

CANADA / JUDGMENT

Lin v. Vancouver (City)

2025 BCSC 976

COURT

Supreme Court of British Columbia

DECIDED

28 May 2025

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2025 BCSC 976 Lin v. Vancouver (City)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lin v. Vancouver (City),

2025 BCSC 976

Date: 20250528

Docket: S245351

Registry: Vancouver

Between:

Ms. Dan Bin Lin

Petitioner

And

The City of Vancouver,

The Vacancy Tax Review Officer and

The Vacancy Tax Review Panel

Respondents

Before: The Honourable Justice Ormiston

Reasons for Judgment

In Chambers

Counsel for the Petitioner:

J.A. Nitikman, K.C.

Counsel for the Respondents:

I.K. Dixon

Place and Date of Hearing:

Vancouver, B.C.

February 14, 2025

Place and Date of Judgment:

Vancouver, B.C.

May 28, 2025

Table of Contents

BACKGROUND.. 3

STANDARD OF REVIEW.. 4

ANALYSIS. 6

Statute-Barred. 6

Did the Notice issue for the 2019 tax year?. 8

Was the City authorised to assess the 2018 vacancy period in 2021?. 11

Principal Residence. 17

BACKGROUND

- [1] The petitioner owns a residential property that the City of Vancouver has determined is subject to a vacancy tax. According to City by-laws, a property is considered "vacant" if it has been unoccupied for more than six months of the year. An "unoccupied" property is one that is not the occupier's principal residence. The petitioner declared that the property in issue was her principal residence for more than six months in 2018. This declaration was audited and the property was determined to be inappropriately designated as the petitioner's principal residence. Accordingly, in 2021, the City Tax Collector issued a "supplementary vacancy tax notice" requiring the petitioner to pay the tax based on the 2018 period of vacancy.
- [2] The by-laws governing the vacancy tax are contained in the City of Vancouver Vacancy Tax By-law, No. 11674 (the "By-law"). The petitioner pursued her statutory avenues for review of the auditor's decision, first to the Vacancy Tax Review Officer ("Review Officer"), and ultimately to the Vacancy Tax Review Panel (the "Panel"). The Panel agreed with the Review Officer's decision that the supplementary vacancy tax notice was validly issued.

- [3] The petitioner applies to this Court pursuant the Judicial Review Procedures Act, R.S.B.C. 1996, c. 241 ["JRPA"] for the following remedies:
- (i) an order that the supplementary vacancy tax notice be vacated and quashed on the basis that the petitioner is not liable for vacancy tax for 2018;
 - (ii) an order quashing the decisions of the Review Officer and the Panel; or alternatively,
 - (iii) an order that this matter be returned to the Panel for reconsideration and redetermination on the issue of whether the supplementary vacancy tax notice issued in this case was valid.
- [4] Two legal arguments are advanced on this petition. First, that issuance of the supplementary vacancy tax notice was statute barred by the limitation period established in s. 4.14 of the By-law. Second, that it was unreasonable to find the petitioner did not use the property as a "principal residence," as that term was defined at the relevant time.

STANDARD OF REVIEW

- [5] The parties agree this Court should apply a standard of reasonableness to the Review Officer and Panel's decision and interpretation of the By-law. The guiding authority on this standard of review is *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [Vavilov]. Vavilov also sets out how to apply the reasonableness standard. The majority in Vavilov describes the reasonableness standard as sensitive and respectful, but also a robust standard of review (at para. 12). The focus of a reasonableness review must be on the decision actually made, including the reasoning process and the outcome (at para. 83).
- [6] For a decision to be reasonable, it must be based on analysis that is both rational and logical. The reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic and must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived": Vavilov at para. 102.
- [7] Administrative decisions should be set aside where there are sufficiently serious shortcomings or flaws that are central or significant enough to render the decision unreasonable. These can include "a failure of rationality internal to the reasoning process", or a decision that is "untenable in light of the relevant factual and legal constraints that bear [upon] it": Vavilov at para. 101.
- [8] This petition engages issues of statutory interpretation, and the Supreme Court of Canada in Vavilov has also articulated how a reviewing court is to consider statutory interpretation in the context of a reasonableness review. In particular, Vavilov makes clear that conducting a reasonableness review functions differently than an appeal, and differently than approaching questions of statutory interpretation in the first instance. This is not a *de novo* analysis, and this Court must guard against replacing the decisions made with its own. A reasonableness review of statutory interpretation starts from the premise that legislative intent will be respected, and the reviewing court will assume that those who interpret the

law do so in a manner consistent with the modern principles of statutory interpretation.

- [9] Latitude and deference is accorded to the administrative decision makers in terms of form, but "whatever form the interpretive exercise takes, the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision": Vavilov at para. 120.
- [10] Both counsel highlight the importance of our Court of Appeal's decision in *English v. Richmond (City)*, 2021 BCCA 442. In its ruling, the Court finds that while judicial restraint must be exercised to ensure reviewing courts do not substitute their own decisions for those of the administrative decision maker, a reviewing court also has a "positive obligation to determine whether the interpretation adopted by the decision maker respects its relevant legal constraints": *English* at para. 66.
- [11] While a reviewing court can conduct a preliminary analysis of the text, context and purpose of contested legislation, to understand the "lay of the land" before examining the decision maker's reasons and the outcome, the reason to do so is not to engage in statutory analysis as a court of first instance. "Rather, the consideration of text, context and purpose, with reference to the "modern principle" of statutory interpretation, is done to the extent necessary to enable an informed assessment of whether the applicant for judicial review has shown that the interpretation adopted by the decision maker is unreasonable in light of the contextual constraints Vavilov at paras. 110, 116-118, 121": *English* at para. 67.

ANALYSIS

Statute-Barred

- [12] In order to engage with the petitioner's argument, it is important to understand how the By-law imposes the vacancy tax. The City can only impose the vacancy tax in one of three situations:
- (i) when the homeowner has made a property status declaration that the property is vacant;
 - (ii) when the homeowner fails to make a declaration by the deadline and the property is deemed vacant; or
 - (iii) as is the case here, where the property is selected for audit and determined to be vacant.
- [13] Property declarations have to be mailed to homeowners before December 31 (s. 4.2). Section 4.5 establishes a deadline of February 4 for deemed or declared vacancies. Sections 4.6, 2.1 and 4.13 give the City a window of time from the second business day of each February to the 10th business day of the following March, to review submitted declarations to determine if the property is subject to the tax. The City has to issue vacancy tax notices by the 10th business day in March. Section 4.14 is at the heart of this review because it is the section that dictates whether and when the tax can be imposed in the third scenario, where the vacancy is determined to be owing, as opposed to where vacancy has been declared or deemed.

[14] At para. 37 of their decision, the Panel writes:

d. Section 4.14 states the following:

"If the Collector of Taxes determines at any time after the 10th business day of March that a vacancy tax notice should have been assessed for a parcel of residential property for either the current tax year or one or both of the two most recent tax years to which this by-law applies, the Collector of Taxes must cause a supplementary vacancy tax notice to be mailed to the registered owner of the taxable property for the applicable tax year or years."

[15] Section 1.2 of the Vacancy Tax By-law defines the following terms:

- (i) "vacancy reference period" means the calendar year prior to the then applicable tax year;
- (ii) "tax year" means the calendar year in which the tax is imposed;
- (iii) "vacancy tax notice" means a notice issued to a registered owner of taxable property setting out the vacancy tax that is imposed on that taxable property in accordance with this by-law; and
- (iv) "supplementary vacancy tax notice" means a notice issued to a registered owner of residential property where the Collector of Taxes has determined after the 10th business day of March of the current tax year, that a vacancy tax notice should have been issued for a parcel of residential property for either the current tax year or one or both of the two most recent tax years.

[16] The current definitions for "tax year" and "vacancy reference period" came into effect in October 2018. Before that, a "tax year" was defined as "a calendar year," and a "vacancy reference period" was defined as "the twelve months of a tax year."

[17] There is no dispute that the period of the alleged vacancy was the 2018 calendar year. The petitioner's argument is that the Panel was incorrect in deciding that s. 4.14 allowed the City to assess the 2018 vacancy reference period in 2021, and they submit the way the Panel arrived at its decision was unreasonable. The following fundamental findings of the Review Officer and the Panel are challenged by the petitioner:

- (i) that the Supplementary Vacancy Tax Notice was issued for the 2019 tax year; and
- (ii) that issuance of the Notice for a 2019 tax year authorised an assessment of whether tax was owing for the 2018 vacancy period.

Did the Notice issue for the 2019 tax year?

[18] Identifying the applicable tax year is significant because s. 4.14 only allows the supplementary vacancy tax notice to issue for one of three tax years. In the petitioner's original submission to the Review Officer, they maintained that the applicable tax year is 2018, and as such it is beyond the three years set out in s.4.14. The Review Officer responded to the original complaint by explaining that the 2018 vacancy period is assessed in the 2019 tax year. The petitioner argues this position is inconsistent with the definition of a "tax year" as "the year in which the tax is imposed," because the tax was either imposed in 2018 or

2021.

- [19] The petitioner first argued the tax year at issue is 2018, since that is when the tax was imposed. The Review Officer and the Panel disagreed. I find their analysis of this issue to be reasonable. At paras. 44-47 of its decision, the Panel references the applicable sections of the By-law to explain how the vacancy tax is imposed in different circumstances. Whether the property was declared vacant, deemed vacant, or determined vacant, the tax is not imposed until the declaration deadline has passed.
- [20] In none of these three scenarios (declared, deemed, or determined) would the conditions of the By-law be met in the vacancy reference period, which in this case is 2018. The Panel's finding in this regard is well supported by the sections of the By-law cited in their decision. Since the vacancy reference period is the 2018 calendar year, the deadline for a declaration was February 4, 2019. The Notice could not have issued, and the tax could not have been imposed before this date in 2019 (Panel decision at paras. 46-49).
- [21] While the petitioner relies on case law suggesting that a tax notice merely confirms the tax imposed, the Panel expressly considered the law provided and grappled with the issue presented in the complaint by distinguishing this vacancy tax regime from those in which the tax year is the same as the period being assessed. It was reasonable for the Panel to rely on the specific By-laws being challenged to make these distinctions, particularly since the definition of a "vacancy tax notice" specifies that the tax will be imposed "in accordance with this By-law". The decision is not rendered unreasonable by the Panel's failure to cite the definition for a "vacancy tax notice" in its reasons. Their decision is harmonious with this definition and as such, the plaintiff has not established that the Panel's decision is unreasonable for being inconsistent with the prevailing legal context or constraints.
- [22] The petitioner also relies on the Notice itself as proof that it was the 2018 tax year that was being assessed in this case. The Notice issued to the petitioner reads "Empty Homes Tax 2018 Vacancy Tax Notice." I find the Panel did give this argument full consideration, and decided that the wording on the tax notice, while arguably ambiguous, does not determine the "tax year" for the purposes of s. 4.14. Rather, the Panel relies on the timelines in the By-law which make clear that the tax will always be imposed in the year or years following the vacancy reference period. There is nothing illogical about the Panel's reasoning in this regard.
- [23] The petitioner submits that it defies belief for all of the notices issued by the City to erroneously state the tax year. However, given the Panel's explanation of how this particular tax is imposed, it was open to them to be unpersuaded that the wording of the Notice itself established 2018 as the tax year for the purposes of applying s. 4.14. The Panel's interpretation is rooted in the By-laws themselves.
- [24] As the Panel's decision makes clear (at para. 49), tax years and vacancy periods are different, but they are also always related to one another. It is this relationship between the tax year and the vacancy period that makes sense of the way the Notice is worded. It is not

necessarily inaccurate for the Notice to describe a tax imposed "for the 2019 tax year" as a 2018 tax, because it draws the recipient's attention to the fact that the tax is being imposed in relation to conduct that occurred in 2018. The City could have spelled out that the Notice should have been issued in 2019 for the 2018 vacancy period, but describing it as a "2018 vacancy tax" is an efficient way of communicating the same point to the public.

- [25] The Notice alerts homeowners to their tax obligations related to a specific vacancy period (in this case 2018). As the Panel explains, that tax never could have been imposed any earlier than 2019. The purpose of s. 4.14 is to extend the time the City has to issue a vacancy tax notice, past the 10th business day of March of the year after the vacancy period. Viewed in this light, the Notice is not inconsistent with the applicable "tax year" being 2019 for the purposes of applying s. 4.14.
- [26] The Panel's simple explanation (at para. 50) that "the By-law establishes the tax and not the notice" is sufficient to communicate this point. While their reasons relating to the wording of the Notice itself are brief, when read in the context of the Panel's overall decision, they show engagement with the issues in dispute and provide a reasonable answer to the petitioner's complaint.
- [27] The petitioner launches a second line of attack on the Panel's conclusion that the Notice issued for the 2019 tax year. The petitioner says that if the tax was not imposed in 2018, then it was imposed in 2021 when the supplementary vacancy tax notice issued and the tax became payable. This is consistent with the Panel's position that the tax was imposed in 2021 (at para. 49 of the Panel's decision). The petitioner makes two arguments related to the Panel's position that the tax was imposed in 2021. First, the petitioner suggests that if the tax was imposed in 2021, then it was erroneous for the Review Officer to identify 2019 as the applicable tax year for the purposes of s. 4.14. The petitioner supports this submission with the current definition of a "tax year" as the "year in which the tax is imposed," which according to the Panel is 2021 not 2019.
- [28] This submission misapprehends the Reviewing Officer's conclusion that the tax year for the 2018 vacancy period is 2019. When read in context, it is clear the Review Officer is explaining that if the property in issue had been declared or deemed vacant, then the tax year would be 2019. However, as the Review Officer goes on to point out, since s. 4.14 applies, the tax year can be 2021, 2020 or 2019.
- [29] The petitioner's position that 2019 cannot be the applicable tax year when the tax was imposed in 2021 is not tenable because it is premised on there only being one "tax year". The purpose of s. 4.14 is to allow the Notice to issue in one of three different tax years. As such, it is entirely reasonable to say that a tax is imposed in 2021 for an "applicable tax year" of 2019. If the City had indeed issued a Notice for the 2018 tax year, the petitioner would have a viable argument. However, as outlined above, the Panel reasonably found that 2018 was not the "tax year" in this case.

Was the City authorised to assess the 2018 vacancy period in 2021?

- [30] The petitioner's second argument is that if 2018 was not the applicable "tax year," then the City acted outside the authority granted in s. 4.14, which only allows an assessment for three tax years: 2019, 2020 or 2021. The Panel reasons that the tax year for the 2018 vacancy reference period is 2019. However, the petitioner submits that in so finding, the Panel unreasonably failed to consider the plain meaning of s. 4.14, and essentially "read in" an authorisation for the City to assess tax in relation to a vacancy period as opposed to a "tax year".
- [31] The petitioner emphasises the specific language used in s. 4.14, which says that where a vacancy tax notice should have been assessed for either the current tax year or one or both of the two most recent tax years to which this By-law applies, then the Collector of Taxes can issue a supplementary vacancy tax notice for the applicable tax year or years. The petitioner argues that the Panel unreasonably found the City was authorised to issue a Notice "for" a 2018 vacancy reference period when the By-law only authorises a notice to be assessed "for" a tax year, in this case, the 2019 tax year.
- [32] The petitioner submits that the legislative decision to use the words "tax year" as opposed to "vacancy reference period" in s. 4.14 is intentional and ought to be afforded deference. At most, the petitioner submits, the City was authorised to assess the 2019 tax year, and not the preceding 2018 vacancy reference period. Indeed, the definitions in s. 1.2 and the sections of the By-law that set out how the tax operates do make clear that tax years and vacancy periods are distinct. However, I find the Panel also confronted and resolved this issue in their reasons.
- [33] While the Panel rejected the argument that the tax period and the vacancy period are one and the same, they, critically, also explained that tax years and vacancy periods are necessarily related. The specific language used by the Panel is found at para. 49:

In summary, the Panel finds that for the 2018 "vacancy reference period", the tax year was 2019, however, the tax in this instance was imposed in 2021, as illustrated below:

- a. The current tax year was 2021, for the 2020 vacancy reference period;
- b. The first most recent tax year was 2020, for the 2019 vacancy reference period; and
- c. The second recent tax year was 2019, for the 2018 vacancy period.

- [34] The Panel accurately sets out how the tax is assessed and imposed under the By-law, wherein a Notice that issues for a given tax year always imposes tax for vacancy in a year that is earlier than the tax year. In the Panel's words, at para. 39 of the decision:

the [vacancy reference period] is used in the By-law to verify the status of the "residential property" and the "taxable property" and to calculate the vacancy tax rate in section 2.4; while the [tax year] is used in the By-law as the year in which the tax is imposed.

- [35] At para. 40 and following, the Panel draws specific attention to the fact that the By-law creates a "timeline" that the petitioner's argument overlooks. The Panel engages in precisely the kind of contextual and purposeful interpretation of the By-law that is endorsed in Vavilov. I cannot find the Panel unnecessarily strays from the language of s. 4.14 in coming to this conclusion, nor is their decision based solely on the mid-2018 amendment to how "vacancy reference period" and "tax year" are defined.
- [36] The Panel's conclusion about the relationship between "vacancy reference periods" and "tax years" is a logical one to make, and the basis for it is explained at paras. 40-48 of the decision, where the Panel reviews the statutory timelines for mailing declarations to homeowners by December 31 of a given vacancy period, and the necessarily subsequent imposition of tax no sooner than February of the following year. Given this statutory framework, it is reasonable for the Panel to identify the flaw in the petitioner's argument as overlooking "a critical period along the timeline which operates in respect of the vacancy tax and this particular By-law."
- [37] Given the timelines for declarations to be made and for the tax to be imposed on the time period to which those declarations apply, I cannot accept the petitioner's submission that it is incorrect for the Panel to say 2019 is the applicable tax year for the 2018 vacancy period. It is true that s. 4.14 uses the term "tax year" and not "vacancy reference period" as a marker for the City's deadline to impose the tax, but the Panel's conclusion that s. 4.14 nevertheless authorises imposition of the tax based on the previous year's vacancy period is adequately explained by reference to the sections of the By-law that functionally establish a temporal relationship between the tax year and the vacancy reference period.
- [38] The petitioner urges the court to find that the phrase "for the [] tax year" is clear and intentional, and that the meaning of s. 4.14 does not require any kind of contextual analysis in order to be discerned. I do not find it was unreasonable for the Panel to explain their interpretation of s. 4.14 in relation to other sections of the By-law, because, ultimately, the Panel's findings are in agreement with the plain meaning of s. 4.14.
- [39] The petitioner submits that the words used in s. 4.14 can only mean that the City is limited to assessing whether the property in question was vacant during one of the enumerated "tax years". However, s. 4.14 does not authorise assessment of vacancy, it authorises assessment of the "vacancy tax notice". It is only when the vacancy tax notice should have been issued that the Collector of Taxes can issue a supplementary vacancy tax notice "for the applicable tax year or years." It is the words "vacancy tax notice" that insulate the Panel's interpretation of s. 4.14 from being inconsistent with the plain wording of the section.

- [40] According to s. 4.14, a supplementary vacancy tax notice is a vacancy notice that should have been sent. The remedial purpose of this section cannot be overlooked in this analysis. The reference in s. 4.14 to "the 10th business day in March" makes it even more clear that the "supplementary vacancy tax notice" is meant to act in the same way as a "vacancy tax notice". The Panel acknowledges the way s. 4.14 references a "vacancy tax notice" in paras. 45-46 of the decision:
45. The combined effect of sections 4.6, 2.1 and 4.13, provides the Collector of Taxes with a window of time which begins the day after the 2nd business day of each February and continues until the 10th business day of the following March ("Review Period"), to review submitted declarations, to determine whether the residential property is taxable property and thus subject to vacancy tax and to mail out a vacancy tax notice.
46. With respect to the third event, being properties which have been selected for audit and determined to be vacant under the By-law, it is possible that said audit process could be initiated and completed within the Review Period, in which case a vacancy tax notice could theoretically be sent out before the end of the Review Period, being the 10th business day of March. However, the audit process will likely continue beyond or even more likely begin after the end of the Review period, in which case the Collector of Taxes would, in accordance with section 4.14, cause a supplementary vacancy tax notice to be sent to the registered owner.
- [41] In these paragraphs, the Panel acknowledges the purpose of s. 4.14, which is to extend the time the City has, not just to impose the tax, but to impose it in relation to the preceding vacancy reference period because that is what a vacancy tax notice would have done. Applying the Panel's reasoning to the facts of this case, if a homeowner declares their property not vacant in 2019, it would always be in reference to a preceding year. If the 2019 declaration is audited and the property is found to have been vacant, then the City will determine that the vacancy tax notice should have been sent for 2019. According to s. 4.14, the City can then impose the tax by sending a notice that should have been sent for 2019, either later in 2019, or in 2020 or in 2021.
- [42] While the statutory definition of a "supplementary vacancy tax notice" was not expressly included in the Panel's decision, their ultimate decision is consistent with the definition of a "vacancy tax notice," which is what a supplementary vacancy tax notice is meant to replace. A vacancy tax notice imposes the tax, and it is imposed based on the previous year's vacancy reference period. I appreciate that both the Panel and the petitioner consider 2021 to be the "current tax year" in their application of s. 4.14 to the facts of this case. However, the "supplementary vacancy tax notice" definition suggests that on the facts of this case, the "current tax year" would be 2019, since it states:

where the Collector of Taxes has determined after the 10th business day of March of the current tax year, that a vacancy tax notice should have been issued for either the current tax year or one or both of the two most recent tax years.

- [43] Whether s. 4.14 is read with or without reference to the statutory definition for a supplementary vacancy tax notice, it is clear that the Panel accurately comprehends the purpose of s. 4.14, which is to allow the City to issue a vacancy tax notice for the preceding year's vacancy period even after the March deadline established in s. 4.13. The definition of "supplementary vacancy tax notice" suggests the City can issue a notice assessing the tax later that same year, or in one of the two most recent tax years. Applied to this case, that means the City can issue a vacancy tax notice, relating to the previous year of vacancy (2018), past the March 2019 deadline, as long as they do so that year (2019), the next year (2020), or the next (2021).
- [44] While the Panel considers 2021 to be the "current tax year", the onus rests on the petitioner to demonstrate the decisions of the Review Officer and the Panel were unreasonable. The Panel's conclusions about s. 4.14 are a matter of statutory interpretation. That does not mean this Court should approach their findings from a standard of correctness. The task of this Court is to determine whether there is an interpretation of the By-law upon which the Review Officer and Panel could reasonably have based their decision.
- [45] Whether 2019 or 2021 is considered the "current tax year" for the purpose of s. 4.14, the result will be the same. More importantly, the Panel arrived at its decision in a way that remains consistent with the purpose of s. 4.14 when the overall statutory context is considered. Specifically, the Panel measures the limitation period by when the vacancy tax notice can issue for a preceding vacancy period. Whether the Panel counts forward from when the vacancy tax notice should have issued, or backwards from when the supplementary vacancy tax notice issued, the City is entitled to issue Notice in 2021 for the 2019 tax year.
- [46] In contrast, the petitioner's reading of s. 4.14 is inconsistent with the language and purpose of this section. If s. 4.14 only allowed an assessment of vacancy during the enumerated tax years, then the phrase "at any time after the 10th business day of March" would make no sense. Such an interpretation would also conflict with the definition of a "supplementary vacancy tax notice," which further elucidates the significance of the March deadline as the date by which the City ordinarily has to issue a tax notice for the preceding year's vacancy. The petitioner's interpretation of s. 4.14 is not plausible in my view, given the internal illogic that would result if the section were to be applied as they have suggested.
- [47] While correctness is not the standard, a reasonable interpretation of s. 4.14 must accord with the significance of the March deadline contained within it. This wording, particularly when read in the context of the other related sections and the definition of a "vacancy tax notice" is reasonably capable of meaning that if the notice for a given tax year should have been assessed, then the tax should have been imposed that year based on whether a property was vacant during the previous year. The reasons given by the Panel are adequate to understand that it is the way these particular By-laws schedule imposition of the tax that authorises the City to assess a previous year's vacancy period when the section itself says the notice is "for" a particular tax year.

- [48] I cannot accept the petitioner's submission that the Panel unreasonably replaces the plain meaning of "for" the applicable tax year with "in" the applicable tax year. The Panel's findings regarding the interplay between various sections of the By-law support the conclusion that s. 4.14 does not have to explicitly state that the notice can be issued "in" the particular tax year for this to be authorised. The Panel does not simply ignore the wording of the section that says "for" a particular tax year. The Panel's conclusions are grounded in the purpose of s. 4.14, which is to allow further time for the City to review whether or not notice "for" a particular tax year should have imposed a tax after the March deadline, when the City would ordinarily have had to issue a vacancy tax notice.
- [49] In the absence of judicial interpretation of s. 4.14, the petitioner also relies on the interpretation of expert legal practitioner Mr. Sarna. I do not find Mr. Sarna's advice to be persuasive. His observation that "the City has up to two years to mail a EHT bill to a homeowner for a year" ignores the fact that the section clearly allows the City to issue the "bill" for one of three different years, not two. It can be sent for the current tax year, or one, or both of the two most recent tax years. As the Panel's decision makes clear, there is ample authority in the By-law to find that the "bill" is always issued based on a previous year's vacancy.
- [50] The Panel's interpretation of s. 4.14 does not amount to "reading in" the words "vacancy reference period," rather, it is reasonable for the Panel to have found this is an obvious conclusion that aligns with a plain reading of the section. When s. 4.14 is considered in the context of how this tax operates, I find the Panel's reasoning to be sound, even if it is not the only way the words can be read in isolation.
- [51] The petitioner submits that, on the facts of this case, s. 4.14 only authorises issuance of a Notice assessing whether the property was vacant in 2019. I find this to be inconsistent with the overarching legal framework—a framework the Panel reasonably identifies and interprets. In conclusion, the Panel's interpretation does not ignore or contradict the plain wording of the section or the prevailing legal constraints as alleged. For the reasons given, I find them to be harmonious.

Principal Residence

- [52] Section 1.2 of the Vacancy Tax By-law now defines a "principal residence" as:
- the usual place where an individual lives, makes their home and conducts their daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including without limitation, income tax returns, Medical Service Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence. [Emphasis added.]
- [53] The last phrase of this definition was added in an amendment made in October 2018.

- [54] The petitioner declared that the property at issue was her principal residence in 2018, and specifically that she lived there between January and September of 2018. The onus rests on the homeowner to establish their property was "not unoccupied" at the relevant time. In this case, an auditor decided that the petitioner had not discharged that burden. The petitioner's complaint about the audit was considered by the Reviewing Officer who agreed with the auditor that principal residency had not been established for more than six months in 2018.
- [55] The petitioner submits at this hearing that the Review Officer made an error in law by failing to apply the pre-amendment definition to their analysis. The petitioner characterises the amendment as a substantive change to the meaning of the By-law, and submits that, as such, it cannot apply retrospectively, particularly in this case where the period of time the petitioner says she lived at the property pre-dates the amendment. However, the Panel found the October amendment did not make substantive changes to the By-law, and that it was reasonable for the Review Officer to conclude, before or after the amendment, that the definition of "principal residence" necessarily means an owner can only have one principal residence.
- [56] Before this Court, the petitioner submits the Panel's decision was unreasonable because it is contradicted by case law that establishes an owner can have more than one place where they usually reside, and because the Panel failed to engage in the kind of contextual and purposive analysis endorsed by the Supreme Court of Canada in *Vavilov*.
- [57] The petitioner emphasised in oral submissions, that her affidavit was not challenged through cross-examination and as such, there is reliable evidence that she did live principally at the property in question from January to September of 2018. The petitioner may not have been subject to cross-examination, but this is not the only way to challenge evidence. The correspondence between the petitioner and the Review Officer shows that the Review Officer considered and rejected the petitioner's evidence that she used the property as her principal residence during that time.
- [58] The petitioner's husband owns a different residence in Vancouver, and the Review Officer cites several reasons to find the petitioner principally lived at this other Vancouver residence. The Review Officer itemised the evidence that was put before them in support of the petitioner's declaration, and considered this evidence in the larger context of other evidence that contradicted her declaration. On one hand the petitioner's declaration, her daughter's declaration, and the house insurance support the finding that she did make the property at issue her principal residence for more than six months in 2018. However, the Review Officer goes on to consider a significant body of evidence supporting the inference the petitioner's principal residence was her husband's property.
- [59] The Panel details the Review Officer's decision to reject the petitioner's evidence in the face of the substantial contradictory evidence. I see no reason to interfere with this factual finding. I cannot agree with the petitioner that the Review Officer and the Panel did not explain why the declarations and the homeowner insurance were not strong enough to

support the petitioner's position. It is clear from the Review Officer and the Panel's ultimate decisions that they considered the contradictory evidence sufficient to challenge and effectively undermine the evidence relied on by the petitioner.

- [60] The Panel not only reviews the relevant evidence, but goes on at paras. 67-73 of its decision to analyse the contradictory evidence to explain why it is compelling. It is not unreasonable for the Panel to have preferred the preponderance of reliably independent evidence as opposed to the evidence marshalled by the petitioner and a close family member, for which there was little corroboration.
- [61] While the Review Officer may have erroneously relied on the pre-amendment version of the By-law, the Panel found this did not change the result. I cannot accede to the petitioner's submission that the Panel's analysis was in any way lacking or inconsistent with Vavilov. The Panel gives reasons for finding that even before the amendment, a person could not have multiple principal residences. Primarily the Panel relies on *Farina v. Grant Administrator*, 2006 BCSC 1093 [Farina], which is a judicial review of a decision made under the Home Owner Grant Act, R.S.B.C. 1996, c. 194, holding that the petitioner was not entitled to a grant on property that was not her "principal residence." The petitioner relies on *Carlson v. Phelan Estate*, 2016 BCSC 1256, where the Court engages with a requirement to be "habitually resident" under the Family Law Act, S.B.C. 2011, c. 25.
- [62] In my view, it was reasonable for the Panel to rely on *Farina*, where the Court considers identical language, in legislation with a purpose more closely aligned to these By-laws. The analysis relied on by the Panel reveals that the Court in *Farina* engaged in a similar exercise of deciding whether the "the usual place where an individual makes his or her home" necessarily requires a determination of a single place. The Court determined that the definition of "principal residence" which referred to "the usual place" a person makes home as opposed to "a usual place" a person makes home, did "[demand] that one determine a single place that is the principal residence, not a multitude of places that may be the principal residence at different times of the year": *Farina* at para. 22.
- [63] As the Court goes on to explain in *Farina*, determining a person's "usual" home is not a simple issue to resolve, and it is not necessarily determined by counting the number of months spent in one place or another. To draw on the example given in *Farina* (at para. 24), if a person is hospitalised for more than six months of the year, it does not mean their principal residence becomes the hospital. This reasoning is persuasive and applicable to the By-law at issue here. As with the Home Owner Grant legislation, this By-law is concerned with determining primacy in the residences a person may have.
- [64] The petitioner's assertion that the Panel did not engage with principles of statutory interpretation, including considering the context or purpose of this By-law is at odds with the Panel's detailed decision. The Panel not only probes the meaning of "principal residence", they also cite the prevailing principles of statutory interpretation from *E.A. Driedger's Construction of Statutes* (1st ed. 1974, p. 67) and identify the purpose of these By-

laws at para. 58, which is "to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver." The Panel follows a logical and legal pathway to conclude that a citizen can only have one "principal residence," and their finding is consistent with the purpose of the legislation.

- [65] In conclusion, the Review Officer was entitled to rely on evidence contradicting the petitioner's declaration that she lived principally at the property in issue for more than six months in 2018. The reasons given make clear that it was the paucity of reliable evidence in support of the petitioner's declaration and the weight of reliable contradictory evidence that led to their decision. I can find no reason to interfere with the Panel's conclusion that this factual issue was reasonably resolved. Furthermore, the Panel's decision that the October amendment did not change the substantive meaning of the By-law is well supported by case law and cohesive internal logic.
- [66] Having determined that the supplementary vacancy tax notice was not statute barred, and that the decision of the Panel regarding liability for the tax is reasonable, the petition for all orders being sought is dismissed.

"Ormiston J."

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Prepared on 26 October 2026 · Esheria