribed Indigenous entity, or between a First Nation or a prescribed Indigenous entity and a third party.

The previous version of the *Community Charter* already required council meetings to be closed for government-to-government meetings between a municipality and the provincial government, federal government or another local government. These amendments have simply expanded the list of qualifying government-to-government meetings to include meetings with First Nations and prescribed Indigenous entities.

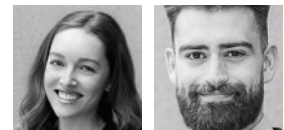
“Indigenous entity” is defined in Section 90(0.1) of the *Community Charter* as “an Indigenous entity that exercises governmental functions”. Section 90 only refers to “prescribed” Indigenous entities, meaning that the list of Indigenous entities will be prescribed by

regulation. The Legislature’s intent is that local governments can request to have certain Indigenous entities prescribed. As of the date of this article, no Indigenous entities have been prescribed.

### Conclusion

The amendments to the *Community Charter* allow (and in some cases, require) municipalities to close meetings where information is being shared by or negotiations are taking place with Indigenous entities. They allow municipalities to have confidential government-to-government discussions with First Nations and other Indigenous entities, and prevent the disclosure of culturally sensitive information. These amendments will likely also provide clarity as municipalities continue to engage and work together with Indigenous entities. For example, one of the points considered by the Court in *Kits Point Residents Association v. Vancouver (City)*, 2023 BCSC 1706 was whether the City of Vancouver was entitled to discuss, in a closed meeting, a Services Agreement to be entered into between the City and the Squamish Nation. While the Court ultimately found that the City’s actions were reasonable, in that case, such a closed meeting would likely be more clearly permitted under the new amendments to the *Community Charter*.

Sophie Marshall & Nick Falzon 



# Defamation Claims for Unfavourable Employment References

*In the recent decision of Lawetz v. Wigboldus, 2024 BCSC 1867 [“Lawetz”] the BC Supreme Court dismissed a defamation action by a former employee against his former supervisor. The Plaintiff was employed as a salesperson at CounterPath, where he reported directly to the Defendant, who was the Senior Vice President of Sales.*

While the Plaintiff excelled in his sales numbers, the Defendant was critical of the Plaintiff’s sales tactics which he described as “high pressure sales techniques”. The Defendant also found the Plaintiff to be difficult to manage and was also often subject to complaints from clients, other employees, and executives. Accordingly, the Defendant was directed by the company’s CEO to place the Plaintiff on a “performance improvement plan”. Shortly thereafter, the Plaintiff resigned from CounterPath and sued the company.

In the years following the Plaintiff’s resignation from CounterPath, the Defendant had also left CounterPath and joined another company called Rise People where he worked with Janelle Maier. Ms. Maier eventually left Rise People and joined another company called Tipalti Inc. In February 2022, the Plaintiff interviewed for a position at Tipalti before a panel of three hiring managers, one of whom was Ms. Maier. Midway through the interview, Ms. Maier realized that the Plaintiff had worked with the Defendant at CounterPath. She texted the Defendant to ask if he knew the Plaintiff, and the Defendant responded with a brief message advising her

not to hire the Plaintiff.

At the conclusion of the interview, all three hiring managers on the interview panel were not impressed with the Plaintiff’s performance and were not interested in hiring him. Ms. Maier spoke with the Defendant afterwards to ensure that they were not making a mistake in not hiring the Plaintiff. During their conversation, the Defendant confirmed many of Ms. Maier’s concerns about the Plaintiff, including that he was not very coachable and may not be a good fit for Tipalti’s sales styles. The Defendant also told Ms. Maier about the customer complaints against the Plaintiff, the Plaintiff’s pressure sales tactics, and that he had been placed on a performance improvement plan. However, the Defendant also stated that the Plaintiff was a top salesperson at CounterPath and that if Tipalti was looking for an aggressive salesperson, the Plaintiff may be a good fit. Ms. Maier sent a brief note regarding their discussion to the other two hiring managers, which confirmed their initial impressions of the Plaintiff.

Subsequently, the Plaintiff was advised by his contact at Tipalti that he would not be

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*There are several defences to defamation, including justification, fair comment, responsible communication, and qualified privilege.*

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proceeding further in the hiring process and that he should ask Ms. Maier when she spoke to the Defendant.

The Plaintiff commenced an action against the Defendant, alleging that the Defendant made defamatory statements about him to Ms. Meier, which damaged his reputation.

As noted by the Court, in order to sustain a claim for defamation, a plaintiff must prove that:

- (a) The defendant made comments that are defamatory, in the sense that they would tend to lower the plaintiff’s reputation in the eyes of a reasonable person;
- (b) The comments referred to the plaintiff; and
- (c) The comments were published, meaning that they were communicated to at least one person other than the plaintiff.

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*the Court held that the comments by the Defendant to Ms. Maier fell within scope of an employment reference and therefore, were protected by qualified privilege.*

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- The Plaintiff was not able to manage all his accounts.

Despite this finding, the Court held that the Defendant was able to successfully defend against the claim for defamation. There are several defences to defamation, including justification, fair comment, responsible communication, and qualified privilege. In this case, the Defendant raised the defences of qualified privilege and justification.

Qualified privilege is available as a defence where a person has “an interest or a duty, legal, social, moral or personal” to impart the information to the person to whom it is made, and the recipient has a corresponding interest or duty to receive it. Courts have long held that the provision of an employment reference is a “classic occasion of qualified privilege”.

However, the privilege is “qualified”, meaning that it can be defeated if the dominant motive for the statement was malice. The plaintiff

In this case, the Court found that the Plaintiff met the above test for defamation when the Defendant made the following statements or inferences about the Plaintiff to Ms. Maier:

- The Plaintiff was not open to change, learning or coaching;
- The Plaintiff bullied people into buying;
- The Plaintiff received a lot of customer complaints about pressure selling;
- Took shortcuts, sold on price/ discounting; and

bears the onus of proving there was malice, and will need to point to evidence showing that the defendant made the comments in any of the following circumstances:

- a) Due to spite or ill will;
- b) For an indirect or ulterior purpose that conflicts with the purpose of providing a job reference;
- c) Dishonesty, with reckless disregard of the truth.

In this case, the Court held that the comments by the Defendant to Ms. Maier fell within scope of

an employment reference and therefore, were protected by qualified privilege. Additionally, the Court found that there was a complete lack of evidence of malice on the part of the Defendant.

The other defence raised by the Defendant was justification, which is an absolute defence and cannot be defeated by malice. Justification succeeds if the words complained of are true or substantially true. The defendant does not need to prove the truth of each and every word, just that the “gist” or “sting of the charge” is true. Minor inaccuracies would not defeat the defence of justification.

In this case, the Court found that the comments made by the Defendant were true, substantially true or honestly held opinions.

This decision serves as a relief to employers in that providing an unfavourable reference regarding a former employee will unlikely constitute defamation so long as the comments were made in the occasion of providing an employment reference and done so without malice, or the comments were substantially true.

However, it should be remembered that, in order to be protected by the defence of qualified privilege, employment references should only be given if requested by a prospective employer seeking to hire the former employee. This is because the defence arises from the *occasion* in which the comments were made, not from the content of the comments itself. Thus, offhanded or unsolicited comments about a former employee to a third-party would unlikely

be protected by qualified privilege. Additionally, the defence for justification only protects comments that are true or substantially true. Therefore, comments that are an exaggeration or are only somewhat true, may not be protected by the defence of justification.

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*... in order to be protected by the defence of qualified privilege, employment references should only be given if requested by a prospective employer seeking to hire the former employee.*

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On the other hand, this decision also serves as a warning to employers, in that giving unfavourable employment references may lead to a claim for defamation, which can be costly and time-consuming to defend. Furthermore, employers who provide references must be

careful in the words they choose given the test for justification and given the fact that the inferential meaning of a comment can meet the *prima facie* test for defamation.

Accordingly, given the intricacies surrounding the law of defamation and the risk of a defamation lawsuit, we often recommend employers avoid providing negative employment references and to only give neutral references for former employees who did not leave on good terms or who performed poorly during their tenure. A neutral reference would simply constitute a confirmation of the positions that the employee held, their duties and responsibilities in those positions, and their years of service.

Lianna Chang 



# Judicial Review and the Perils of Oral Reasons

*On December 2, 2025, the Supreme Court of British Columbia released its reasons in West Creek Farms Ltd. v. Langley (Township), 2025 BCSC 2385, a case that underscores the challenges municipal councils face on judicial review. Under the framework established by Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65, judicial review of administrative decision-making is focused on “reasons”. In the case of an elected body like a municipal council, which almost never gives written reasons when making a decision, the application of the Vavilov framework can raise difficult and interesting issues.*

The dispute in this case arose from a municipal zoning decision involving West Creek Farms Ltd. (“West Creek”). West Creek operated a commercial growing medium processing facility within the Township of Langley’s Rural Floodplain (RU-5) Zone. Over time, the operation expanded to include agriculturally-related processing, which the Agricultural Land Commission approved. Municipal staff, however, concluded that this expanded use did not fall within the RU-5 Zone’s definition of “agricultural use” and advised that a site-specific zoning amendment was required to expressly permit the activity.

The application ultimately went before Council. In a close vote, Council rejected it – contrary to staff’s recommendation.

Two councillors who voted against the application offered reasons from Council chambers. Their concern, in essence, was that approving the rezoning would undermine an “equal playing field” by conferring an unfair competitive advantage on West Creek compared

to similar businesses. Those comments became the focal point of the judicial review.

## The Judicial Review

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*Under Vavilov, the focus is not just on whether the outcome is a reasonable one, but on whether the reasoning process is transparent, intelligible, and justified.*

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West Creek argued that the decision was unreasonable. Under *Vavilov*, the focus is not just on whether the outcome is a reasonable one, but on whether the reasoning process is transparent, intelligible, and justified. Where a municipal council decision is impugned as unreasonable, the

court usually focuses on the record before council, as well as its debate and deliberations.

Here, the Court focused on the reasons articulated by the councillors who formed part of the majority opposing the zoning amendment. Notably, those councillors did not rely on the nuisance concerns raised by neighbours at the public hearing, nor on environmental, land-use compatibility, or traditional agricultural considerations. Rather, the councillors framed their opposition almost entirely around market considerations and what they described as

the need to preserve an “equal playing field” for competitors. Along the way, one councillor referred to conflicting submissions about the number of similar businesses that existed and expressed a preference for information he had received from long-time residents, while another indicated he had personally “looked up” competitors operating elsewhere.

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*At its core, this case highlights the persistent difficulty of “providing reasons” in the municipal context, especially where a council departs from staff’s recommendation.*

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This creates a fundamental tension between two important goals. Councillors need to be able to rely on their experience and policy instincts and to speak candidly in the moment, yet *Vavilov* makes clear that decision-makers must avoid the exercise of “untrammelled discretion,” and any reasons they do provide must be capable of withstanding legal scrutiny. Ultimately, *West Creek Farms*

The Court made clear that while competitive fairness was not an illegitimate consideration, the conclusion about the uneven playing field had no discernible footing in the evidentiary record. The Court could not identify any factual foundation for a councillor’s personal research, nor for reliance on unnamed third-parties whose information never entered the public record. As a result, the Court found the decision unreasonable under the *Vavilov* framework, quashed it, and remitted the matter back to Council for reconsideration.

serves as a caution that even well-intentioned municipal decisions can fail on judicial review if their reasons, however genuine, are not adequately anchored in the record.

**Takeaway**

At its core, this case highlights the persistent difficulty of “providing reasons” in the municipal context, especially where a council departs from staff’s recommendation.

When a council follows staff’s recommendation, the staff report often does much of the heavy lifting. In those cases, reasons can be drawn, at least in part, from the analysis and evidentiary foundation already set out in the report. But where a council goes the other way, as it did here, the reasons must largely be found in what the councillors actually say during deliberations.

Jack Wells  

## Look For Your Lawyers

The firm is pleased to welcome **Piers Fibiger** as an associate lawyer, with a focus on litigation. Prior to joining Young Anderson, Piers articulated and worked as an associate at a large multinational law firm and then at a boutique civil litigation firm, both in Vancouver. He was called to the bar in 2019 after obtaining his B.A. from the University of California, Santa Barbara and his J.D. from the Peter A. Allard School of Law at the University of British Columbia.

**Carolyn MacEachern** will be a member of the Pre-Forum Workshop panel topic “Career Crossroads: Risk Mitigation Amidst Change” at the Local Government Management Association CAO Forum being held February 17-19, 2026 in Richmond.

**Young, Anderson** will be presenting its Annual Local Government Law Seminar (Island Edition) on February 20, 2026 at the Vancouver Island Convention Centre, 101 Gordon St, Nanaimo.

**Sukhbir Manhas & Carolyn MacEachern** will be presenting a session entitled “Abusive Members of the Public: Local Government Obligations and Rights” at the Municipal Insurance Association of BC 2026 Conference being held in Vancouver on April 8-9, 2026.

**Elizabeth Anderson & Nate Ruston** will be presenting a session entitled “Getting Around “Grandfather Clauses”: An Update and Refresher on Lawful Non-Conforming Uses” at the Local Government Compliance & Enforcement Association Conference being held in Nanaimo April 14-17, 2026.

**Elizabeth Anderson & Nate Ruston** will be presenting a session entitled “Case Law Update” at the Local Government Compliance & Enforcement Association Conference being held in Nanaimo April 14-17, 2026.

**David Giroday & Sophie Marshall** will be presenting a session entitled “Troubled Waters: Select topics in local government regulation of activities in and around waterways” at the Association of Vancouver Island and Coastal Communities (AVICC) 2026 AGM and Convention being held April 24-26, 2026 in Victoria.

**Mike Quattrocchi & Nick Falzon** will be presenting a session entitled “Loan Authorization Litigation” at the GFOABC Conference in Kelowna from May 27-29, 2026.

**Guy Patterson** will be presenting a session entitled “Never Mind the Legislation, Here’s the Case Law” at the 2026 PIBC Annual Conference being held in Penticton June 2-5, 2026.

**Guy Patterson** will be presenting a session entitled “Development Permits: A Deep Dive” at the 2026 PIBC Annual Conference being held in Penticton June 2-5, 2026.

**Reece Harding & Nick Falzon** will be discussing the Cowichan Tribes case at the Local Government Management Association Annual Conference being held June 9-11, 2026 in Penticton.

**Young, Anderson** will be presenting its Annual Local Government Law Seminar (Vancouver Edition) on November 20, 2026 at the Fairmont Hotel Vancouver, 900 Georgia Street, Vancouver.

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