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NEWSLETTER
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City of Vancouver Cannot Control Rents By By-law, BC Supreme Court Finds

In 0733603 B.C. Ltd. v. City of Vancouver, *2022 BCSC 1302, the BC Supreme Court considered the City of Vancouver's pioneering attempt to impose by bylaw rent controls between tenancies in single room accommodations ("SRAs") in the City. Council passed these rent control bylaws, pursuant to the power to regulate business, as part of a broader effort to improve housing affordability and accessibility within the City, especially for low-income tenants.*

Two property owners, who managed properties containing SRAs that were subject to the City's Bylaws, challenged the bylaws by arguing that the City did not have jurisdiction to pass any such regulation of landlord and tenant matters, given the existence of the provincial *Residential Tenancy Act* ("RTA") scheme. The City argued that since compliance with both the RTA and the Bylaws was possible, and the RTA did not specifically regulate in relation to inter-tenancy rent controls, the Bylaws should be considered a valid exercise of the City's ability to regulate in relation to business.

The Court found that the City was prohibited from using its business licensing power to create rules governing rent control

Given that the BC Supreme Court and Court of Appeal recently applied this dual compliance standard to uphold the City of New Westminster's bylaws regarding renovictions of residential tenants (*1193652 B.C. Ltd. v. New Westminster*, 2021 BCCA 176), it might have been expected that this position would prevail. However, the Court found that the distinguishing feature between the two schemes was section 10(2) of the *Community Charter*, applicable to New Westminster but not Vancouver. Section 10(2) of the *Community Charter* provides that a municipal bylaw is not inconsistent with another enactment if a person who complies with the bylaw does not, by this, contravene the other enactment. The Court found that section 272(1)(f) of the *Vancouver Charter*, which allows the City to regulate "every person required to be licensed under this Part, except to the extent that the person is subject to regulation by some other Statute" created a different and much more stringent test.

The Court held that, due to the specific language of section 272 of the *Vancouver Charter*, the only reasonable conclusion was that the bylaws should be assessed on a "pith and substance" or "dominant purpose" analysis. If the dominant purpose of the bylaws was the same as that of the RTA, then they were unauthorized. In performing the analysis, the Court found that the dominant purpose of the bylaws was "rent control in the context of residential tenancies". Since this area was an area, as per section 272 of the *Vancouver Charter*, already *subject to regulation* by the Province under the RTA, the Court found that the City was prohibited from using its business licensing power to create rules governing rent control, even if it was possible to comply with both legislative schemes.

Given that other BC municipalities are subject to the *Community Charter*, the specific effect of this ruling is limited. However, it does serve as a warning that the courts remain willing to engage in a close and sometimes narrow examination of the exercise of the powers of municipalities in contexts involving overlapping jurisdiction.

Elizabeth Anderson & Nick Falzon

Sufficient Shelter? Recent Decisions on Closing Encampments

The ongoing homelessness crisis is a complex, and at times seemingly intractable, problem both for the unhoused people living through it, and the local governments seeking to assist those unhoused people within their boundaries. Local governments and the courts must strike a difficult balance between addressing competing use of public spaces and health and safety concerns that may be raised in relation to encampments on the one hand, and the health,

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safety and constitutional rights of unhoused people on the other. Two recent decisions from the British Columbia Supreme Court, Bamberger v. Vancouver (Board of Parks and Recreation*), 2022 BCSC 49, and* Prince George (City) v. Johnny*, 2022 BCSC 282, provide further insight into what is presently required of local governments when grappling with these difficult issues. These decisions also indicate that the courts may reconsider encampment occupants' right to take shelter during the daytime.*

a) Adams to Adamson: a brief background in BC encampment law

The starting point for the legal framework surrounding encampments is *Victoria (City) v. Adams*, 2009 BCCA 563 (affirming 2008 BCSC 1363). The Court in *Adams* found that a Victoria bylaw which prohibited temporary shelters in Victoria parks infringed on unhoused persons' section 7 *Charter* right to life, liberty, and security of the person. Crucial to the Court's analysis was the fact that the number of unhoused persons in Victoria outnumbered the available shelter space in the City.

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The decision in *Adams* articulated a constitutional right to shelter in public parks, subject to two conditions. First, that this right is exercisable when the number of unhoused persons outnumber the available indoor shelter space. Second, that this right is confined to overnight hours, and does not extend to daytime sheltering.

A litany of subsequent cases have addressed the capacity for local governments to seek to limit or restrict the ability of unhoused persons to erect and maintain shelters since *Adams*. Through the basic articulation of the constitutional right set out in *Adams* has remained largely unchanged, there has been some gradual refinement regarding the determination of available shelter and the role of daytime sheltering in the analysis.

In *Abbotsford (City) v. Shantz*, 2015 BCSC 1909, the Court recognized that available shelter is not determined based solely on the number of available indoor shelter beds, but must also consider whether said space is meaningfully accessible to unhoused people, or if barriers would prevent individuals from accessing these spaces. *Shantz* also discussed daytime sheltering, noting that "there is a legitimate need for people to shelter and rest during the day and no indoor shelter in which to do so" (at 276). In *British Columbia v. Adamson*, 2016 BCSC 584, and *Prince George (City) v. Stewart*, 2021 BCSC 2089, the Court, in declining to grant injunctions to close specific encampments, did not provide any further specifications requiring encampment occupants to pack up their shelters during daytime hours.

b) Bamberger and Johnny: recent developments in the law

The decision in *Bamberger v. Vancouver (Board of Parks and Recreation*) addressed two competing petitions. The first petition was brought by occupants of the CRAB park encampment seeking judicial review of two orders issued by the General Manager of the Vancouver Park Board, one closing CRAB park to overnight sheltering, and another closing a portion of CRAB park to all members of the public for remediation work (the "Orders"). The second petition was brought by the Park Board for an injunction compelling the remaining encampment occupants to comply with the Orders.

The Court set aside the Orders and remitted them back to the General Manager or the Park Board for reconsideration, finding that the Orders had been both procedurally unfair and unreasonable. In considering procedural unfairness, the Court held that people sheltering at CRAB park at the time the Orders were issued had a right to notice and a right to be heard, and that those rights were not met.

In considering whether the Orders were reasonable, the Court assessed the General Manager's assertion that she was "'completely satisfied' that sufficient and appropriate indoor sheltering options were available for those sheltering at CRAB park" (at 87). The Court held that three facts must have been true to support this assertion: that there was enough indoor space for those sheltering at CRAB park; that those indoor spaces were available to CRAB park encampment occupants; and that those indoor spaces were suitable to those individuals (at 89).

None of these required facts were made out. The General Manager deposed that she had received assurances from B.C. Housing that there were enough indoor spaces for all encampment occupants. However, the Court found no specifics as to whether this indoor space had been provided, and the General Manager had not sought out the particulars. The Court stated that:

> ... when making an order that engages, and potentially has significant and harsh consequences for, the constitutional rights to life, liberty, and security of a highly vulnerable population, reasonableness requires more than unquestioned reliance on conclusory statements provided by another government office (at 97).

The indoor spaces that did exist were also found to not be meaningfully available to the CRAB park encampment occupants. The provided phonelines and systems for seeking shelter were exceedingly difficult to use and, when eventually reaching someone with information on available indoor spaces, the caller would be informed the spaces were either full or limited. The space that was meaningfully available was also not suitable to all encampment occupants. There were numerous issues with the available spaces such as bedbug infestations, requiring partners to separate from each other, and safety concerns for victims of domestic abuse.

The Court declined to issue the injunction sought by the Park Board. The Court traced the history of encampments in Vancouver's Downtown Eastside, outlining a cycle of ministerial orders and court injunctions being issued, encampments being closed, and being subsequently re-established in other locations. The Court observed that given this pattern, they were "not persuaded that granting an injunction to the Park Board now will fix the problem of persistent noncompliance, or inability to comply, with the restriction against daytime sheltering" (at 187). The Court also noted a lack of evidence that the encampment posed a serious health or safety risk to the

public, or to the encampment occupants themselves.

Prince George (City) v. Johnny follows on the heels of the decision in *Prince George (City) v. Stewart*. The Court in Stewart declined to issue a declaration that encampment occupants in a downtown green-space were in contravention of the City's zoning bylaw, finding that "absent other suitable housing and daytime facilities, the occupants of those encampments must be permitted to stay at the encampments" (at 115). The City sought an interlocutory (immediate) injunction allowing it to close the encampment – the subject of the decision in *Johnny* – arguing that it had satisfied the preconditions in the *Stewart* order.

The Court in *Johnny* declined to issue the interlocutory injunction requested by the City, find that the City had not resolved the issued raised in *Stewart*. In *Stewart*, the Court found that while the City had approximately the same number of open shelter beds as there were occupants of the encampment, not all occupants could access these beds. The Court also took judicial notice of the serious risks to the unhoused from extreme colds in the City during the fall and winter.

The City argued that it had addressed these concerns by providing additional housing and daytime facilities. The respondents argued despite this the encampment remained the only viable place of shelter for a number of occupants. The Court agreed, finding that the City was not entitled to dismantle the encampment. In making this finding, the Court noted that the City did not adequately identify how many people regularly occupied the encampment and how their shelters and belongings should be managed; that the additional housing did not have sufficient available space to house the remaining encampment occupants; and that other remaining shelter space in the City was not necessarily accessible or suitable for encampment occupants.

In Stewart*, the Court found that while the City had approximately the same number of open shelter beds as there were occupants of the encampment, not all occupants could access these beds*

c) Daytime sheltering: indication of future legal development?

In addition to providing current examples of the courts' approach to unhoused persons' constitutional right to shelter, *Bamberger* and *Johnny* also hint at further judicial consideration of daytime sheltering. *Johnny*, like *Stewart* before it, does not go so far as to suggest that the constitutional framework initially set out under *Adams* is expanded to include daytime shelter. It does however stipulate that there must be sufficient daytime shelter and facilities before allowing an encampment to be dismantled. This appears due in part to the added severity of fall and winter cold in the Prince George area, and the increased health and safety risks to unhoused persons exposed to the elements. However, while the risk associated with the cold is noted by the Court, it does not suggest this risk must be present before the Court will consider daytime shelter in its analysis.

Likewise in *Bamberger*, the Court does not suggest that the constitutional framework set out in *Adams* has been expanded to

include daytime sheltering, acknowledging that "the scope of the right to shelter under s. 7 of the *Charter* is limited to overnight sheltering" (at 157). The Court however also appears to indicate potential willingness to hear this constitutional question at a later date, noting that there is "no constitutional challenge, as of yet, to the Bylaw" (at 173), and emphasizing that the constitutional issues were not being considered in this case because the encampment petitioners had not raised them. Furthermore, while the Court did not weigh in directly on the constitutionality of prohibiting daytime sheltering, it did discuss its importance, stating that:

> Based on the evidence and the arguments presented by the Injunction Respondents, the daytime needs of at least some of those sheltering in the Park is a serious issue. The evidence shows that for some, daytime sheltering is a necessity or, at least decamping every morning and carrying their possessions throughout the day is a substantial hardship (at 191).

In declining to issue the injunction, the Court also points directly to the burden decamping each morning would place on encampment occupants, stating that: "An injunction compelling everyone to decamp each morning would truly be a "blunt instrument""(at 194).

Neither *Bamberger* or *Johnny* were decided directly on the issue of daytime sheltering. Nor do either of these cases purport to expand the constitutional framework established in *Adams*. However, they do both indicate an increased willingness from the Courts to consider daytime sheltering when considered actions taken by local governments towards closing encampments.

James Barth

Conflicts and "Communities" of Interest – New Direction from the Court of Appeal

In our September 2021 Newsletter, we discussed the BC Supreme Court's decision in Redmond v. Wiebe*, 2021 BCSC 1405, a case that provides interesting insight into the "community of interest" exception in the* Vancouver Charter*'s conflict of interest provisions. The Supreme Court's decision was appealed and last month the BC Court of Appeal released its ruling on the case (*Redmond v. Wiebe*, 2022 BCCA 244).*

The respondent was a councillor and part-owner of a restaurant and bar in the City of Vancouver. The petitioners (represented by Redmond), a group of electors, alleged that the respondent had a conflict of interest when he participated in and voted on a motion to expand outdoor seating to assist restaurants and bars during the COVID-19 pandemic (the "Temporary Patio Program"). The petitioners sought to disqualify the respondent on the basis that he failed to disclose his conflict of interest and contravened the required restrictions on participation.

Both the *Vancouver Charter* and the *Community Charter* prohibit councillors from participating in matters in which they hold a direct or indirect pecuniary interest – the penalty: disqualification. However, even where a councillor has been found to have a pecuniary conflict of interest, they may be saved from this harsh penalty by a statutory exception. At issue in this case was whether one such exception applied. Section 146(1)(a) of the *Vancouver Charter* (section 104(1)(a) of the *Community Charter*) provides that the conflict-of-interest provisions do not apply if a councillor holds a pecuniary interest in a matter "in common with electors of the city generally". This is known as the 'community of interest' exception.

For the community of interest

exception to apply, the councillor at issue

must share an interest in kind

with the comparator group,

in other words, the same kind of interest

The BC Supreme Court found that the community of interest exception applied, because the councillor's pecuniary interest was one that he shared with the 3,127 other restaurant and liquor licensees in Vancouver. This was, in the judge's view, a significant enough number of 'electors' that the exception was applicable.

On appeal, the petitioners argued that, for the community of interest exception to apply, the respondent's pecuniary interest would have to be held in common with all electors in the city. The Court of Appeal rejected this argument, finding that an interest held in common with *some* electors is sufficient to engage the exception. However, the Court did overturn the decision of the BC Supreme Court, holding that the wrong 'comparator group' had been identified. The Court of Appeal found that, even if there is some shared interest between the councillor and a segment of the electors – such as the 3,127 holders of restaurant and liquor licences – the identification of that interest is not the end of the exercise. Indeed, for the community of interest exception to apply, the councillor at issue must share an *interest in kind* with the comparator group, in other words, the same kind of interest.

In examining whether there existed an interest in kind, the Court found that, although the Temporary Patio Program was available to all restaurant and bar licensees, not all licensees were immediately eligible to apply due to various design and accessibility requirements imposed on applicants. At most, the respondent shared an interest in kind with a smaller subset of the 3,127 restaurant and liquor licensees – those that were ready and considered themselves able to apply for the Temporary Patio Permit during its limited availability. Their interest was different in kind from the broader population of licensees. Consequently, the respondent shared a common interest with a much smaller group of electors than previously identified, and the exception did not apply.

This raises the question: how small can the class of those sharing the pecuniary interest become before the benefit of the community of interest exception is lost? In *Redmond*, the Court of Appeal concluded that the group with which a councillor shares their interest in kind must be "sufficiently large". Put another way, the comparator group must represent a "significant segment" of electors. As the Court noted, what constitutes a significant segment is a matter of judgment. The purpose of the

conflict-of-interest provisions must be kept in mind, recognizing that the judgment of even the most well-meaning elected officials may be impaired when their personal financial interests are affected.

Moving back to the facts of the case, even if the smaller number of restaurant licensees and bar owners were enough to be considered a "significant segment" of electors, the Court found that the respondent had distinguished himself further from that group, putting his pecuniary interest in common with an even smaller one — those that could immediately enjoy the benefits of the Temporary Patio Program. The respondent was aware that his restaurant would immediately qualify for a permit (it was one of the first 14 business awarded) and he took steps to pursue the perceived benefits of the Temporary Patio Program, while exercising his public duties as councillor.

This Court of Appeal decision provides substantial direction on the community of interest exception and how the phrase "electors generally" should be interpreted. Where the elected official at issue gains an individualized, separate and distinct interest, clearly the exception will not apply. However, it also may not apply in circumstances where the comparator group is too small to constitute a "significant segment of the public" or where a councillor actively pursues the perceived benefits of a matter while exercising their public duties. Ultimately, the Court's decision emphasizes that elected officials should proceed with great care and caution when participating in discussion of and voting on decisions in which they may have an interest.

Nick Falzon & Julia Turner

Municipal Election Workers Are Likely Employees, Not Independent Contractors

In light of the upcoming municipal elections, this article addresses the approach that the Canada Revenue Agency (the "CRA") has taken towards municipal election workers, and the applicability of the Employment Standards Act*, RSBC 1996, c. 113 (the "*ESA*" or the "*Act*") to them.*

The CRA's Approach

In 2020, the CRA issued a ruling regarding the insurability of the employment of a British Columbia municipality's election workers under the *Employment Insurance Act*, SC 1996, c. 23 and the pensionability of their employment under the Canada Pension Plan ("CPP"), and determined that the municipality's election workers were "employees". The CRA examined the relationship between the election workers and the municipality to determine whether they were engaged to carry out services as employees, or whether they were self-employed individuals in business on their own account, i.e., independent contractors. The CRA examined the actual terms and conditions of the working relationship including such factors as:

- The level of control that the municipality had over the election workers' activities;

- Whether the workers provided their own tools and equipment to perform their duties;
- Whether the worker could subcontract the work or hire assistants;
- The degree of financial risk the worker took;
- The degree of responsibility for investment and management the worker held;
- The workers' opportunity for profit; and
- Any other relevant factors, such as written contracts.

Based on those factors, the CRA determined that the municipality's election workers were "employees" and not self-employed individuals.

In 2020, the CRA also issued guidance in relation to the deduction of income tax, CPP contributions, and employment insurance ("EI") premiums from the wages of election workers who are employees of government bodies:

https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/payroll/payroll-deductions-contributions/special-payments/election-workers.html.

According to the above CRA website, a government body employing an election worker must deduct income tax from their wages. A government body must also deduct CPP contributions and EI premiums from their wages, unless the election worker meets both of the following criteria:

a. The worker is not a regular employee of the government body; and
b. The worker works for less than 35 hours in a calendar year.

Applicability of the *ESA*

Given the above determination by the CRA, the issue of whether election workers are employees for the purposes of the *ESA* arises. The *ESA* also applies to employees, and not to independent contractors. The Employment Standards Branch would apply similar factors to those applied by the CRA in the decision discussed above, in determining whether a municipal election worker is an employee or an independent contractor. As a result, many municipal election workers would likely be found by the Employment Standards Branch to be employees and not independent contractors. Unlike elections workers hired by the provincial government, there is no exception to the application of the *ESA* for municipal election workers. Such election workers meeting the definition of employee under the *ESA* would be entitled to the protections of that *Act* such as minimum wage, overtime pay, vacation pay, minimum daily hours of work, and meal breaks.

Unlike elections workers

hired by the provincial government,

there is no exception to

the application of the ESA

for municipal election workers

Local government employers should keep this information in mind when they are hiring election workers for the upcoming municipal elections.

Michelle Blendell & Carolyn MacEachern

BC Legislation Establishes New Accessibility Requirements for Local Governments

On April 14, 2022, the Accessible British Columbia Regulation*, B.C. Reg. 105/2022 (the "Regulation") was enacted. The Regulation confirms that various organizations including local governments are subject to certain accessibility requirements under the* Accessible British Columbia Act*, S.B.C. 2021, c. 19 (the "Act"), which was developed to establish certain standards to promote accessibility and reduce barriers to full participation in society.*

Accessibility Requirements

a) Accessibility Committees

Pursuant to the Act and the Regulation, all local governments are required to establish an accessibility committee for the purposes of assisting the local government with identifying barriers to individuals in, or interacting with, the local government; and advising the local government on how to remove and prevent such barriers. The Act defines "barriers" as "anything that hinders the full and equal participation in society of a person with an impairment," and recognizes that barriers can be "caused by environments, attitudes, practices, policies, information, communications or technologies," and "affected by intersecting forms of discrimination." The Act requires that, to the extent possible, at least half of the members of each accessibility committee must be persons with disabilities or representing a disability-serving organization, and at least one member must be an Indigenous person. Accessibility committees will be responsible for development accessibility plans for the "identification, removal and prevention of barriers" for individuals seeking access to services.

b) Accessibility Plans

Additionally, effective September 1, 2022, the Act requires local governments, in consultation with their accessibility committee, to develop an accessibility plan for the purpose of identifying, removing and preventing barriers to individuals in, or interacting with, the local government. The accessibility plan, which must be reviewed and updated at least once every three years, must consider the principles of inclusion, adaptability, diversity, collaboration, self-determination, and universal design.

c) Public Feedback

Also effective September 1, 2022, the Act requires local governments to implement a mechanism for public feedback in relation to its accessibility plan and barriers to access in the organization generally. There is currently no guidance in the Act regarding the required process for receiving public comments and feedback, so this mechanism may be tailored to the needs of each local government.

Compliance with Accessibility Requirements

Local governments will have until September 1, 2023, to comply with the requirements of the Act to establish an accessibility committee, an accessibility plan, and a public feedback mechanism. Directors designated by the Minister under the Act will have broad powers to ensure compliance with the Act, including the power to require inspections and impose monetary penalties of up to $250,000 for non-compliance.

Local government employers should ensure that they comply with the requirements under the Act by establishing an accessibility committee, an accessibility plan, and a public feedback mechanism. For more information or with assistance in compliance with the Act, feel free to contact the lawyers at Young Anderson.

Julia Tikhonova & Carolyn MacEachern


Finalising a Housing Agreement – Crossing the Statutory t's and Dotting the Statutory i's

As local governments explore various options for addressing the province's housing crisis, many are turning to housing agreements under section 483 of the Local Government Act*, to ensure promises about price, occupancy and tenure are kept. In other recent papers and articles, we have discussed the terms and content of housing agreements, here we review just a couple of key details to keep in mind when the finish line is in sight.*

Entering into a Housing Agreement

Remember that a local government may only enter into a housing agreement by bylaw, which requires at least two meetings to perfect, because a bylaw cannot be adopted at the same meeting as it is given third reading. Practically speaking a housing agreement bylaw can take various forms, but generally it means a bylaw which identifies the "housing units" that are subject to the agreement, and attaches as a schedule a copy of the housing agreement itself. Though tempting, it's best to avoid tinkering with the terms of the agreement after it has been authorized by bylaw, because section 483(4) of the Local Government Act says a housing agreement can be amended only by bylaw (adopted with the consent of the owner). This means that the terms of the housing agreement should be settled before any bylaw readings, or before third reading at the latest.

Then what?

Once the housing agreement has been entered into by the local government, by bylaw, and signed by the owner of the land or the housing units in question, subsection 483(5), requires the local government to file a notice with the Land Title Office. This step must be taken after the housing agreement is entered into, and for any subsequent amendment. A notice is similar to, but not the same as, the registration of a "charge" on title. Common examples of a charge, as compared to a notice on title, include covenants and mortgages. Registering the notice must not be overlooked. Registration is what makes the agreement reach beyond the original signatory, to become binding on all persons who acquire an interest in the land. Giving the agreement this kind of enduring effect will likely be critical to making a local government's housing affordability wishes come true.

Guy Patterson & Timothy Luk


Whose Land is it Anyway?

The Expropriation Act *requires an expropriating authority to pay compensation to the owner of the land as part of the expropriation process. In its March decision in* Squamish (District) v. 0742848 B.C. Ltd.*, 2022 BCSC 379, the Supreme Court of British Columbia addressed the issue of who owns the land, and is thus entitled to a compensation payment, when the property at issue is foreclosed. The court concluded that the companies that own the land by virtue of an order granted in the foreclosure action should be treated as owners and be entitled to compensation.*

In this case, 0742848 B.C. Ltd. ("848"), the legal owner of the land, granted a mortgage to two companies (the "chargeholders"). The mortgage was registered against the title of the land. 848 defaulted on its payments, the chargeholders made a demand, and since payment was not forthcoming, the chargeholders commenced a foreclosure action. Meanwhile, the District of Squamish sought to acquire a right of way over the land and served an expropriation notice soon after an order, which set the redemption period, was pronounced in the foreclosure action.

To ensure that the District was paying the compensation required under section 20 of the *Expropriation Act* to the correct party, the District made an application to the Court. The Court ordered compensation to be paid into court.

In the foreclosure action, the Court made an order debarring 848 of the land, requiring it to immediately deliver vacant possession of the land to the chargeholders.

Moving back to the expropriation proceeding, the Court held that the chargeholders had a mortgage over the entire land prior to the expropriation and that they were the owners of the entire land under the order granted in the foreclosure action. The expropriated portion of the land was part of the chargeholders' security. Accordingly, the chargeholders were entitled to compensation for the expropriation as compensation for the loss of their interest. The Court concluded that the chargeholders should be "treated as an owner who has sold to the expropriating authority".

Accordingly, the chargeholders

were entitled to compensation

for the expropriation as compensation

for the loss of their interest

This case serves as a good reminder that determining ownership can sometimes be difficult. In circumstances where the local government is uncertain as to the ownership of a property it wishes to expropriate, the local government should consider making an application pursuant to section 20 of the *Expropriation Act* to determine the state of title to the land.

Alexandra Greenberg

Executing Land Title Act Forms – A Few Reminders

Infrequently, we field questions related to the proper execution of Land Title Act *forms. Less infrequently, we see defects in execution that render a form unregistrable. So, at the risk of sounding pedantic, I offer a few quick reminders on the proper execution of LTSA forms.*

First, the form must be executed by the local government's authorized signatories. For most local governments, this means the mayor and corporate officer. However, signing authority can be vested in a single person. This is often the case for releases of spent development covenants or obsolete statutory rights of way. Each authorized signatory must print their full first name, any initials, and surname below their signature.

Second, the date of execution must be inserted in numerals in the YYYY-MM-DD format.

Third, the signature of an authorized signatory must be witnessed by an "officer". Officers include lawyers, notaries and local government corporate officers and their deputies. The officer must actually witness the authorized signatory signing the document. Then, the officer must sign the document and apply the officer's stamp that contains the officer's first name, any initials and surname below the signature. In the absence of a stamp, the officer may print the officer's first name, any initials and surname in the same position.

Lastly, if an officer witnesses more than one authorized signatory's signature, the document must contain the language "as to both signatures" or similar. Most *Land Title Act* forms prepared by law firms will include such language. In circumstances in which the officer witnessed the signature of only one authorized signatory such language should be crossed out. Notably, even though a local government's signing procedures may require that two authorized signatories sign *Land Title Act* forms, the *Land Title Act* only requires that one of those signatures be witnessed by an officer.

Each authorized signatory

must print their full first name,

any initials, and surname

below their signature

Joe Scafe

Contract Termination and the Charter: What You Need to Know

The BC Supreme Court's reasons in The Redeemed Christian Church of God v. New Westminster (City)*, 2021 BCSC 1401 ("Grace Chapel BCSC") and the BC Court of Appeal's reasons in* The Redeemed Christian Church of God v. New Westminster (City)*, 2022 BCCA 224 ("Grace Chapel BCCA") shed light on potential concerns municipalities may face when they terminate contracts.*

In Grace Chapel BCSC, the petitioner, a church group, argued that the City's decision to terminate a hall rental contract was unreasonable as a matter of administrative law and also violated their *Charter of Rights and Freedoms* (the "*Charter*") freedom of expression and freedom of religion.

Grace Chapel had entered into a contract with the City to rent a City-owned venue to host a Christian youth conference. The City subsequently cancelled the contract with Grace Chapel after it received a complaint from a member of the public alleging that the conference would be "anti-LGBTQ". The City informed Grace Chapel that the youth conference would violate the venue's booking policy, which was incorporated into the contract, and provided that groups would be "restricted or prohibited if they promote racism, hate, violence, censorship, criminal or other unethical pursuits".

The BC Supreme Court concluded that Grace Chapel's claim was contractual and was therefore not subject to judicial review for unreasonableness. The relief sought by Grace Chapel was not available because the City's decision to cancel the contract did not involve the exercise of a statutory power. Similarly, the Court found that, by exercising its natural person power to terminate the contract, the City had not made a decision of sufficiently public character so as to be amenable to judicial review. However, the Court also concluded that the City's decision to terminate the contract did violate Grace Chapel's right to freedom of expression under the *Charter*. While administrative law remedies were not available to Grace Chapel, constitutional law remedies were not similarly limited.

The Court also concluded

that the City's decision to terminate

the contract did violate

Grace Chapel's right to freedom of expression

under the Charter

Section 2(b) of the *Charter* provides that everyone has the "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication". The BC Supreme Court concluded that the City's decision to cancel the contract with Grace Chapel infringed Grace Chapel's section 2(b) *Charter* rights and that the infringement was not justified under section 1 of the *Charter*. The Court stated:

> In this particular case, the City failed to proportionately balance competing *Charter* rights. The City took immediate steps to research and consider the concerns raised by the complaint it received that anti-LGBTQ views would be disseminated at the Youth Conference. Yet, before cancelling the Youth Conference the very next day, the City took no similar steps to more fully inform itself about the anticipated content or focal points of the speakers at the Youth Conference. There was a clear imbalance in the City's efforts to inform itself of the competing rights at stake, or to at least attempt to balance them. The failure to balance competing rights leads me to conclude that the City's Decision is an unreasonable and unjustified infringement.

In Grace Chapel BCCA, the Court of Appeal ultimately overturned the BC Supreme Court's decision on Grace Chapel's *Charter* infringement, based on the manner in which it had been commenced pursuant to the Supreme Court Civil Rules. The Court of Appeal concluded that in the absence of a proper proceeding for judicial review, a *Charter* claim must be separately commenced by way of a notice of civil claim. As Grace Chapel commenced its proceeding by way of a petition, it had not properly commenced the *Charter* claim, and therefore, the claim could not proceed.

Leaving aside the procedural reason that the Court of Appeal overturned the chambers judge's decision, this case is a helpful reminder that local governments need to consider *Charter* rights when making certain types of decisions. Even where the decision at issue is not made directly pursuant to a statute, or where, as here, the local government is exercising a "natural person power" by considering whether to terminate a contract for municipal-owned facilities, the *Charter* may apply.

Sarah Strukoff

Miscellaneous Statutes: Did You Know?

Did you know that under section 20 of the Community Care and Assisted Living Act, *community care facilities are exempt from provisions of local government bylaws that would limit the number of persons in care that a community care facility may accept and that would limit the types of care that may be provided to persons in care at a community care facility? In order to be exempt, the community care facility must not be used as a day care for more than 8 persons in care or as a residence for more than 10 persons, 6 of which are in care, and must comply with all enactments related to health and safety that are applicable to a single-family dwelling house.*

Joe Scafe

Look For Your Lawyers

We wish **Michael Moll**, the long-time editor of this newsletter, all the best as he brings his talents to a new role at Civic Legal. We, and the readers of the newsletter, will miss Michael.

Reece Harding will be teaching "Municipal Law" at the Municipal Administration Training Institute (MATI) on October 6, 2022.

Also on October 6, 2022, **Carolyn MacEachern** will be speaking on risk management at the Western Cities HR Conference.

On October 12, 2022, **Reece Harding** will be guest lecturing in administrative law for the Capilano University School of Public Administration.

Bill Buholzer and **Guy Patterson** will be teaching a planning and zoning law refresher for SFU Continuing Studies.

Bill Buholzer will be speaking on DCCs for GFOABC on November 14, 2022.

On November 24, 2022, **Sukh Manhas** will be giving the legal update at the LGMA Corporate Officers Forum.

We are pleased to welcome our newest articled student, **Nathan Ruston**, to Young Anderson. Nate is a graduate of the UVic Faculty of Law. Before law school, he completed a master's degree in history, also at UVic, and has since published two papers in historical journals. Last summer, he worked as a Review Officer Intern at WorkSafeBC, where he developed his skills in adjudication, policy analysis, and statutory interpretation. Nate grew up on the west coast, and is looking forward to working with communities across B.C.

CLE BC has recently published the Ninth Edition of **Bill Buholzer's** "Local Government: A British Columbia Legal Handbook", an essential resource for any planner or planning lawyer.

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