

CANADA / JUDGMENT

1193652 B.C. Ltd. v. New Westminster (City)

2020 BCSC 163

COURT

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

1193652 B.C. Ltd. v. New Westminster (City),

2020 BCSC 163

Date: 20200211

Docket: S215150

Registry: New Westminster

Between:

1193652 B.C. Ltd.

Petitioner

And

The Corporation of the City of New Westminster

Respondent

Before: The Honourable Chief Justice Hinkson

Reasons for Judgment

Counsel for the Petitioner:

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Place and Date of Hearing:

New Westminster, B.C.

December 11, 2019

Place and Date of Judgment:

New Westminster, B.C.

February 11, 2020

Introduction

- [1] The petitioner has been the owner of a multi-family residential rental building located at 1117 Hamilton Street in the City of New Westminster ("the Building") since May 2, 2019. The Building is a four-storey building with 21 suites and was built in approximately 1959.
- [2] The respondent ("the City") is a municipality incorporated under the Local Government Act, R.S.B.C. 2015, c. 1.
- [3] On May 27, 2019, the City passed a bylaw amendment to its Business Regulations and Licensing (Rental Units) Bylaw No. 6926, 2004, in the form of Bylaw No. 8130, 2019 ("the Impugned Bylaw"), effective June 24, 2019.
- [4] The amendment restricts the ability of landlords to evict tenants in order to accommodate renovation work. The petitioner contends that the restriction is ultra vires and beyond the legislative jurisdiction of the City.

Background

- [5] In 2017, the City adopted an Official Community Plan through Bylaw No. 7925, 2017. Policy 8.3 of the Official Community Plan provides that the City is to "[f]oster a rental housing stock in which tenants have adequate opportunities to live in healthy, safe and secure housing".
- [6] Thereafter, the City perceived that it had a shortage of affordable market rental residential accommodation, and instituted a Rental Housing Revitalization Initiative, intended, in part, to address what it described as "renovictions", defined as the eviction of tenants under the guise of performing major renovations on units and then significantly increasing the rent on those units.

- [7] On February 4, 2019, the City adopted Bylaw No. 8085, 2019 in response to this perceived shortage. The bylaw amended the City's Business Regulations and Licensing (Rental Units) Bylaw by adding new regulations respecting evictions related to building renovations. The preamble to the bylaw provided, in part, that:

WHEREAS the renovation of residential buildings can usually be approached by performing renovations on a suite by suite or floor by floor basis as suites or floors become vacant in the normal course of business; and

WHEREAS the residential tenancy legislation generally applicable in British Columbia permits owners to evict tenants in order to renovate or repair the tenant's home and to increase rents to recover the cost of significant repairs and renovations, in each case subject to certain limitations set out in the legislation

- [8] The minutes of the City's council meeting when Bylaw No. 8085, 2019 was passed recorded that council observed "[r]enters have not been protected from renovictions by the Residential Tenancy Act", there is a "[n]eed for strong action to respond to the housing crisis", and "[l]ocal landlords are being replaced by investors who are driven by the low vacancy rate".

- [9] In what was indicated to be an effort to improve clarity and the practical application of the regulations, Bylaw No. 8085, 2019 was amended by the adoption of the Impugned Bylaw.

- [10] The Impugned Bylaw provides, in part:

47. Restriction on Evictions

- (a) No owner shall deliver to any tenant a notice of termination of their tenancy of a rental unit in order to renovate or repair the rental unit, or having delivered such a notice prior to the enactment of this section 47(a), require the tenant to vacate their rental unit pursuant to the notice, unless the owner has obtained every building permit, plumbing permit, development permit, special development permit or heritage alteration permit required by any City bylaw and any other permit or approval required to authorize the renovation or repair, and has either:

i entered into a new tenancy agreement with the tenant on the same terms as the tenancy agreement pertaining to the rental unit being renovated or repaired, or terms that are more favourable to the tenant, in respect of a comparable rental unit in the same building, and provided a copy of the agreement to the Manager; or

ii made other arrangements in writing for the tenant's temporary accommodation during the renovation or repair, and for their return to their original rental unit under the terms of the existing tenancy agreement following completion of the renovation or repair, and provided to the Manager satisfactory documentation of the arrangements including evidence of the tenant's consent to the arrangements.

- (b) No owner shall, having failed to comply with section 47(a), continue to fail to enter into a new tenancy agreement as described in section 47(a)(i) or make other arrangements for the tenant's temporary accommodation and return to their original rental unit as described in subsection 47(a)(ii).
- (c) For the purposes of subsection (a)(i),
 - i. a rental unit in another building that is located on the same parcel as the building that is being renovated or repaired and owned by the same owner is deemed to be a rental unit in the same building,
 - ii a rental unit is comparable to a rental unit that is being renovated or repaired if it has the same or a greater number of bedrooms and complies with the maintenance standards in Section 32 of the Residential Tenancy Act and Part 4 of this bylaw, and the rent for the unit is equal to or less than the rent for the rental unit that is being renovated or repaired; and
 - iii the new tenancy agreement may either transfer the tenant's tenancy permanently to the other rental unit, or entitle the tenant to occupy the other rental unit temporarily during the course of the renovation or repair and return to their original rental unit following completion of the renovation or repair.
- (d) No owner shall, having renovated or repaired a rental unit as permitted by subsection (a)(ii), increase the rent payable by the tenant upon their return to their rental unit, except as an "additional rent increase" approved under Part 3 of the Residential Tenancy Act.
- (e) The Manager may require any owner to provide, prior to obtaining a business licence or business licence renewal under this bylaw, a statutory declaration that states the rent payable in respect of any rental unit prior to and following renovation or repair work that required the tenant of the rental unit to vacate the unit. If the rent was increased, the declaration must include a copy of the director's approval of the rent increase under Part 3 of the Residential Tenancy Act.
- (f) The Manager may issue or renew a business licence under this bylaw to an owner who has applied for an additional rent increase related to renovation or repair under Part 3 of the Residential Tenancy Act if the director has not yet decided the rent increase application. In doing so, the Manager may indicate on the licence that a surcharge may become payable under subsection (g) if the additional rent increase is not allowed but the rent for the rental unit in question exceeds the rent that is allowed without the additional rent increase.
- (g) The Manager may levy a monthly business licence surcharge on any owner who contravenes subsection (d), in the amount that is the difference between the rent permitted by that subsection and the rent that the owner's tenant is paying in respect of the rental unit that has been renovated or repaired, and may refuse to renew the business licence of any owner who, being subject to such a surcharge, has not paid the surcharge by the date on which the licence renewal is required.

48. Application for Exemption

- (a) An owner who is subject to section 47 may apply to the Council for an exemption from that section in respect of the owner's building or one or more portions of the building, on the grounds that the owner's renovation or repair plans cannot be safely implemented unless the building or portion is vacated.
- [11] The petitioner purchased the Building on May 2, 2019. It has 21 suites. The Building has not undergone extensive renovations since it was constructed, and the petitioner asserts that it is in poor condition and requires cosmetic, mechanical and electrical upgrades, and general maintenance.
- [12] The petitioner contends that in order to effect the needed upgrades, it is necessary to: demolish certain areas of the interior of the Building; remove and replace windows and lighting; and remove and replace floors, cabinets, countertops, kitchen appliances, lights, sinks, toilets, bathtubs, dishwashers, washers and dryers, and electrical panels. The petitioner also contends that the water lines and piping require upgrading, the interior of the Building requires upgrading and painting, and the exterior requires painting, landscaping and signage.
- [13] At present, nine of the 21 units are vacant. The petitioner contends that it requires vacant possession of all of the 21 units for a minimum period of one year in order to perform the renovations, the total cost of which is asserted to be in excess of \$1 million. The petitioner has secured construction financing to cover the expected cost of the renovations.
- [14] The petitioner has not applied for an exemption from the terms of the Impugned Bylaw under s. 48 thereof.

The Issue

- [15] The petitioner seeks relief under the Judicial Review Procedure Act, R.S.B.C. 1996, c. 241. Specifically, the petitioner seeks a declaration that the Impugned Bylaw is ultra vires the City and is therefore invalid, and an order that the Impugned Bylaw be quashed. The petitioner also seeks the costs of this proceeding.
- [16] In its amended petition, filed July 9, 2019, the petitioner originally advanced a number of grounds challenging the Impugned Bylaw. The City pleaded responses to these various grounds in its response to petition, filed August 6, 2019.
- [17] The further amended petition was filed by consent on December 10, 2019. At the hearing of this petition, the parties agreed that the only issue before me was whether the Impugned Bylaw was intra or ultra vires the jurisdiction of the City to enact.

Relevant Legislation

[18] Municipalities are created by statute. Their powers are statutorily delegated by the provincial government. The Community Charter, S.B.C. 2003, c. 26 is the enabling statute for the City's power to adopt bylaws generally.

[19] Section 8 of the Community Charter includes that:

(3) A council may, by bylaw, regulate, prohibit and impose requirements in relation to the following:

(g) the health, safety or protection of persons or property in relation to matters referred to in section 63 [protection of persons and property];

...

(6) A council may, by bylaw, regulate in relation to business.

(7) The powers under subsections (3) to (6) to regulate, prohibit and impose requirements, as applicable, in relation to a matter

(a) are separate powers that may be exercised independently of one another,

(b) include the power to regulate, prohibit and impose requirements, as applicable, respecting persons, property, things and activities in relation to the matter,

(8) As examples, the powers to regulate, prohibit and impose requirements under this section include the following powers:

(a) to provide that persons may engage in a regulated activity only in accordance with the rules established by bylaw;

(b) to prohibit persons from doing things with their property;

(c) to require persons to do things with their property, to do things at their expense and to provide security for fulfilling a requirement.

(10) Powers provided to municipalities under this section

(a) are subject to any specific conditions and restrictions established under this or another Act, and

(b) must be exercised in accordance with this Act unless otherwise provided.

[20] The term "regulate" found in subsections 8(7) and 8(8) of the Community Charter is broadly defined in the Schedule thereto:

"regulate" includes authorize, control, inspect, limit and restrict, including by establishing rules respecting what must or must not be done, in relation to the persons, properties, activities, things or other matters being regulated (emphasis added).

[21] Section 9 of the Community Charter sets out spheres of concurrent provincial authority:

9(1) This section applies in relation to the following:

- (a) bylaws under section 8 (3) (i) [public health];
- (b) bylaws under section 8 (3) (j) [protection of the natural environment];
- (c) bylaws under section 8 (3) (k) [animals] in relation to wildlife;
- (d) [Repealed 2015-2-47.]
- (e) bylaws under section 8 (3) (m) [removal and deposit of soil and other material] that
 - (i) prohibit soil removal, or
 - (ii) prohibit the deposit of soil or other material, making reference to quality of the soil or material or to contamination.

(2) For certainty, this section does not apply to:

- (a) a bylaw under section 8 [fundamental powers] that is under a provision not referred to in subsection (1) or is in respect of a matter to which subsection (1) does not apply,
- (b) a bylaw that is authorized under a provision of this Act other than section 8, or
- (c) a bylaw that is authorized under another Act,

even if the bylaw could have been made under an authority to which this section does apply.

(3) Recognizing the Provincial interest in matters dealt with by bylaws referred to in subsection (1), a council may not adopt a bylaw to which this section applies unless the bylaw is

- (a) in accordance with a regulation under subsection (4),
- (b) in accordance with an agreement under subsection (5), or
- (c) approved by the minister responsible.

[22] Section 10 of the Community Charter deals with conflict between municipal bylaws and provincial laws:

10(1) A provision of a municipal bylaw has no effect if it is inconsistent with a Provincial enactment.

(2) For the purposes of subsection (1), unless otherwise provided, 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.

[23] Section 63(f) of the Community Charter provides that:

63 The authority of a council under section 8 (3) (g) [spheres of authority - protection of persons and property] may be exercised in relation to the following:

- (f) rental units and residential property, as those are defined in the Residential Tenancy Act, that are subject to a tenancy agreement, as defined in that Act.

[24] The Residential Tenancy Act, S.B.C. 2002, c. 78 is also relevant to the consideration of this petition. It applies to tenancy agreements, rental units and other residential property: s. 2. It defines "rental unit" and "tenancy agreement" respectively as follows:

living accommodation rented or intended to be rented to a tenant;

And

an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit

[25] Subsections 5 and 6 of s. 49 of the Residential Tenancy Act provide that:

- (5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

- (6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c) convert the residential property to strata lots under the Strata Property Act;
- (d) convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

The Positions of the Parties

- [26] The petitioner contends the provisions of the Community Charter do not permit the City to create landlord-tenant legislation and that if the Impugned Bylaw is ultra vires, it is unnecessary for it to have to apply for any exemption under the bylaw.
- [27] The City contends that the Impugned Bylaw fits within the scope of the legislative authority found in ss. 8(6) and 8(3)(g) of the Community Charter, and says that it is unnecessary to apply either a pith and substance analysis or a frustration of purpose analysis.
- [28] I was advised by counsel that the petition herein was served on the Attorney General for British Columbia, who chose to neither file any response nor appear by counsel before me.

Discussion

Standing

- [29] The petitioner's standing to bring its petition was not challenged and I find that it has private interest standing to bring the petition for judicial review as "a person interested in the bylaw": *Benoit v. Strathcona (Regional District)*, 2019 BCSC 362 [Benoit] at para. 26.

Standard of Review

- [30] I accept the shared view of the parties that the standard of review to be applied to the vires issue is that of correctness: *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19 at para. 5 [United Taxi].

Principles of Statutory Interpretation

- [31] Municipal authority to enact bylaws is governed by the basic principles of statutory interpretation.
- [32] In interpreting the Community Charter, I must give the statute a fair, large and liberal interpretation and must read the words in their grammatical and ordinary sense harmoniously with the scheme of the statute, its object, and the intention of the Legislature: *United Taxi* at paras. 6-8.
- [33] This approach is codified in s. 4 of the Community Charter, which provides:
- 4(1) The powers conferred on municipalities and their councils under this Act or the Local Government Act must be interpreted broadly in accordance with the purposes of those Acts and in accordance with municipal purposes.
- (2) If
- (a) an enactment confers a specific power on a municipality or council in relation to a matter, and

- (b) the specific power can be read as coming within a general power conferred under this Act or the Local Government Act,

the general power must not be interpreted as being limited by that specific power, but that aspect of the general power that encompasses the specific power may only be exercised subject to any conditions and restrictions established in relation to the specific power.

[34] The Community Charter emphasizes that the public is best served when the municipalities and the Province "acknowledge and respect the jurisdiction of each" and "work towards harmonization of Provincial and municipal enactments, policies and programs": s. 2(1). Section 2(2) articulates the principles upon which the relationship between municipalities and the Province is based, including:

- (a) the Provincial government respects municipal authority and municipalities respect Provincial authority;
- (f) the authority of municipalities is balanced by the responsibility of the Provincial government to consider the interests of the citizens of British Columbia generally;

[35] Section 3 of the Community Charter describes its purpose as follows:

3 The purposes of this Act are to provide municipalities and their councils with

- (a) a legal framework for the powers, duties and functions that are necessary to fulfill their purposes,
- (b) the authority and discretion to address existing and future community needs, and
- (c) the flexibility to determine the public interest of their communities and to respond to the different needs and changing circumstances of their communities.

[36] A bylaw is presumed to be validly enacted until proven otherwise: *MacMillan Bloedel Ltd. v. Galiano Island Trust Committee* (1995), 10 B.C.L.R. (3d) 121 at para. 144 (C.A.).

Whether the Impugned Bylaw is intra or ultra vires

[37] If the Impugned Bylaw is not authorized by the Community Charter, then it is ultra vires and must be set aside: *Benoit* at para. 22.

[38] The City contends the business regulation powers of a municipality are cast in broad form and that the Impugned Bylaw draws on its power to regulate in relation to business under s. 8(6) of the Community Charter. The City also pleads and relies on the provisions of ss. 8(3)(g) and 63(f) of the Community Charter.

[39] In *Koslowski v. West Vancouver (Municipality)* (1981), 26 B.C.L.R. 210 at 222 (S.C.), Chief Justice McEachern commented:

The fact that council had more than one purpose, and the fact that one of its purposes may have been its predominant purpose, and beyond its power, does not prevent council from acting lawfully if it also has an honest purpose that is within its statutory powers.

Where is the line to be drawn? When there is more than one purpose, as in this case, the test of predominant purpose may not be appropriate to determine legality because it is not always possible to ascertain the predominant purpose, or the scales may be weighted only slightly one way or the other. In my view, legislative action should be upheld in most cases as long as the court is satisfied that council does in fact have a lawful purpose and it acts in good faith. In such circumstances good faith is a proper test by which to judge the conduct of council. If council acts in good faith, and it has one or more lawful purposes, then its enactments should not be set aside.

[Emphasis added]

[40] Applying this reasoning, I therefore need only determine if the Impugned Bylaw had a lawful purpose, and need not determine its essential character or purpose.

The "Pith and Substance" of the Impugned Bylaw

[41] The petitioner contends that the vires of the Impugned Bylaw falls to be determined by an examination of its dominant purpose, or pith and substance. The petitioner contends that the dominant purpose of the Impugned Bylaw is landlord-tenant legislation and that it is thus an attack on the perceived inadequacy of the Residential Tenancy Act.

[42] The petitioner cites *West Kelowna (City) v. Black Crow Herbals Association*, 2019 BCSC 1082 at para. 52 [Black Crow], for the proposition that this Court must engage in a two-step analysis to determine the vires of the Impugned Bylaw: (1) determine the essential character of the impugned provision, then (2) determine whether the impugned provision falls within the jurisdiction of the enacting government.

[43] In *Black Crow*, Mr. Justice Blok dealt with the division of powers between the federal criminal law power and the provincial power over property and civil rights. The bylaw at issue was one that purported to prevent certain cannabis dispensaries from operating in West Kelowna. The dispensaries challenged the bylaw as purporting to exercise a criminal law power, thus rendering it unconstitutional. The alleged conflict was between municipal jurisdiction (statutorily enabled through the Community Charter) and federal jurisdiction.

[44] It was in this context that Blok J. said at para. 52 the authorities establish a two-step test. This is well settled. In constitutional division of powers cases, the analysis is the two-step test therein cited. However, I do not read Blok J. as suggesting the analysis is similarly imported to considering potential conflict between municipal and provincial powers.

- [45] In other words, the issue in *Black Crow* turned on the division between federal and provincial powers, not provincial and municipal powers, which is a different issue than the one before me.
- [46] In light of this, the reasoning in *Black Crow* does not compel a decision that the adoption of the Impugned Bylaw is beyond the jurisdiction of the City. I find that the Impugned Bylaw is not inconsistent with the provisions of the Residential Tenancy Act, and that compliance with it would not result in the contravention of the provisions of that Act.
- [47] The petitioner also placed great reliance on the comments of Madam Justice Newbury, writing for the Court, in *Canadian Plastic Bag Association v. Victoria (City)*, 2019 BCCA 254 [Canadian Plastic Bag]. The issue before the Court in that case was whether a Victoria bylaw constituted the regulation of business under s. 8(6) of the Community Charter or instead a regulation in relation to the natural environment under s. 8(3)(j). If the bylaw constituted a regulation in relation to the natural environment, then it required provincial approval pursuant to s. 9 of the Community Charter.
- [48] Newbury J.A. applied a pith and substance test in that case to determine whether the impugned legislation there was adopted under s. 8(3)(j), which is under concurrent authority with the Province, or under s. 8(6), which is sole municipal authority. I do not find Newbury J.A. employed the analysis for a vires determination more generally. At paras. 41-42, Newbury J.A. held, in part:
- [41] As we have seen, cases such as *Koslowski* and *International Bio Research* demonstrate that where a bylaw is enacted in good faith and the municipality has a purpose that, broadly speaking, can be said to fall within the enabling legislation, it will (absent any other statutory restriction) be upheld -- even though there may also be other underlying purposes and even though individual members of the council may have had other motivations.
- [42] Setting aside s. 9 for the moment, then, Bylaw 18-008 might well be justified as having a "lawful purpose" in relation to "business." (See *Koslowski* at 222.) In this instance, however, we must consider s. 9, which makes environmental protection a matter of "concurrent authority" and prima facie at least, requires provincial approval for a bylaw that regulates "in relation to ... protection of the natural environment." If the "true character" of the bylaw is found to relate to the protection of the environment, the second issue is whether properly interpreted, the requirement for approval is negated by another provision of the Community Charter or a regulation thereunder, as the City contends.

[Underline emphasis added; bold emphasis in original]

- [49] The City contends, and I agree, that the pith and substance, or dominant purpose, analysis as a means of limiting the scope of municipal power, is only appropriate where there is an applicable legislative direction that precludes overlap between the municipal power at issue and another specified power where the legislative regime at issue expressly provides for a division of powers. That is not the circumstance in this case.

Section 8(6): Business Regulation

- [50] In order for the Impugned Bylaw to be intra vires the power granted by s. 8(6) of the Community Charter, the Impugned Bylaw must "regulate" in relation to "business".
- [51] Cases construing the meaning of "business" in the context of the Community Charter and similar enactments have given the term a broad meaning: Canadian Plastic Bag at para. 41.
- [52] There is no issue as to whether the petitioner is in the "business" of renting units in an apartment building. Instead, the petitioner contends the Impugned Bylaw does not fit within the definition of "regulate" in the Community Charter because the bylaw imposes "requirements". I disagree, and accept the submission of the City that a bylaw that "authorizes" or "restricts" is a regulation. I also accept the City's submission that when done as part of an "authorization," "control," "inspection," "limit," or "restriction," a bylaw that establishes "rules respecting what must or must not be done" is also a regulation. The Impugned Bylaw meets these criteria.
- [53] The definition of "regulate," in the Schedule to the Community Charter, includes that a regulation may establish "what must or must not be done." Implicit in those words is the ability to make regulations that include "requirements" in the broad sense of that term.
- [54] The Impugned Bylaw provides for what must be done in order to end a tenancy for renovation purposes as well as what must not be done unless specified actions are first taken. I find that in this regard, it thus fits within the definition of "regulate".
- [55] Therefore, in my view, the Impugned Bylaw fits within the jurisdiction granted by s. 8(6) of the Community Charter. It establishes rules that constitute regulations or requirements in relation to the business of renting of apartment units.

Sections 8(3)(g) and 63(f): Regulation of Health, Safety or Protection of Persons or Property

- [56] Section 8(3)(g) of the Community Charter authorizes municipalities to regulate for the health, safety or protection of persons or property by bylaw. Subsection 63(f) of the Community Charter authorizes such authority to be exercised in relation to "rental units and residential property, as those are defined in the Residential Tenancy Act, that are subject to a tenancy agreement, as defined in that Act."
- [57] The petitioner contends that the reference to rental units and residential property in s. 63(f) of the Community Charter should be narrowly construed and restricted to safety measures such as installing pool enclosures and emergency exits.

- [58] There is no express limitation in s. 8(3)(g) as to the permissible object of a bylaw aimed at the "protection" of tenants of rental units. I agree with the City that the word "protection" cannot have been included in this section to give authority to deal only with physical harm. I find that there is no reason to conclude that the tenant protection aims of the City are insufficient to bring the Impugned Bylaw within the scope of the authority in s. 8(3)(g).
- [59] This interpretation of s. 8(3)(g) is consistent with the purpose of the Community Charter as described in s. 3(c), which gives a municipality the flexibility to respond to the needs of a particular element of the community; in this case, renters.
- [60] It is my view that the Impugned Bylaw also fits within the jurisdiction granted by s. 8(3)(g). It establishes rules that constitute regulations, prohibitions or requirements. Those rules are in relation to tenants. They aim to protect tenants from the consequences of evictions from their rental units, which are subject to tenancy agreements under the Residential Tenancy Act.

Whether the Impugned Bylaw Should Be Read Down

- [61] The petitioner contends that the Residential Tenancy Act is an all-inclusive or comprehensive scheme that the Impugned Bylaw would frustrate if it is found to be intra vires. The petitioner therefore urges this Court to read down the Impugned Bylaw to exclude an interpretation which renders it intra vires.
- [62] The petitioner likens the Impugned Bylaw to the provisions of the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231, which were read down by Mr. Justice Steeves in *Cook v. The Insurance Corporation of British Columbia*, 2014 BCSC 1289 [Cook].
- [63] In *Cook*, the plaintiff sought damages for, amongst other claims, breach of alleged duties and obligations under the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165 ("FIPA") for concerns he had about how the defendants collected, distributed and used personal information about him obtained from insurance claims. The defendants challenged the plaintiff's reliance on FIPA to ground such claims. They argued FIPA was a complete code. As such, they said any rights and remedies owed to the plaintiff must be found in FIPA, which did not provide adjudication of these rights and remedies in Supreme Court.
- [64] Steeves J. considered an application to strike out large portions of the plaintiff's notice of civil claim. At para. 51, he accepted that:

51 If there is an issue of FIPA versus the common law (i.e. tort law) or where two (or more) legislative provisions apply to the same facts, there are four possibilities:

- 1) The overlapping provisions do not conflict, and since both apply, the court gives effect to both.

- 2) The overlapping provisions might conflict, but the conflict is avoided through legislative fiat or judicial interpretation.
- 3) The overlapping provisions do not conflict, but the court concludes that one of the provisions was meant to be exhaustive and therefore applies to the exclusion of the other.
- 4) The overlapping provisions conflict and, in order to resolve the conflict, the court applies a paramountcy rule.

Ruth Sullivan, *Statutory Interpretation*, 2nd ed., (Toronto: Irwin Law, 2007), page 303.

[65] Steeves J. held it was "self-evident" that FIPA does not contain any express provision for damages for breach of that Act (at para. 63). He further found it was "conjecture" to read access to the Supreme Court for civil damages into FIPA; instead, he concluded the Legislature determined that penalties under FIPA are "a penalty imposed by the state rather than damages between parties" (at para. 64).

[66] In striking out large portions of the plaintiff's notice of civil claim, Steeves J. concluded at para. 70:

70 I find that the third category set out by Professor Sullivan is applicable here. In my view, FIPA is exhaustive and therefore applies to the exclusion of the civil courts for matters under that statute, including common law remedies related to statutory insurance contracts under the Insurance (Vehicle) Act.

[67] In support of its position, the petitioner also relies on *Seignoret v. Bakonyi Holdings Ltd.*, 2019 BCCA 105 at para. 50, in which Mr. Justice Willcock determined that:

the legislature, by enacting the RTA established an all-inclusive scheme. The RTA describes the only way in which residential leases may be terminated. In particular, it describes the circumstances in which a landlord may terminate a residential lease and the steps they must follow to do so.

[68] Even though, as Willcock J.A. holds, the RTA is an all-inclusive scheme that describes the circumstances in which a landlord may terminate a residential lease, I note for instance that s. 49(6) of the RTA specifically contemplates a landlord having "necessary permits and approvals required by law" before they can terminate a lease. There are various legislative and regulatory schemes that might apply; the RTA only requires those permits and approvals to be "necessary" and "required by law". So, even within the all-inclusive scheme for termination of a residential lease, the RTA contemplates actions beyond the statute itself.

[69] In addition, it was open to the Legislature to include the subject matter of the Impugned Bylaw, matters pertaining to rental units or the landlord and tenant relationship, in s. 9 of the Community Charter, thereby requiring provincial ministerial approval. It chose not to do so.

- [70] Instead, s. 10 of the Community Charter contemplates overlap and provides that a bylaw is inconsistent with a provincial enactment only if it requires contravention of the enactment. The petitioner has not demonstrated how the Impugned Bylaw would result in a contravention of the RTA. In the result, I find that the City has exercised municipal power in respect of a subject area also governed by the RTA, but has done so in a way that is consistent with the Act.
- [71] The petitioner also urged me to apply the reasoning of Mr. Justice Anderson in *R. v. Davidson Developments Ltd.*, [1973] 5 W.W.R. 736 (B.C.S.C.) [Davidson Developments]. In that case, Anderson J., as he then was, considered a bylaw enacted by the City of Vancouver in 1969, pursuant to the Rent-Control Act, R.S.B.C. 1960, c. 338, fixing the maximum amount that could be demanded for a security deposit by a landlord. The bylaw established the Vancouver Rental Accommodation Grievance Board to enforce the bylaw. The following year, the provincial government enacted Part II of the Landlord and Tenant Act, R.S.B.C. 1960, c. 207 as amended by S.B.C. 1970, c. 18, making provision for security deposits.
- [72] In *Davidson Developments*, the respondent was charged with failure to comply with an order of the Board, and the charge was dismissed by a Provincial Court Judge. On appeal from the judge's ruling, Anderson J. explained:

In my view, when Pt. II of the Act is examined as a whole, it becomes clear that the Legislature has completely occupied the field, with the exception that municipalities may provide for security deposits to be required or received by landlords by enacting appropriate bylaws.

Insofar as security deposits are concerned, Pt. II of the Act has superseded The Rent-control Act, and if there were a power to create a Board with extensive powers, already referred to, the new legislation gives no such powers to the municipalities. It would take very clear language to permit municipalities to establish courts of law or deny access to courts of law. It would, moreover, take very clear language to permit a municipality the right to fix the amount of the penalty which could be imposed by the Board.

- [73] In dismissing the summary conviction appeal, Anderson J. held at paras. 15-16 that, since the Landlord and Tenant Act "occupie[d] the same field" as the bylaw, it rendered the bylaw invalid. Since the Legislature did not create a "clear and unequivocal" exemption for the adopted bylaw to survive, it followed that the Board created by the bylaw became "redundant in law".
- [74] This reasoning was, in effect, rejected by the Supreme Court of Canada in 114957 *Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40. In that decision, at paras. 38-39, Madam Justice L'Heureux-Dubé, writing for the majority, held:

38 Some courts have already made use of the Multiple Access test to examine alleged provincial-municipal conflicts. For example, in *British Columbia Lottery Corp. v. Vancouver (City)* (1999), 169 D.L.R. (4th) 141, at pp. 147-48, the British Columbia Court of Appeal stated that cases pre-dating Multiple Access, including the Ontario Court of Appeal decision in *Mississauga*, supra, "must be read in the light of [that] decision".

It is no longer the key to this kind of problem to look at one comprehensive scheme, and then to look at the other comprehensive scheme, and to decide which scheme entirely occupies the field to the exclusion of the other. Instead, the correct course is to look at the precise provisions and the way they operate in the precise case, and ask: Can they coexist in this particular case in their operation? If so, they should be allowed to co-exist, and each should do its own parallel regulation of one aspect of the same activity, or two different aspects of the same activity. [Emphasis added.]

The court summarized the applicable standard as follows: "A true and outright conflict can only be said to arise when one enactment compels what the other forbids." See also *Law Society of Upper Canada v. Barrie (City)* (2000), 46 O.R. (3d) 620 (S.C.J.), at pp. 629-30: "Compliance with the provincial Act does not necessitate defiance of the municipal By-law; dual compliance is certainly possible"; *Huot v. St-Jérôme (Ville de)*, J.E. 93-1052 (Sup. Ct.), at p. 19: [TRANSLATION] "A finding that a municipal by-law is inconsistent with a provincial statute (or a provincial statute with a federal statute) requires, first, that they both deal with similar subject matters and, second, that obeying one necessarily means disobeying the other."

39 As a general principle, the mere existence of provincial (or federal) legislation in a given field does not oust municipal prerogatives to regulate the subject matter.

[75] More importantly, s. 10 of the Community Charter governs the relationship between municipal bylaws and provincial enactments in British Columbia. Section 10 contemplates an overlap between municipal bylaws and provincial enactments and does not prohibit a municipal bylaw from dealing directly with the same subject matter as a provincial enactment, unless there is an inconsistency in the manner specified by s. 10.

[76] I accept the submission by counsel for the City that there is no general rule that municipal bylaws cannot legislate in respect of matters that are otherwise regulated by the Province. If that were the case, there would be no need for s. 10 of the Community Charter.

[77] Section 10(2) of the Community Charter permits a municipality to pass a bylaw so long as it is not inconsistent with another enactment. Pursuant to s. 10(2), 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 Impugned Bylaw does not require those complying with it to disobey a provision of the Residential Tenancy Act.

Conclusion

[78] The Impugned Bylaw is within the jurisdiction of the City and intra vires. The petition is therefore dismissed.

[79] The parties may file written submissions with respect to the costs of these proceedings if they are unable to reach an agreement with respect thereto. If they are unable to reach agreement as to the entitlement to costs, the City must file its written submissions within three weeks of the date of these reasons for judgment, the petitioner to respond thereto no later than two weeks after receipt of the City's written submissions, and the City to file any response, if needed, to the petitioner's written submissions no later than one week after receipt of the petitioner's written submissions.

"The Honourable Chief Justice Hinkson"

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