

## Artificial General (Municipal) Intelligence: Not Quite Yet

*ChatGPT, and other artificial intelligence language models like it, can be powerful tools for generating text. As a lawyer, whose job is also very focused on generating text, I wanted to see whether ChatGPT could help with some legal research and maybe even exercise some judgment in relation to a legal question. I chose to ask it a question about community amenity contributions (CACs), a subject on which BC legislation is famously silent. The results were very interesting and a little alarming.*

I posed ChatGPT the following question:

In British Columbia, is it legally permissible for a local government to require a developer to pay money (called a community amenity contribution) as a condition of adopting a re-zoning bylaw?

ChatGPT took no time at all to spit out the following response:

Yes, it is legally permissible for a local government in British Columbia to require a developer to pay a community amenity contribution (CAC) as a condition of adopting a rezoning bylaw.

Under the Local Government Act of British Columbia, municipalities are authorized to impose requirements on developers as a condition of rezoning land. These requirements can include the provision

of public amenities, such as parks or community centers, or contributions towards the cost of providing such amenities.

The use of CACs by local governments in British Columbia is regulated by the Community Amenity Contributions Regulation, which sets out rules for determining the value of CACs and how they are to be calculated and collected.

However, it is important to note that there are limitations on the use of CACs. They must be directly related to the rezoning, and the amount of the contribution must be reasonable and not unduly onerous. Developers also have the right to appeal the imposition of a CAC to the local government or to the British Columbia Supreme Court.

While I basically agreed with the first two paragraphs, the third and fourth immediately caught my eye: an appeal to the Supreme Court? More importantly, what was this Regulation to which ChatGPT was referring? I had never heard of it before.

Worrying that I might have missed a consequential legislative change for local governments, I asked ChatGPT a series of questions about the Community Amenity Contributions Regulation. When I asked for the citation of the Regulation, ChatGPT very helpfully gave me a link to the BC Laws webpage. The one problem was that the link took me to the Denturists Regulation, adopted under the *Health Professions Act*.

After this answer, I informed ChatGPT that I was pretty sure that the Community Amenity Contributions Regulation was not real. Insisting that it was in fact real, ChatGPT then linked me to the Notice to Mediate (Family) Regulation, adopted under the *Law and Equity Act*, and finally to a blank page on the BC Laws website containing a 404-error message.

Thinking that ChatGPT would finally admit that it was making up the Community Amenity Contributions Regulation, I asked if it could write out the text of the regulation for me. Much to my surprise, ChatGPT obliged, showing me the text of an apparent regulation dealing

with the calculation of CACs. While I will not reproduce the whole Regulation, it did include the following:

#### Calculation of community amenity contributions

2(1) For the purpose of section 37 of the Act, the value of community amenity contributions is to be determined by one of the following methods:

- (a) the contribution is based on a percentage of the appraised value of the land and improvements that are subject to the rezoning application;
- (b) the contribution is based on a fixed amount per square metre of residential floor area or commercial floor area, as applicable, that is proposed for the land that is the subject of the rezoning application; and
- (c) the contribution is based on the cost to the local government of providing the community amenity that is the subject of the contribution, as determined by the local government, and is related to the rezoning application.

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As you can see, section 2 of the alleged Community Amenity Contributions Regulation is credibly drafted to resemble real legislation. If one digs a little deeper, however, they will note that section 37 of the Act (the *Local Government Act*), referred to in the fictitious section 2(1) above, deals with the transfer of Provincial Property tax money under the *Taxation Rural Area Act* in respect of lands included in a municipality by incorporation or extension of municipal boundaries. It has nothing whatsoever to do with community amenity contributions.

The jig was finally up. When I told ChatGPT that I had unsuccessfully searched the text of the regulation on BC Laws and CanLii, and that the sections of the *Local Government Act* referred to in the Community Amenity Contributions Regulation did not relate to CACs, it admitted defeat:

I apologize for the confusion. You are correct that the regulation as I presented it does not exist. I made an error and provided incorrect information. I strive to provide accurate information, but as an AI language model, I am not infallible and

may make many mistakes. I apologize for an inconvenience this may have caused.

Feeling the need to rub it in, I asked it the following:

So, you're admitting that there is no Community Amenity Contributions Regulation in British Columbia?

It (solemnly) responded:

Yes, that is correct. To the best of my knowledge, there is no Community Amenity Contributions Regulation in British Columbia. The information I provided earlier was incorrect, and I apologize for any confusion this may have caused.

Along with leading me to think that our jobs appear safe (for the time being at least), this interaction is a cautionary tale to all those hoping to save some time on legal research or analysis.



Nick Falzon ✍️

## BC Financial Services Authority Changes Policy on Real Estate Development Marketing Act

*The British Columbia Financial Services Authority recently announced a significant amendment to Policy Statement 5 ("PS-5"), made under the Real Estate Development Marketing Act ("REDMA"). The change allows developers to market developments earlier in the approval process than was previously permitted. Now, marketing can begin as soon as any rezoning*

*bylaws necessary for the project receive third reading from the local government council or board with jurisdiction over the land on which the project will be constructed. This may seem like a minor change, but it could have implications for local governments in British Columbia.*

REDMA prohibits developers from offering to sell or lease development units until they have “approval in principle” to construct or otherwise create the unit. Prior to the recent amendment to PS-5, a development was approved in principle only when zoning allowing the development to proceed was in place. This meant that if the development lands needed to be rezoned to accommodate a proposed development, the local government would have to adopt the zoning bylaw prior to developer being able to offer the development units for sale. “Approval in principle” is now granted if the relevant rezoning bylaw has received third reading. Once approval in principle is obtained, developers are permitted to market their developments for sale for a period of twelve months. If the developer fails to obtain a building permit for the development by the end of this 12-month period, they must stop marketing the units for sale and the pre-sale purchasers can terminate their purchase contracts.

As part of the marketing process, REDMA requires developers to file and provide all purchasers with documents called disclosure statements prior to selling units. Disclosure statements must contain all material facts about the development available when the statement is filed. As a result, the disclosure

statements that pre-sale purchasers receive will have to indicate if the relevant rezoning bylaw has been adopted or only received third reading. Theoretically, this means that all pre-sale purchasers will be aware that the relevant zoning is not yet in place. Practically, however, this information could easily be missed by purchasers, as disclosure statements frequently include hundreds of pages of

technical and legal information, and they could be led to believe that the project already has local government approval, even though the developer has not actually obtained the requisite zoning.

Developers will likely welcome the amendment to PS-5 because it allows

them to reduce the amount of time it takes to bring their developments to market. By marketing their projects earlier, developers will hope to be able to secure pre-sales and financing more quickly, which would lead to faster construction timelines.

This change may, however, put added pressure on local government councils and boards to adopt rezoning bylaws for developments that have pre-sold units after third reading but before adoption. If a rezoning bylaw receives third reading but is ultimately not adopted, presale buyers could be left in a position where the unit that they paid for will not actually be built. This could create a situation where local

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*Approval in principle” is now granted if  
the relevant rezoning bylaw has received  
third reading.*

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governments feel obligated to adopt rezoning bylaws that have received third reading because units in the proposed development have already been sold. While purchasers would be entitled to get their money back from the developer if a zoning bylaw is not adopted, they will likely prefer to purchase the unit they thought they had already bought. Additionally, developers will be eager to obtain the required zoning, so that they can begin the process of obtaining a building permit within the twelve-month period after receiving approval in principle. As a result, both developers and purchasers may put pressure on the local government to adopt the zoning bylaw if that is the only thing preventing the development from proceeding.

Overall, the change to PS-5 of the British Columbia *Real Estate and Development*

*Marketing Act* has the potential to be a significant one. By allowing developers to market their projects earlier in the process, the hope is that it will help to reduce the amount of time it takes to bring developments to market. However, this change could put added public and political pressure on local governments to adopt rezoning bylaws, and do so faster than they may otherwise, for developments that have presold units.

Jordan Adam and Nate Ruston 



## Elected Officials Not Necessarily Experts in the Eyes of the Court

*A recently released ruling from the BC Supreme Court serves as a reminder that long service as a local government elected official, does not confer any particular or preferred status to provide expert evidence on questions pertaining to local government administration. The case, Saloojee v. Gibsons (Town), 2021 BCSC 2726, involved a catastrophic personal injury to the plaintiff caused by a portion of a dried and broken tree, located in the Town's White Tower Park, breaking off and striking him on the back of his head and neck. The plaintiff sought to introduce an expert report from the former mayor of New Westminster, the purpose of which was described as providing guidance to the court on how local governments operate, offering opinions on the following questions:*

1. How does a local government operate?
2. What is the purpose of a local government?
3. What are the responsibilities of a local government?
4. How does local government work?
5. What is a capital budget?
6. How is White Tower Park defined and how does that definition affect the operation of White Tower Park?
7. What considerations are made by a local government in erecting signs and who is responsible for creating and erecting signs?

opinion of the former mayor was unnecessary.

The judge found that the former mayor's opinions with respect to the responsibilities of local government and how they work were also unnecessary. An opinion from an expert was simply not required to assist the court. The judge also considered that the concept of a capital budget (question 5) was not so obscure that the former mayor's evidence would be needed by the court, particularly where the Town's chief financial officer was going to testify and could provide any explanation regarding the capital plan's preparation and use.

For the sixth question, focusing on how the particular park had been defined and how that affected its operation, the former mayor was considered to be in no better position to speak to these matters than a person with

actual knowledge of the facts. The former mayor did not have any qualifications, experience or knowledge that would qualify him to provide expert opinion evidence.

For the final question, the former mayor's

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*[the Court]*

*Ruled that the former mayor's report*

*was not admissible as an expert report*

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Justice Adair ruled that the former mayor's report was not admissible as an expert report and that he could not be qualified as an expert to give opinion evidence; he could be called only as a non-expert fact witness.

On the first question, the report drew largely on the former mayor's experience as mayor of New Westminster and attempted to draw an analogy between New Westminster and Gibsons from a review of their organizational charts. The response to the question was comprised largely of quotations from the Community Charter, was unnecessary or unhelpful to the court and not in keeping with the role of an impartial expert. Similarly, the proffered opinion respecting the purpose of a local government was addressed in the provisions of the Community Charter; the

experience as the New Westminster mayor with respect to the adequacy of signage was also held to be unhelpful and unnecessary. The judge observed that the court could draw its own conclusions as to whether the signage in place was sufficient. New Westminster's practices regarding signage in parks was not seen as relevant to the judge's determination as to whether Gibsons' signage was adequate.

Beyond rejecting the content of the report's responses on the various questions posed as not meeting the substantive requirements for admission as expert evidence, Justice Adair also found the former mayor did not

possess any special expertise to give opinion evidence. While recognizing that formal training or qualification is not a requirement for qualification as an expert, the judge held that the former mayor’s experience in local government gave him no special expertise “that would permit him to be qualified as an expert to express general opinions capable of broad application concerning social, political or economic factors.”

Judges exercise an important “gatekeeping” function in determining whether persons should be qualified to give opinion evidence as experts and/or whether “expert” reports

should be admitted as such. In her gatekeeper’s ruling in Saloojee, Justice Adair noted the dangers of essentially anecdotal evidence and the arguments of litigants being cloaked with the aura of expert opinion. Without denigrating the experience of the former mayor, the judge rejected the attempt to encroach on the court’s responsibilities to find facts and interpret legislation by means of opinions solicited from a non-expert.



Barry Williamson *✍*

## Keep Your Cool in BC’s Hot Housing Market

*A belated reminder that the Province’s residential real estate “cooling off” legislation is now in force. The legislation, which came into force on January 3rd of this year, gives purchasers a right to back out of a binding contract of purchase and sale for residential real estate.*

The Province adopted the legislation in response to pressures reported by home buyers to submit offers without basic conditions that protect their interests. According to the Province, industry representatives estimated that in 2022 more than 70% of offers in the most competitive housing markets may have been made without any conditions. Intended to give home buyers time in which to reconsider their unconditional offer, the legislation is meant to ensure satisfactory financing is in place and a home inspection can be obtained.

The right is available to buyers of detached houses, semi-detached houses, townhouses, apartments in duplexes or multi-family buildings, manufactured homes that are affixed to land, and units in buildings operated

by cooperative associations. It is not available to buyers of residential property located on leased land, a leasehold interest in residential property, residential property sold under court order or under the supervision of the court, or at auction. Condominium presales are also exempt as a seven-day cooling off period for those units already exists under the *Real Estate Development Marketing Act*.

A purchaser must exercise the right to rescind the contract within three days of the contract being formed. There are a few things to note about the three-day rescission period. First, the “days” are business days, meaning Monday to Friday excluding statutory holidays in British Columbia. Second, the period begins when the contract is formed. A contract is only formed

when acceptance is communicated to the offeror. So, a seller cannot avoid the rescission period by signing the contract and sending it to the buyer four days later. Third, the period begins when the contract is formed, not when any conditions precedent or “subjects” are satisfied. Lastly, in the calculation of the period, the date on which the contract is formed is not counted. For example, if a contract was formed on a Thursday, the buyer would have until midnight the following Tuesday to rescind the contract, assuming that neither Monday nor Tuesday of that week is a statutory holiday.

The right to rescind the contract is not free. If a buyer exercises the right, the buyer must pay the seller 0.25% of the purchase price of the property. If a deposit was paid in respect of the sale, the amount is deducted from the deposit. Otherwise, the fee must be paid promptly. The right is exercised by the buyer serving notice on the seller by registered mail, fax or the email address noted in the contract. The notice must contain prescribed information, including a description of the property, the identity of each seller, the date on which the

right is being exercised, and the name and signature or electronic signature of the buyer. The legislation provides that the right cannot be waived. So, a buyer and seller cannot agree that the right does not apply, that the right may be exercised during a shorter period, or to a higher rescission fee.

The right to rescind is likely to have little impact on local governments. However, local governments sometimes buy, and more rarely sell, the types of property to which the legislation applies. In these circumstances, staff should be aware of the local government’s right to rescind the contract and a purchaser’s right to back out of a sale by the local government. As noted, residential property sold at auction is exempt from the rescission right. So, the right will have no effect on residential property sold at municipal tax sale.

*Joe Scafe and Nate Ruston* ✍



## Pay Transparency Legislation Enacted

*On May 11, 2023, the Pay Transparency Act (the “Act”) received Royal Assent and became law in British Columbia. It enacts new requirements for employers in the province to address pay inequity in their organizations. According to the Provincial Government’s media release regarding the Act, the legislation is aimed at reducing the pay gap between men and women in British Columbia. The media release notes that last year, women in the province earned*



*approximately 17 percent less than men. However, the Act casts a wider net than simply addressing the gender pay gap, and is also intended to address the pay gaps that exist for other groups of workers.*

*The Act places pay transparency obligations on all employers, and additional reporting obligations on “reporting employers”.*

**Obligations of All Employers**

As of Royal Assent, section 3 of the Act prohibits all employers from seeking information about a job applicant’s prior wage or salary history by any means, whether directly from the applicant or through a third party, unless the pay history information is publicly available.

Section 4 of the Act also prohibits employers from dismissing, suspending, demoting, disciplining, harassing or otherwise disadvantaging an employee, or threatening to do so because of a number of employee actions. The protected employee actions include making inquiries to the employer about the employee’s pay; disclosing information about the employee’s pay to another employee of the employer, or to an individual who has applied for employment with the employer; asking the employer to comply with the employer’s obligations under the Act; and making a report to the Director of Pay Transparency in relation to the employer’s compliance with the employer’s obligations under the Act. Protected actions for employees of reporting employers also include making inquiries to the reporting employer about a pay transparency report or information contained in a pay transparency report.

Effective November 1, 2023, Section 2 of the

Act will provide that all employers must when advertising a job opportunity publicly, specify in the advertisement either the expected salary or wage for the job, or the expected salary or wage range for the job. The section also provides that additional regulations may be made limiting an employer’s ability to use a range in its job advertising, and prescribing additional information that must be included in an advertisement.

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*The Act places pay transparency obligations on all employers, and additional reporting obligations on “reporting employers”.*

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**Obligations of Reporting Employers**

Sections 1(2) and (3) of the Act designate various employers as “reporting employers”. As of Royal Assent, section

1(2) designates the Provincial Government and various crown corporations as reporting employers. According to section 1(3), unless exempted by regulation, effective the following dates, the following employers will also be “reporting employers”:

- January 1, 2024, employers with 1000 or more employees;
- January 1, 2025, employers with 300 or more employees; and
- January 1, 2026, employers with 50 or more employees.

Section 5 of the Act requires reporting employers to prepare a pay transparency report on or before November 1st of each year. The report must contain information as prescribed

by regulation and be in a prescribed format. According to the Provincial Government's media release, the reports will need to show the gaps in pay for certain groups, and an online reporting tool will assist reporting employers in preparing the report. The Government is currently determining the information to be included in a pay transparency report in collaboration with the BC Public Service Agency and the crown corporations that are the first reporting employers.

Section 6 of the Act also requires a reporting employer to make reasonable efforts to collect the prescribed information for inclusion in a pay transparency report. Reporting employers must make reasonable efforts to collect the required information for each of their employees, and must at least once every calendar year provide each employee with the opportunity to provide the required information and to update or make additions to any information they previously provided. A reporting employer must also, when collecting information from an employee under Section 6, collect the information in a prescribed manner

and inform the employee that their disclosure of information is voluntary.

Section 7 of the Act requires a reporting employer to publish its pay transparency report on its publicly accessible website. If a reporting employer does not have such a website, it must make a copy of the report available to its employees in at least one conspicuous place in each of its workplaces, and make a copy of the report available to any member of the public who requests one.

Local government employers should carefully consider their obligations under the pay transparency legislation and be prepared to comply with its requirements. We encourage local government employers to contact us if they have any questions about their obligations under the legislation.



Michelle Blendell 

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## Recent BC Court of Appeal Decision Evolves the Law on Family Status Discrimination

*The British Columbia Court of Appeal issued its decision in British Columbia (Human Rights Tribunal) v Gibraltar Mines Ltd., 2023 BCCA 168 (“Gibraltar Mines”) on April 21, 2023. The Court was tasked with determining whether the BC Human Rights Tribunal (the “Tribunal”) had correctly decided not to dismiss a complaint against Gibraltar Mines (the “Employer”) for discriminating against an employee on the basis of family status, contrary to section 13 of the Human Rights Code (the “Code”).*

The complainant in this case was an employee of Gibraltar Mines. The employee’s spouse was also employed with Gibraltar. The complainant and her spouse both worked the same 12-hour shift at the mine, occasionally working different night shifts.

After the birth of their first child, the complainant approached the Employer seeking to change her and her spouse’s schedules to facilitate childcare arrangements. The parties were unable to agree on suitable accommodation, and the complainant filed a complaint with the Tribunal alleging discrimination in employment on the basis of family status, marital status, and sex under section 13 of the Code. The Employer sought to have the complaint dismissed.

As regards the family status claim – all others having been dismissed by the Tribunal – the Employer argued that it had not changed the terms or conditions of the complainant’s employment, and that the circumstances amounted only to “commonplace childcare difficulties”, not a serious interference with a substantial parental obligation or duty. The Tribunal did not agree with the Employer’s argument that that a change in a term or condition of employment was a necessary requirement in making a claim of family status discrimination due to childcare. Given the evidence provided by the complainant of the challenges she faced in finding childcare, the Tribunal found that the facts of the case, if proven, could constitute a substantial interference with a parental or family obligation.

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*Discrimination against an employee based on family status can occur regardless of whether there has been a change in employment terms or conditions*

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The Employer appealed the Tribunal’s decision to the British Columbia Supreme Court (“BCSC”), on the grounds that the Tribunal erred in its interpretation of the correct legal test for family status discrimination. The BCSC agreed with the Employer, finding that based

on previous court decisions, in order to establish prima facie discrimination based on family status under section 13 of the Code, a change in a term or condition of employment must first be shown.

The test for discrimination based on family status was originally set out in *Health Sciences*

*Assoc. of BC v Campbell River and North Island Transition Society*, 2004 BCCA 260 (“Campbell River”) as follows:

- there must be a change in a term or condition of employment; and
- that change results in a serious interference with a substantial parental or other family obligation of the employee.

The BCSC further noted that the Court upheld this test as good law in its 2019 decision *Envirocon Environmental Services, ULC v. Suen*, 2019 BCCA 46 (“Envirocon”). The BCSC found it was bound to follow the Court’s decision in *Envirocon*, but noted that were it not for this decision it “...may well have shared the Tribunal’s view that Campbell River does not stand for the proposition that a change in a term or condition of employment is necessary to establish prima facie family status discrimination”.

The Tribunal appealed the BCSC decision to the BC Court of Appeal (“BCCA”). The BCCA agreed with the Tribunal, finding that a change in a term or condition of employment was not a necessary precondition for establishing a prima facie case of family status discrimination.

The court in Gibraltar Mines noted that the issue before it (whether a change in employment terms or conditions was necessary to make a case for family status discrimination) had not been before the court in Campbell River or Envirocon as those employers had changed the terms of employment. The BCCA found that the court in Campbell River did not state that such a change was a necessary to find prima facie discrimination, only that a change in employment terms resulting in a serious interference with parental duties was sufficient to show prima facie discrimination. The court in Gibraltar Mines observed that the court in Campbell River:

... decided that a prima facie case of discrimination is made out when a change in a term or condition of employment imposed by an employer, results in a serious interference with a substantial parental or other family duty or obligation of the employee. What [the] Court did not decide is whether a change in a term of condition of employment is the only circumstance in which a prima facie case of discrimination could be made out (at para 70).

The BCCA further noted that while the decision in Envirocon did interpret the Campbell River test, the judgement was not concerned with whether a change of a term or condition of employment was a necessary precondition for a prima facie claim of family status discrimination.

The BCCA also looked to the Code and held that nothing in it limited the protections provided under section 13 to only apply to circumstances arising from a change in a term

or condition of employment. The BCCA found this reading of the Code was further supported by the interpretive rule that human rights legislation is to be given a broad and liberal interpretation.

The central takeaway from Gibraltar Mines is that discrimination against an employee based on family status can occur regardless of whether there has been a change in employment terms or conditions. The decision in Campbell River should no longer be interpreted as requiring a change in the terms and conditions of employment as a precondition to finding prima facie discrimination on family status grounds.

It should be noted that the decision in Gibraltar Mines does not do away with the test from Campbell River altogether. The second requirement – that a serious interference with a substantial parental or other family duty can be shown – remains necessary to demonstrate prima facie discrimination on the basis of family status. However, this serious interference no longer must flow from a change in employment terms. If a complainant can demonstrate this manner of serious interference, it may constitute discrimination based on family status despite the terms and conditions of their employment having remained constant.

James Barth ✍️



# What’s in a Sign? Recent Caselaw on Signage in Municipal Liability

*Any step that a local government can take to limit its liability, particularly one easily acted upon, deserves some thoughtful attention. Two recent decisions show how the humble warning sign can play into municipal liability for negligence, both at common law and in statute. The first shows how signage is not always necessary to prevent a finding of negligence, while the second shows just how important a sign can be.*

In *Saloojee v Gibsons (Town)* 2023 BCSC 249, the plaintiff sued the Town of Gibsons (the “Town”) under the *Occupiers Liability Act* for the paralyzing injuries he suffered when part of a dead tree fell on him in a forested park operated by the Town. The plaintiff, a minor at the time of his injury, had been pushing on the tree with another youth when a piece snapped off and struck him. At the time, The Town’s Bylaw No. 1012 made it an offence to “[d]estroy, alter, damage, or remove any tree” and permitted (but did not require) the Director of Parks to “post signs from time to time in or on a public place as needed for the safe and efficient use of that public space”. The Town had a written policy that allowed for the removal of trees that the Director considered to be an immediate hazard to workers or park users, but Town staff also followed an unwritten policy to only inspect maintained trails for dangerous trees. The plaintiff’s accident occurred in a remote area of the park, at a distance from any maintained trails.

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*The plaintiff claimed that by failing to post adequate signage, as it could have under the bylaw, the Town had acted negligently*

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The plaintiff claimed that by failing to post adequate signage, as it could have under the bylaw, the Town had acted negligently and contributed to the plaintiff’s injuries. The court disagreed with the Town’s argument that its decision not to post signs in the park was a core policy decision immune from liability. The court held that the decision to post signs had been delegated to the Director of Parks, who was not an elected official, but a staff member who “was responsible for implementing and administering by-laws, regulations and policies”, in particular, “Bylaw No. 1012 and the Tree Removal Policy, as well as the Unwritten Policy”.

Even without the core policy shield, the court ultimately declined to find the Town liable for the plaintiff’s injuries for two reasons. First, the court concluded that the Town had not breached the standard of care because the evidence showed that the area where the plaintiff’s injuries occurred was not one that people typically travelled through. As such, the Town’s decision to not conduct a dangerous

tree assessment in the area, restrict access, or post warning signs, was a reasonable one. Second, the court found that it was not clear that the plaintiff would have obeyed a sign even if one had been posted.

In *Revelstoke (City) v Gelowitz* 2023 BCCA 139 the plaintiff sued the City after he dove into shallow water and struck an obstacle, suffering serious injury. The plaintiff had been camping in a city-owned park on one side of a lake and dove into the lake from the other side, which was privately owned; the City was aware that this was a common practice among swimmers. The City maintained a dock at its shore and a floating raft at the mid-point of the lake. It posted "Swim at your own risk" and "No diving" signs along its beach area and painted "No diving" signs on the dock and raft. Unfortunately, the plaintiff entered the lake from a different area and did not see a sign and on the day the plaintiff's injury occurred, no sign was visible on the raft.

In the initial trial, the court found the City liable in negligence, but it also found the plaintiff contributorily negligent and apportioned only 35% liability to the City. The City appealed, arguing that it did not owe a duty of care to the plaintiff when his injury occurred on land it neither owned nor controlled. The Court of Appeal upheld the trial decision, finding that the City owed a duty of care because it invited

swimmers onto its portion of the lake, had notice of underwater obstacles around the shore, knew that swimmers frequently crossed to the other side, and could reasonably foresee that failure to warn might lead to injury. The City had a duty to warn swimmers about the dangers of diving from areas that it knew they commonly accessed. That duty required the City to post and maintain appropriate signs on its shore and raft that were visible en route to accessible diving points, including diving points on private property.

**Takeaway:** Whether liability will be incurred due to the failure to post a sign warning of a hazard will depend on the particular circumstances of the event. For this reason, when deciding whether a warning sign is necessary, a local government is well advised to consider the site specific circumstance and how their land is being used. While a warning sign may not protect a local government from all types of claims, its absence can clearly have an effect on liability.

*Eman Jeddy and Aidan Andrews* ✍️



## Attention all Collectors! Significant New Tax Sale Notice Requirement

*On March 9th, 2023, Bill 3: Miscellaneous Statutes Amendment Act, 2023 ("Bill 3") received royal assent. Bill 3 amends the Local Government Act ("LGA") by establishing a new requirement for municipalities to provide advance notice of impending tax sales.*

Currently, section 657 of the LGA requires the municipal tax collector to give notice of the tax sale and redemption period after the property has been sold at the annual tax sale. Bill 3 adds a new requirement for the collector to give advance notice to all registered owners and chargeholders of properties to be offered for sale, at least 60 days before the annual tax sale.

The notice under the new section 647.1 must include the following information:

- a) the time and place of the annual tax sale;
- b) the legal description and street address, if any, of the property subject to tax sale;
- c) the amount of all taxes owing to the municipality on the property and interest to the date of the annual tax sale;
- d) the tax sale upset price for the property;
- e) a statement that, if the amounts referred to in section 649(1)(a) and (b) [upset price for tax sale] are not paid before the annual tax sale, the collector will offer the property for sale by public auction at the time and place stated in the notice; and
- f) a statement that, if the property is sold at the annual tax sale, a right of redemption will remain in the owner or holder of the charge until the end of the redemption period.

The collector must either serve the notice or send it by registered mail to all registered owners and chargeholders. If service is

unsuccessful, section 647.1(2)(c) authorizes collectors to apply to the Supreme Court for an order to serve the notice by substituted service.

Importantly, failure to properly serve a notice under section 647.1 may result in the tax sale being set aside and declared invalid, as section 666(2) of the LGA will allow a registered owner or chargeholder to apply to the Supreme Court to have the tax sale set aside on the grounds that the collector did not give this required notice. Accordingly, it will be important for the municipal tax sale process to allow sufficient time to contact a lawyer and apply to court for a substituted service order and to then comply with the order.

These new amendments to the LGA will come into force by regulation of the Lieutenant Governor in Council (no such regulation was in place at time of writing). In the meantime, municipal tax collectors should familiarize themselves with these new requirements. Collectors will need to be prepared to fulfill their obligation to provide owners and chargeholders of advance notice of impending tax sales and, critically, to allow for sufficient time to obtain court ordered substituted service if needed.

*Mike Quattrocchi and Julia Tikhonova* ✍



## Look for Your Lawyers

We are pleased to welcome **Aidan Andrews** and **Ayesha Ali** to the firm as articled students, along with **Aishling Carson**, our summer articled student. Aside from the overrepresentation of the letter "A" in their names, Aidan, Ayesha, and Aishling have all made great additions to our team.

We are also pleased to announce **Chris Gallardo-Ganaban** as a new associate at Young, Anderson. Chris maintains a broad municipal law practice, with particular interest in employment, contract, negligence, bylaw enforcement, expropriation, construction, and constitutional issues. Prior to joining Young, Anderson, Chris had a varied practice in litigation at a medium sized regional boutique firm, specializing in matters involving insurance, bodily injury, property damage, construction, and subrogation. He received his law degree from the University of Alberta in 2019, and completed a Bachelor of Arts degree in Communications in 2014 from Simon Fraser University.

Congratulations are also in order to **Nate Ruston** on the completion of his articles and his call to the bar. We are pleased to announce that Nate will be staying on with the firm as an associate.

**Guy Patterson & Timothy Luk** will be presenting a pre-conference session entitled "The Legal Side of Zoning: Foundations, Principles and Recent Developments" as part of the 2023 PIBC Annual Conference being held in Sun Peaks on May 30, 2023.

**Timothy Luk** will also be co-presenting another session at the 2023 PIBC Annual Conference in Sun Peaks, beginning May 31st, 2023, entitled "Housing Agreements - A Community Approach to a Powerful Tool".

**Mike Quattrocchi** will be presenting a session entitled "Trusts & Why They Matter to Municipalities & Regional Districts" at the GFOA Conference in Whistler from May 31-June 2, 2023.

**Elizabeth Anderson** and **Nick Falzon** will be presenting a session entitled "Case Law Update" at the Licence Inspectors and Bylaw Officers Association Conference and AGM being held in Nanaimo May 30 to June 2, 2023.

**Sukhbir Manhas** will be presenting a session entitled "Cybersecurity: The Legal Issues" at the LGMA Annual Conference, held June 13-15 in Nanaimo.

**Kathleen Higgins** and **Elizabeth Anderson** are also presenting at the LGMA Annual Conference. Their session is called "Waterworld: Impacts of Rising Seas and Rivers".

**STAY CONNECTED**

If you are keen to receive client bulletins and updates to the firm blog by e-mail, go to [www.younganderson.ca](http://www.younganderson.ca) and click on the "STAY CONNECTED" button at the top of the webpage.