

Province Takes Direct Steps to Address Missed Housing Targets

By a relatively uncommon flexing of its constitutional land use muscles, using an order made pursuant to section 12 of the Housing Supply Act (the “April 7 Order”), BC’s Lieutenant Governor in Council has amended West Vancouver’s official community plan. The Province set the stage for the April 7 Order first by enacting the Housing Supply Act and then by setting housing targets, which the District had failed to meet, and by issuing a provincial directive, which apparently the District had not followed. West Vancouver was not alone in receiving targets and directives but as far as we know this is the first time the Province has amended a local government bylaw under the Housing Supply Act. It shows the Province may at least be inclined to take similar steps if other municipalities fail to meet their housing supply targets.

The *Housing Supply Act* permits the Province, by regulation, to select “specific municipalities” and set housing targets for them. In 2023 the Housing Supply Regulation was approved and, as of the writing of this article, 59 municipalities have been designated specific municipalities.

The minister responsible for the *Housing Supply Act* (the Minister of Housing and Municipal Affairs) issued the District a Housing Target Order on September 23, 2023, which set 1,432 units over 5 years as the total minimum number of net new completed housing units required to be built in the District. The first-year target was 220, which the District fell short of. In January 2025 the minister appointed an advisor

to assist the District with identifying barriers and recommending solutions to reaching the housing targets. The advisor issued a report after a two-month review period and from that report the minister issued three directives: 1) increase density at Park Royal, 2) extend Ambleside Apartment Area Development Permit Area, and 3) approve proposed Ambleside Centre local area plan. The April 7 Order which amended the District’s OCP relates only to the third directive.

It should not be inferred from this article that the District did nothing while the Province issued these orders and directives. As outlined in a series of letters between the minister and the District, which can be found

on the District's website, the two sides were in regular communication, engaged in the process, and reportedly worked together throughout. Despite this process, the District had, in the opinion of the minister, failed to meet any of the three directives. In a press release related to the April 7 Order, the Province noted that the Ambleside Centre local area plan was drafted by District staff, had undergone public consultation, and as it was otherwise ready to be adopted would be the subject of this provincial order.

Part 4 of the *Housing Supply Act* contemplates the steps taken by the Province. Beginning at section 6, the minister may, upon reviewing a housing target progress report make a determination that the housing target has not been met and that satisfactory progress towards meeting the target has not been made, may either appoint an advisor to the specified municipality and/or issue a directive to the specified municipality. In the case of the

District, the minister first appointed an advisor and then, using the advisor's report, issued directives. The *Housing Supply Act* does not permit the Lieutenant Governor in Council to

make an order unless a municipality has failed to comply with a directive issued under section 11 of the *Housing Supply Act* and the minister has recommended an order be issued.

This authority is similar to section 787 of the *Local Government Act*, which authorizes the Lieutenant Governor

in Council to make orders enacting or amending a zoning or parking bylaw if the minister is satisfied that a local government has failed to adopt zoning that complies with the small scale multi-unit housing requirements or related parking requirements. That authority though does not require a directive to have been issued, only that the minister give prior notice to the local government of the minister's objections to their bylaw and 30 days' notice to alter the bylaw accordingly.

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If you spent this entire article wondering who the Lieutenant Governor in Council is and how that mysterious entity relates to the Province and the minister under, hear this: the Lieutenant Governor in Council is effectively the province's Lieutenant Governor acting on the advice of provincial cabinet, which is all of the ministers in the province. It is therefore the collection of ministers rather than just one minister making decisions on their own, but it is not the ministers sitting as members of the Legislature making laws in the usual way (introduction of Bill, debate, readings, Royal Assent)

There is therefore a spectrum of government authority when it comes to provincial decision making and legislation, with individual ministers making decisions on one end, which represent a unilateral exercise of authority, to the Lieutenant Governor in Council making decisions with the input from the cabinet, representing a middle ground of group decision making, and then finally on the opposite end the provincial legislature passing

legislation which involves debate and voting by all elected MLA. In other words, when cabinet makes orders pursuant to legislation like the *Housing Supply Act*, cabinet is a delegate of the Legislature. This is important because, among other things, decisions of cabinet when acting as a delegate of the Legislature are, just like decisions of municipal councils and regional district boards, subject to judicial review. As always, judicial review is another level of checks and balances for the exercising of delegated authority, which occurs without the benefit of public debate and voting by the full legislature.



Timothy Luk ✍️

Where the Rubber Meets the Law: Road Dedication Agreements

When a local government seeks to acquire a piece of privately owned land for highway purposes, we frequently see that accomplished through a 'road dedication agreement' in which the private owner agrees to dedicate a portion of their land shown on a survey plan for highway purposes pursuant to section 107 of the Land Title Act.

The *Community Charter* broadly defines highway to include a street, road, lane, bridge, viaduct and any other way open to public use, other than a private right of way on private property. Section 107 of the *Land Title Act* provides that the deposit [in the land title office] of a subdivision, reference or explanatory plan showing a portion of the

land as highway operates as an immediate and conclusive dedication by the owner to the public of that portion of land shown as a highway.

Whether or not a local government agrees to pay compensation in exchange for the road dedication will depend on the circumstances

of each transaction. For example, where a road dedication is being provided in connection with a subdivision for the purpose of providing necessary and reasonable access to all new parcels, no compensation is paid in exchange for the dedication and typically there would not be any need for a written agreement solely to address the road dedication. In a different example, where a local government seeks to widen an existing road, the local government will typically enter into a road dedication agreement with each property owner to specify, among other things, the area of each acquisition and the purchase price or other consideration, as well as allocation of responsibility for plan preparation, registration, and related costs.

Sometimes, in lieu of or in addition to paying monetary compensation for the road dedication, local governments will agree to perform certain obligations on the property owner's lands, such as restoring any affected portions of the private property outside of the dedication area to the condition they were in prior to the local government's work at the property. In those scenarios, the local government may require that the property owner grant it a licence over portions of the property (before and/or after the dedication is effected) for the purpose of performing any works necessary by the local government in the specified licence area, which may include works agreed to by the local government as compensation for the dedication.

From a local government's perspective, preparing a road dedication agreement can be beneficial not only for the purpose of clarifying the terms of the dedication, but also to obtain

certain representations and commitments from the property owner that can protect and enhance the local government's interests in acquiring the highway. For example, road dedication agreements frequently include provisions to grant the local government access to the property (prior to completion of the dedication) upon a specified notice period for the purpose of carrying out inspections, tests, studies, appraisals, surveys, and investigations.

Upon completion of a road dedication, by section 35(1) of the *Community Charter*, all highways physically located in a municipality are vested in that municipality, except for those highways listed as exceptions in subsection 35(2), such as Provincial arterial highways and other forms of highway owned by the Province, federal highways, and

highways located on reserves under the *Indian Act*.

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Jacob Lewin  

Bill 17 - Province moves to uniform model for elected official conduct

In a long-awaited move, the Minister of Housing and Municipal Affairs has introduced legislation that would create uniform standards of conduct for elected officials in British Columbia. Bill 17 – 2026, Housing and Municipal Affairs Statutes (Codes of Conduct) Amendment Act, 2026, creates a framework for the adjudication of complaints submitted under codes of conduct. It also lays the groundwork for the province to introduce, by regulation, a uniform code that could apply to every local government in British Columbia.

Bill 17 is relatively lengthy, but some highlights include amendments to the *Community Charter* and *Vancouver Charter* that introduce the following: (1) new mandatory grounds for the closure of meetings relating to the consideration of code of conduct complaints; (2) procedural provisions dealing with the filing of complaints and referral to an investigator; (3) provisions establishing screening processes, along with informal and formal investigation processes; and (4) provisions guiding council decision-making and reporting of conduct matters.

Currently, local governments have the flexibility to determine what process will apply to a code of conduct complaint. This flexibility has, however, arguably led to several court cases in which elected officials have successfully challenged the procedural fairness of a code of conduct process (see *Herar v. Mission*, 2025 BCSC 1553, *Paull v. Quesnel (City)*, 2025 BCSC 347, and *Michetti v. Pouce Coupe*, 2022 BCSC 472). While a standardized process would not absolve local governments of the need to carefully consider each step in a conduct process, it would provide some clarification as well as a set of ground rules.

With Bill 17 still at first reading, we will continue to monitor it closely. While the procedural provisions are of great importance and interest, we also await the substantive matters that would be addressed in a model code. As illustrated by the variation between current codes of conduct that have been adopted by municipalities and regional districts, there is no agreement between local governments as to what kind of conduct should be captured by a code. Any code the province adopts must take great care to adequately balance the expressive rights of elected officials, which are both protected by the *Canadian Charter of Rights and Freedoms* and necessary for a robust and functioning local democracy, with the objects of the conduct regime, which include the orderly functioning of local governments and the protection of staff.

Should the legislation be adopted, it would render pre-existing codes of conduct of no force and effect.

Nick Falzon ✍️



Drawing the Line: Lessons from *Dan v. Vancouver (City)*

In Dan v. Vancouver (City), 2026 BCSC 799, the City of Vancouver’s Vacancy Tax Bylaw was challenged on judicial review by property owners who were required to pay an “empty homes tax”, claiming it applied unfairly to their circumstances. The tax was established in 2016 to increase the supply of rental housing by taxing vacant homes. It included several exemptions, none of which applied to the petitioners. There were several petitioners, each with unique circumstances, but they more or less collectively maintained that practical barriers prevented them from selling, developing, or renting their properties. Owners of the developed properties further emphasized that their homes were regularly used or served meaningful personal or family purposes rather than functioning as investment properties.

On judicial review, the petitioners first alleged that the City had failed to comply with the *Vancouver Charter* by not holding a public hearing before enacting the bylaw. They claimed that the Vacancy Tax Bylaw was effectively zoning-related because its purpose and design were intended to influence how owners used their “empty” homes, and therefore required a public hearing. The Court acknowledged the well-established principle that a bylaw need not expressly identify itself as a zoning bylaw, nor derive authority from the “zoning” provisions of enabling

legislation, in order to effectively function as one. At the same time, however, the Court

emphasized that a bylaw does not become a zoning bylaw merely because it indirectly influences the use or occupancy of land. Drawing on a contextual interpretation of the *Vancouver Charter*, the Court distinguished zoning – which *regulates* land use – from

taxation, which is a separate municipal function. The Court ultimately concluded that the Vacancy Tax Bylaw was not, in effect, a zoning bylaw.

The petitioners also argued that the City acted unreasonably by applying the tax to vacant land and to second homes that were used regularly. They contended

that taxing frequently-used second homes was irrational and illogical, and rested on

...when determining whether a bylaw constitutes a “zoning bylaw” that triggers public hearing requirements, the structure and design of the enabling legislation matters, but so does the nature of the bylaw and the intention of Council in enacting it.

unfounded generalizations. The Court rejected this argument, finding that Council’s rationale for declining to exempt such properties was “transparent, intelligible and justified.” The Court recognized the practical difficulties that would arise if the exemption sought by the petitioners were adopted and held that it was open to Council to determine where the line should be drawn.

A few lessons emerge from this case. First, when determining whether a bylaw constitutes a “zoning bylaw” that triggers public hearing requirements, the structure and design of the enabling legislation matters, but so does the nature of the bylaw and the intention of Council in enacting it. Relevant considerations include where the bylaw authority is located within the statute, the language used in the legislation, and whether other provisions suggest that the power being exercised is regulatory in nature.

Second, this case demonstrates that some level of over- or under-inclusiveness is often unavoidable in policy design, and legislative schemes often must rely on generalizations to be effective. Local governments are entitled to draw reasonable lines based on general patterns of behaviour, even if those lines do not perfectly account for every individual circumstance.



Jack Wells *✍*

No PPPA Protection from Bylaw Enforcement Proceeding

In a unique application commenced pursuant to the Protection of Public Participation Act, S.B.C. 2019, c. 3 (the “PPPA”), the Supreme Court of British Columbia recently declined an invitation to dismiss, on a preliminary basis, a bylaw enforcement proceeding commenced by the City of Kelowna. In Kelowna (City) v. Lindsay, 2026 BCSC 842, the applicants (David Lindsay and Lloyd Manchester), who are respondents in the City’s enforcement proceeding, argued that the proceeding “arose from an expression related to a matter of public interest” and that therefore the Court should dismiss it under the PPPA.

The PPPA, modeled on similar legislation from Ontario, is an “anti-SLAPP” statute. “SLAPP” stands for “strategic lawsuit against public participation”. The PPPA is designed to give defendants to certain civil court actions – usually,

but not always, defamation claims – the ability to apply early in the litigation for a dismissal order. By creating an off-ramp for claims relating to matters of public interest, the PPPA allows certain defendants to avoid going through costly

and time-consuming discovery and disclosure processes.

The PPPA does not require that defendants prove that the claim against them is a “SLAPP” suit. Rather, to engage the PPPA, a party must prove that: (1) the proceeding at issue “arises from an expression”; and (2) the expression at issue “relates to a matter of public interest”. Once those two elements are proven, the onus shifts to the plaintiff/respondent to convince the court (applying various factors set out by the PPPA) that it is in the public interest that the court proceeding should continue. While the PPPA is most commonly used in relation to defamation claims, there is nothing in its text that limits its usage to such matters.

The underlying claim at issue commenced by the City alleges that the applicants, and others who were involved in the “Freedom Rallies” that they organized, had breached several bylaws by holding unpermitted events, selling goods, erecting temporary structures, and blocking roadways. The bylaws alleged to have been breached were the City’s Parks and Public Spaces Bylaw, the Good Neighbour Bylaw, the Traffic Bylaw, and the Outdoor Events Bylaw.

While the Court was presented with an 1800-page evidentiary record that included substantial information regarding the Freedom Rallies, including substantial literature about vaccination issues, mandates, lockdowns, and informed consent – all of which was tendered in relation to the “public interest” elements of the PPPA test – the case came down to a single issue: whether the bylaw enforcement

proceeding “arose from an expression”.

The Court accepted the City’s argument that, for a bylaw enforcement proceeding to “arise from an expression” within the meaning of the PPPA, the *content* of the expression at issue must be a material element of the cause of action at issue in the proceeding. Because the bylaws relied on by the City did not target the content of the applicants’ expression – rather, they targeted the alleged harms caused by the activities engaged in by the applicants – there was not a sufficient causal link between the “proceeding” and the “expression” as required by the PPPA. While there was evidence before the Court that

the applicants, and others, subjectively believed that they had been targeted because of the content of their expression, the Court found that the PPPA was intended to avoid an inquiry into the motivation of a party for commencing litigation. Rather, the PPPA sets out an objective test, which in this case was not satisfied.

The Court accepted the City’s argument that, for a bylaw enforcement proceeding to “arise from an expression” within the meaning of the PPPA, the content of the expression at issue must be a material element of the cause of action at issue in the proceeding.

Following the dismissal of the PPPA application, the City is entitled to continue its proceeding, which seeks certain declarations and injunctions related to the activities undertaken by the applicants.

Nick Falzon ✍️



A Recent Decision on Liability for Unsafe Crosswalks

On January 27, 2026, the BC Supreme Court released its judgment in H.D. v. North Vancouver (District), 2026 BCSC 124, which considered a local government’s duty to construct and maintain crosswalks in a non-negligent manner such that their users are safe from an unreasonable risk of harm.

The events giving rise to this case occurred on June 12, 2015. That morning, the seven-year-old plaintiff was walking to school when she was struck by a van while crossing a crosswalk, resulting in a life-altering traumatic brain injury. The plaintiff subsequently sued the District of North Vancouver (the District), alleging that it had been negligent in maintaining the crosswalk. The issues at trial were (a) how liability for the accident should be apportioned as between the District, the driver, and the plaintiff, and (b) the amount of damages to which the plaintiff was entitled.

The Crosswalk

The crosswalk’s surface was marked, and it was indicated by a black and white sign on the right-hand side of the road as well as an advance yellow warning sign some distance ahead of it. The crosswalk was located at the base of a set of stairs that emerged onto the sidewalk immediately in front of the crosswalk. At the time of the accident, there was abundant vegetation on the side of the road as well as

in front of the stairs that descended to the crosswalk.

The Accident

The driver said that he was aware of the crosswalk and was travelling at or near the speed limit of 50 km/h as he approached it. He testified that when he was one car length away from the crosswalk, there was a pink blur and he saw a little girl adjacent to his bumper, at which point it was too late to avoid the collision. The plaintiff did not have a clear recollection of the accident.

At the time of the accident, there was abundant vegetation on the side of the road as well as in front of the stairs that descended to the crosswalk.

The District’s Liability

The judge began her analysis by observing that the District, as the party responsible for constructing and maintaining the crosswalk, owed a duty of care to the plaintiff to keep it in a reasonably safe condition.

The District did not argue forcefully that the

nature of its conduct in issue was in the realm of policy and thus exempt from liability. The judge considered that the alleged failures of the District were at the operational level, requiring the court to assess whether the roadway and crosswalk were reasonably safe for purposes of travel and met the applicable standard of care.

In assessing the crosswalk's safety, the judge found three features where it was lacking.

The first was that the black and white sign giving notice to drivers of the crosswalk would have been only partly visible to drivers.

The second was the concrete padding on the side of the road at the foot of the staircase, where a pedestrian would stand before entering the crosswalk. The growth of vegetation and the effect of that vegetation on both direct sightline and shading of the area meant that, from a driver's perspective, visibility would have been obscured. Additionally, from a pedestrian's perspective, it would have impeded a clear view from the sidewalk's edge towards oncoming traffic.

The third was visibility onto the stairway itself, which was completely obscured by vegetation.

This would have limited a driver's ability to respond to the entry of a pedestrian into the crosswalk. It also would have limited a pedestrian's opportunity to observe traffic before

being immediately beside the road. While the stairway was not part of the crosswalk itself, it formed part of the environment in which the crosswalk was situated such that it contributed to its overall safety.

While inspectors for the District carried out regular observations, they did not pay adequate attention to the impact that

obscurating the path and stairs from view would have on the total context of the crosswalk's safety. Although the District performed some routine pruning work, the manner in which they did so had actually made the vegetation denser and thus even further restricted visibility.

restricted visibility.

Also of note to the judge was the fact that this crosswalk was: (a) known to be used by children and families accessing an elementary school in the immediate vicinity, and (b) in an area of known concern for speeding drivers.

Based on these factors, the judge

concluded that the District had failed to meet its duty of care to make the crosswalk reasonably safe for prudent users. For that reason, the District was liable.

Although the District performed some routine pruning work, the manner in which they did so had actually made the vegetation denser and thus even further restricted visibility.

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The Plaintiff’s and Driver’s Liability

With respect to the driver, the judge assessed him 30% liable on the basis that she found he had been driving 70 km/h in a 50 km/h zone and failed to exercise due care.

As to the plaintiff, although she was capable of being held negligent notwithstanding her young age, there was no evidence that she had failed to exhibit proper behaviour when crossing the crosswalk.

Damages

Ultimately, the court awarded the plaintiff \$3,630,000.00 in damages, of which the District was responsible for 70%.

Takeaways

This decision reveals several important considerations for local governments in how they construct and maintain crosswalks.

The first is that maintaining the safety of crosswalks is an ongoing obligation, and requires careful consideration of how changing circumstances such as the growth of vegetation can impact the safety of an otherwise well-designed crossing. While a District employee had trimmed back vegetation at the crosswalk

just nine days prior to the accident, this was held to be insufficient to alleviate the visual impairment hazard. Maintenance standards should be reviewed to ensure that they are sufficiently rigorous to address identifiable risks.

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The second is that it is not just the crosswalk itself that a court may look at in assessing its safety, but rather the overall environment in which it was situated. In this case, the stairs leading to the crosswalk were an important consideration in determining the

crosswalk’s safety.

Finally, how the crosswalk is used can also be an important factor. Here, the fact that it was well-known to be used by children and young families, as well as the fact that speeding drivers were a documented concern, should have alerted the District that it needed to take extra precautions in maintaining the crosswalk.

Maintenance standards

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to address identifiable risks.



Piers Fibiger *✍*

To Warn or Not to Warn: The FIPPA Consideration

Has your local government been made aware of an unstable slope? A crumbling retaining wall?

Perhaps some other risk of public safety?

The local government may or may not have a duty to remedy the danger but could also have a standalone duty to warn the public of the hazard.

The *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 ("FIPPA") governs public bodies, such as local governments, setting out obligations public bodies must meet regarding their informational holdings. One of the obligations imposed by FIPPA on local governments is a duty to warn the public in certain situations. Section 25 of FIPPA reads as follows:

25(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information

- (a) About a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
- (b) The disclosure of which is, for any other reason, clearly in the public interest.

The risk need not be imminent for the duty to warn to be triggered, but the risk must be likely to happen. The Office of the Information and Privacy Commissioner for British Columbia (the "Commissioner") stated in Order 02-38 that, while each determination will rely on the specific

circumstances of the case, some information should be disclosed under s. 25(1)(a) after a risk has been identified, including (but not limited to) information that:

(a) Discloses the existence of the risk;

(b) Describes the nature of the risk and

the nature and extent of any anticipated harm; and

(c) Allows the public to take the necessary action to mitigate the risk or avoid harm.

Where disclosure involves personal information, the public body should limit the release to only what is reasonably necessary to address and reduce the risk.

It must be determined what level of risk and harm is required to trigger s. 25(1)(a) of FIPPA. Further, where a risk does not meet

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but the risk must be likely to happen.

the “significant” threshold under s. 25(1)(a), it may still meet the public interest threshold of s. 25(1)(b). However, even where neither threshold is met, a public body may consider proactive disclosure. If a public body chooses to make this proactive disclosure where s. 25 does not apply, it must first ensure the information does not attract the mandatory exceptions contained in part 2 of FIPPA or contain personal information, or redact such information prior to public release of the records.

Order F20-51 states that the obligations of s. 25 override every other section of FIPPA. Therefore, the threshold for the proactive disclosure under s. 25 is very high, and s. 25 only applies in the “clearest and most serious situations”. The BC Court of Appeal found a limited exception to this rule in *British Columbia (Children and Family Development) v. British Columbia (Information and Privacy Commissioner)*, 2024 BCCA 190, finding that s. 25 does not override solicitor-client privilege as established by s. 14 of FIPPA. Otherwise, all grounds under which a local government could otherwise withhold information under FIPPA do not operate if s. 25 is found to apply.

In 2013, the Commissioner released Investigation Report F13-05 to aid in further understanding how and when s. 25 of FIPPA applies. There were several case studies examined in this report. One such case was that of the Testalinden Dam collapse of 2010. Prior to the collapse, the Ministry of Forests, Lands and Natural Resource Operations possessed extensive information about the dam. A 1978 report indicated that the dam, in its existing

condition, posed a hazard to life and property in downstream communities. A later 1985 report concluded that the dam had reached the end of its useful life and should be replaced. The Commissioner found that the Ministry breached its duty to warn under s. 25 by failing to notify the public, or at minimum the affected property owners, of the compromised state of the dam. In addressing the argument that the harm was not imminent—given that the collapse occurred years later—the Commissioner clarified that public bodies must assess their obligations based on the information available at the time, not with the benefit of hindsight. Ultimately, the Commissioner concluded that the Ministry failed to meet its obligations under both s. 25(1)

(a) and (b). This case study illustrates the type of circumstance that can give rise to a duty to warn.

In summary, local governments must remain mindful of their statutory obligations under FIPPA when they become aware of potential risks to public health or safety, and they should act promptly

to determine whether the duty to warn has been engaged.

If a public body chooses to make this proactive disclosure where s. 25 does not apply, it must first ensure the information does not attract the mandatory exceptions contained in part 2 of FIPPA or contain personal information, or redact such information prior to public release of the records.

Emma McCann ✍️



Not So Exclusive After All? Province Required to Consider Land Use Requirements When Approving Mine Permits

Despite the provincial government's jurisdiction over mining which, in general, operates to oust municipal land use jurisdiction over mine sites (see O.K. Industries Ltd. v. District of Highlands, 2022 BCCA 12) a recent case illustrates that local government land use policies are still an important consideration for the Inspector of Mines when considering approval of a permit for a new mine. In Garnet Valley Agri-Tourism v. British Columbia (Ministry of Mining and Critical Minerals), 2026 BCSC 302 [Garnet Valley], the B.C. Supreme Court found that a decision to approve a permit for a gravel pit under the Mines Act was unreasonable, in part because of the decision-maker's failure to consider local land use requirements.

Garnet Valley involved a judicial review of a decision to grant a permit under the *Mines Act* to operate a gravel pit. Under the *Mines Act*, a permit from the Ministry of Mining and Critical Minerals is required to operate a mine. The *Mines Act* permit process includes the Ministry's review of the application, referral to other provincial ministries for input, an opportunity for the public to provide submissions, and consultation with First Nations.

The applicant, 1440254 B.C. Ltd., had applied in 2023 for a permit to operate a sand and gravel pit in the Garnet Valley area of Summerland. The Ministry received many submissions from the public regarding the permit application, including from the District of Summerland. The District's submissions noted that the proposed gravel pit was inconsistent with the District's land use bylaws, including its zoning bylaw and official community plan. Despite this, and despite many submissions from the general public raising concerns with the proposed gravel pit, the Ministry granted the *Mines Act* permit in 2024.

The Garnet Valley Agri-Tourism Association and another local landowner brought the petition for judicial review of the *Mines Act* permit on the basis that:

1. The decision to grant the permit was unreasonable because the decision-maker did not consider key issues, including local planning and zoning requirements; and
2. The decision was procedurally unfair, in part because the public notice stated that the Ministry could not consider planning or zoning issues as part of the permit process.

The Court found that the decision to approve the *Mines Act* permit was unreasonable. The District had included in its submissions to the Ministry that the proposed gravel pit was incompatible with local land use planning, as set out in the District's Official Community Plan (OCP) and zoning bylaw. The Court noted

that while municipal planning and zoning are outside the Ministry’s jurisdiction under the *Mines Act*, planning and zoning matters are part of the wider context of the permit approval.

Further, the Ministry was required to engage with the planning and zoning issues because “[l]and-use designations affect environmental impacts, public interest, and compatibility with surrounding uses” (*Garnet Valley* at para. 108). Ultimately, the Court found that the conflict with the District of Summerland’s OCP and zoning bylaw was a “central issue” and the decision to approve the gravel pit was unreasonable in part because the Ministry’s reasons did not address the OCP and zoning conflicts (*Garnet Valley* at paras. 117-118).

The petitioners also argued that the decision to approve the gravel pit was procedurally unfair, in part because the public notice calling for submissions stated that the Ministry lacked authority to consider submissions on planning or zoning. While the Court found that this “misstatement was not a trivial matter”, ultimately the Ministry received submissions on these issues and there was no evidence that the notice created a misunderstanding that affected the outcome of the decision (*Garnet Valley* at para. 169).

Finding that the Ministry’s decision to approve the gravel pit was unreasonable, the Court quashed the *Mines Act* permit and sent the matter back to the Ministry to reconsider the application based on the Court’s reasons.

Local governments’ planning and zoning requirements are not sufficient on their own to prohibit mines and gravel pits within their boundaries. Multiple cases have found that such bylaws cannot be enforced against a mine once it has been approved. However, the *Garnet Valley* case shows that a mine’s consistency (or lack thereof) with the applicable OCP and

zoning bylaw is a valid consideration for the Ministry when considering whether to approve a permit under the *Mines Act*. In other words, it was not open to the Inspector to simply cite “exclusive jurisdiction” as a response to valid concerns raised by a local government in the referral process. Rather, the Inspector must consider and

weigh input from a local government regarding its land use concerns, at least to the extent that those concerns affect other relevant factors, such as environmental impacts, compatibility with surrounding uses, and the public interest more generally.

Following *Garnet Valley*, local governments that receive referrals from the Ministry should consider how to frame their submissions in a manner that accords with the framework under the *Mines Act* and the *Health, Safety and Reclamation Code for Mines in British Columbia*. While local governments may have less coercive power in relation to mining that they do over other subjects, their comments and input can be important in the Ministry’s consideration of a particular application.

*Multiple cases have found that
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Sophie Marshall ✍️



Look For Your Lawyers

The firm is pleased to welcome **Jaia Manhas** as the firm's summer articulated student. Jaia has completed her second year of law school at Allard Law.

The firm is also pleased to congratulate **Rubal Kang** and **Peter Mate** on their upcoming completion of articles and call to the BC Bar this May.

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, along with Christina Benty (professional facilitator and speaker), will be facilitating "Beyond the Code: Operationalizing Responsible Conduct in Local Government" at a Pre-Conference Workshop prior to the Local Government Management Association Annual Conference being held June 9-11, 2026 in Penticton.

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.

STAY CONNECTED

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