

CANADA / JUDGMENT

Peace River (Regional District) v. Pringle

2023 BCSC 1172

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 1172 Peace River (Regional District) v. Pringle

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Peace River (Regional District) v. Pringle,

2023 BCSC 1172

Date: 20230710

Docket: S23558

Registry: Dawson Creek

Between:

Peace River Regional District

Petitioner

And

Lyle Pringle and Doreen Shadow

Respondents

Before: The Honourable Justice Fitzpatrick

Reasons for Judgment

Counsel for the Petitioner:

A. Bradley

N. Ruston

Counsel for the Respondents:

N. Baker

Place and Dates of Hearing:

Vancouver, B.C.

April 27 and May 16, 2023

Place and Date of Judgment:

Dawson Creek, B.C.

July 10, 2023

INTRODUCTION

- [1] The respondents, Lyle Pringle and Doreen Shadow (collectively, the "Respondents"), are owners of property in Pouce Coupe, BC (the "Property"), which is located in the area of the petitioner, Peace River Regional District (the "PRRD").
- [2] Various issues arose with respect to the Respondents' use of the Property, particularly arising from the fact that the Property is located within the Agricultural Land Reserve (the "ALR"), and also arising from building and zoning bylaws that apply to the Property.
- [3] In 2021, the PRRD issued two bylaw contravention tickets to the Respondents for violations of the building and zoning bylaws respectively. The Respondents disputed the tickets.
- [4] On January 20, 2022, a hearing was convened before an adjudicator (the "Adjudicator"). The Adjudicator upheld the ticket in relation to the PRRD's Bylaw No. 2131, Building Bylaw (2014) [Building Bylaw] infraction, but cancelled the ticket in relation to the PRRD's Bylaw No. 1343, Zoning Bylaw (2001) [Zoning Bylaw] infraction.
- [5] The PRRD now applies for judicial review in respect of the Adjudicator's decision in relation to the zoning bylaw infraction.

BACKGROUND FACTS

- [6] The PRRD is a regional district under the Local Government Act, R.S.B.C. 2015, c. 1.
- [7] In September 2015, the Respondents purchased the Property. The Property is approximately 18 hectares or 44 acres.
- [8] When the Respondents purchased the Property, they intended to develop the site to include a cultural center, campground, community garden and gift store for First Nations crafts. They did not know that the Property was located within the ALR and therefore, subject to the Agricultural Land Commission Act, S.B.C. 2002, c. 36 [ALCA].

- [9] By the time the Respondents learned that the Property was within the ALR, various dwellings and structures had been moved onto the Property and the campground had been constructed to a degree. The Respondents say that they then stopped developing the Property in relation to the campground and other aspects of their business venture.
- [10] Commencing in late 2019, as I will recount below, the Respondents began applying for various permissions to use the Property as they had intended. They sought to avoid the consequences arising from the fact that the Property was in the ALR and that certain zoning and building bylaws applied.

STATUTORY REGIME GOVERNING USES OF THE PROPERTY

- [11] Various statutory and regulatory regimes are engaged here.

The ALR

- [12] Section 20 of the ALCA restricts the use of land in the ALR, such as the Property, to farm use.
- [13] Further, if land is located in the ALR, s. 46(2) of the ALCA provides that the PRRD's bylaws must be consistent with the ALCA:

A local government in respect of its bylaws and a first nation government in respect of its laws must ensure consistency with this Act, the regulations and the orders of the commission.

- [14] At the time of the relevant events here, if a property owner wished to have their land excluded from the ALR or to be permitted to operate a non-farm use that is otherwise prohibited under the ALCA and its regulations, the owner was required to make an application to the Agricultural Land Commission (the "ALC") with the support of the local government with jurisdiction: ALCA, ss. 25(3) and 29(4). Since September 2022, the ALCA has been amended but such amendments are not relevant here.
- [15] In December 2019, the Respondents applied to the ALC to operate non-farm use facilities on the Property (a campground, gift store, restaurant and liquor license), and to exclude a portion of the Property from the ALR. In July 2020, the ALC denied that request. The Respondents made further efforts to avoid the consequences of the Property being in the ALR but, as of October 2021, all such efforts had failed. As such, the Property remains in the ALR and subject to the ALCA.

The Zoning Bylaw

- [16] Pursuant to its authority under s. 479 of the Local Government Act, the PRRD adopted Zoning Bylaw.
- [17] Section 6 of the Zoning Bylaw sets out the fundamental object of this bylaw to permit only those uses expressly listed in each zone, and to prohibit all other uses. It reads:

No person shall:

- (a) use or occupy any land, building or structure; or
- (b) construct, or site, or alter any building or structure; or
- (c) create a parcel by subdivision;

other than specifically permitted by this Bylaw;

[18] Section 8 of the Zoning Bylaw provides that any violation is an offence and that, each day an offence continues, it is a separate offence.

[19] The Zoning Bylaw designates the Property as being within the A-2 (Large Agricultural Holdings) zone: s. 33.

[20] Section 33 of the Zoning Bylaw addressed "permitted uses" that are allowed in the A-2 zone and refers to "dwelling units". Section 33(2)(d) restricts the number of dwelling units on the Property (since it is larger than 3.6 hectares), as follows:

Two SINGLE FAMILY DWELLINGS or one TWO FAMILY DWELLING is permitted on a parcel 3.6 hectares (9 acres) or larger, but not both.

[Emphasis added.]

[21] The Zoning Bylaw also permits "ACCESSORY buildings" (s. 33(1)(p)) subject to certain size restrictions of the aggregate floor area (ss. 13(1)(b) and 13(2)). "Accessory", as defined in s. 3 of the Zoning Bylaw, means:

a use, building or structure which is incidental and subordinate to and located on the same parcel as a PRINCIPAL USE, building or structure.

Summary

[22] Accordingly, both the ALCA and the Zoning Bylaw provided that the Property was prohibited from containing more than two dwellings and the operation of a campground was not allowed.

THE BYLAW ENFORCEMENT REGIME

[23] The PRRD enforces its bylaws pursuant to the regime established under the Local Government Bylaw Notice Enforcement Act, S.B.C 2003, c. 60 [Bylaw Enforcement Act], and the Bylaw Notice Enforcement Regulation, B.C. Reg. 175/2004.

[24] Section 4 of Bylaw Enforcement Act provides that a local government may designate bylaw contraventions, which may be dealt with via bylaw notices under that Act. Section 4(4) provides:

A bylaw notice must contain all the following information:

- (a) particulars of the alleged contravention of the bylaw in sufficient detail that a recipient of the notice would be able to identify the bylaw and the contravention alleged;
- (b) the amount of the penalty that the recipient is liable to pay in respect of the contravention, the amount of a discount for early payment of the penalty, the amount of a surcharge for late payment of the penalty and the consequences of failing to respond to the bylaw notice;
- (c) methods of paying the penalty;
- (d) how to dispute the allegation in the notice;
- (e) information required under the regulations.

[25] Part 3 of the Bylaw Enforcement Act governs bylaw notice dispute adjudication. Section 14 provides that a local government may establish a "bylaw notice dispute adjudication system" that provides for the hearing and determination of disputes in respect of whether "the contravention alleged in a bylaw notice occurred as alleged".

[26] If a local government establishes a dispute adjudication system, the deputy attorney general appoints adjudicators to determine disputes: Bylaw Enforcement Act, s. 15.

[27] Central to this judicial review is the jurisdiction of adjudicators and the procedural aspects of the adjudication. These are addressed in ss. 16-20 of the Bylaw Enforcement Act. Portions of s. 21 are engaged here:

- (1) The standard of proof for resolving a dispute referred to in section 14 [local government dispute adjudication system] is proof on a balance of probabilities.
- (2) If, after the hearing required under section 18 [adjudication procedures] in respect of a dispute referred to in section 14 (a) [local government dispute adjudication system], the adjudicator is satisfied that the contravention alleged in the bylaw notice occurred as alleged, the adjudicator must order that the penalty set out in the notice is immediately due and payable to the local government indicated on the bylaw notice by the person to whom it was issued or deemed issued.
- (3) If, after the hearing required under section 18 in respect of a dispute referred to in section 14 (a), the adjudicator is satisfied that the contravention alleged in the bylaw notice did not occur as alleged, the adjudicator must cancel the bylaw notice.

[Emphasis added.]

[28] Section 22(1) of the Bylaw Enforcement Act further states:

The determination of an adjudicator under section 21 [adjudicator decision] is final and conclusive, and is not open:

- (a) to review in a court except on a question of law or lack of jurisdiction, or
- (b) to appeal to any body.

- [29] The PRRD has enacted Bylaw No. 2042, Bylaw Notice Enforcement Bylaw (2012). Section 5.1 of the Bylaw Notice Enforcement Bylaw provides that contraventions of s. 6 of the Zoning Bylaw may be dealt with via bylaw notice. Schedule "A" sets out that a contravention of the Zoning Bylaw (regarding prohibited use of property) has a penalty amount of \$200, which increases to \$250 if payment is made after 32 days.

TICKETING AND ADJUDICATION

- [30] On November 16, 2021, the PRRD issued bylaw notice ticket number PRRD 00209 ("Bylaw Notice 209") to the Respondents for contravening s. 2.5.1(i) of the Building Bylaw, alleging that some buildings did not have building permits.
- [31] On December 6, 2021, the PRRD issued bylaw notice ticket number PRRD 00212 ("Bylaw Notice 212") to the Respondents for contravening s. 6 of the Zoning Bylaw. In the "description" section of Bylaw Notice 212, the bylaw officer wrote "prohibited use of property".
- [32] Specifically, the PRRD alleged in its cover letter for Bylaw Notice 212, dated December 6, 2021, that the Property contained four dwellings--two more than were permitted by the Zoning Bylaw. In addition, the PRRD alleged that the Property also contained a campground that was "in use", which is not permitted by the Zoning Bylaw. In a letter dated July 17, 2020, the PRRD had also informed the Respondents that the recreational vehicle ("RV") sites with electrical and sewer infrastructure on the campground were not permitted. In the cover letter dated December 6, 2021, the PRRD stated that if the Respondents wanted to avoid further fines or other enforcement actions, they were required to, among other things, remove the listed structures/dwellings and the campground from the Property.
- [33] The Respondents disputed both tickets. On January 20, 2022, the matter came for hearing before the Adjudicator.
- [34] There is some disagreement between the parties in relation to the record before the Adjudicator at the hearing. Nevertheless, I have now reviewed the evidence and record in detail, which includes the affidavit of Erin Price, the Bylaw Enforcement Officer with the PRRD, and written submissions from both parties.
- [35] I find that the record before the Adjudicator included the following facts and information:
- a) The Respondents referred to their substantial efforts since 2019 to resolve the issues, arising from the fact that the Property was within the ALR. They referred to their applications to the ALC to exclude a portion of the Property from the ALR to allow, among other things, the operation of a campground with 22 RV sites. They confirmed that their applications were denied by the ALC on July 16, 2020 and April 9, 2021, and their request for reconsideration of the decision was denied by the ALC on October 27, 2021;

- b) In the 2020/2021 timeframe, the Respondents received multiple letters from the PRRD identifying the ongoing bylaw infractions (both the Building Bylaw and the Zoning Bylaw) and warning of enforcement action;
 - c) Various aerial photographs from 2016-2018 were in evidence, showing an increasing number of structures on the Property;
 - d) Ms. Price's undisputed evidence is that, at the hearing, the Respondents did not dispute that the Property contained four dwellings--two more than are allowed on the Property. Mr. Pringle confirmed that, in addition to the home that he and Ms. Shadow lived in, there was a three-bedroom mobile home called "The Nest" and "camp shacks" for employees of the "medic company". In their submissions, the Respondents confirmed having moved two mobile homes onto the Property for their business ventures;
 - e) The Respondents did not dispute that there are RV sites on the Property;
 - f) The existence of these structures (four dwellings and other structures) was evidenced by photographs of the Property taken by Ms. Price on January 5, 2022, just days before the hearing. These photographs also depicted what Ms. Price described as the campground facilities, showing electrical hook-ups and a sign at the entrance stating "Now Open";
 - g) The Respondents stated that they have not exhausted all options for rezoning and they are currently pursuing other avenues to avoid being subject to and penalized by the bylaws;
 - h) On November 15, 2021, Ms. Shadow sent an email to various BC government employees (including the then Premier) seeking assistance in addressing their zoning issues. Specifically, Ms. Shadow stated that, in 2019, the Respondents had stopped the development of the Property when these issues were first raised. There was no evidence as to any substantive action by the BC government in response; and
 - i) There was no evidence that the Respondents were pursuing any "formal" avenues in the sense of obtaining dispensation from the Zoning Bylaw.
- [36] At the January 20, 2022 hearing, the Adjudicator gave an oral decision upholding Bylaw Notice 209 in relation to the Building Bylaw infractions. In her Adjudication Hearing Judgment issued on January 20, 2022 (the "Adjudication Judgment")--a document that allows a choice between whether the alleged violation "Did Take Place" or "Did Not Take Place"--she "ticked" "Did Take Place". In her comments, she stated "Upon hearing the evidence, I am satisfied that the contravention alleged has occurred and I order the disputant to pay the penalty to the [PRRD]."
- [37] As indicated earlier in these reasons, having found that the infraction in Bylaw Notice 209 occurred as alleged, s. 21(2) of the Bylaw Enforcement Act then required the Adjudicator to uphold the penalty to be paid (i.e. "must order").

- [38] No party has sought judicial review of the Adjudication Judgment in relation to Bylaw Notice 209. Accordingly, that decision is not at issue in this judicial review, other than to provide some context for the dispute.
- [39] Also at the January 20, 2022 hearing, the Adjudicator cancelled Bylaw Notice 212, the decision that gives rise to this judicial review. The Adjudication Judgment was somewhat more complicated than those in relation to Bylaw Notice 209, being:
- a) the Adjudicator made certain oral comments (the "Oral Comments") where she told the parties that she was dismissing the Zoning Bylaw ticket. She stated that the Respondents were doing "the best they can", that bureaucracy was blocking their progress and that provincial and political involvement was muddying the water. Ms. Price then immediately asked the Adjudicator to confirm if only the monetary penalty was cancelled and that the Respondents still had to bring the Property into compliance with the Zoning Bylaw. The Adjudicator replied "yes" and that the Respondents had to comply with the Zoning Bylaw; and
 - b) the Adjudicator issued her Adjudication Judgment. In that decision, she ticked that the alleged violation "Did Not Take Place". Her comment stated "Upon hearing the evidence, I am satisfied that on the balance of probabilities that the Disputants where [sic] actively attempting to rectify the situation in regards to this property. I thereby CANCEL the ticket."
- [40] Later, the Adjudicator also issued a summary of the hearing as it related to both Bylaw Notices and set out her further reasoning (the "Written Reasons"). In that document, the Adjudicator included the following additional comments:
- a) that the Respondents were pursuing other avenues to change the zoning so that they would be in compliance, by communicating with the various government agencies; and
 - b) that the Respondents acknowledged that some of the buildings on the Property were old and "still functioning" and that they had moved two mobile homes and other structures onto the Property for the purpose of their business venture.
- [41] In the Written Reasons, the Adjudicator then repeated her earlier comment about the Respondents' attempts to "rectify the zoning situation" leading to her cancelling Bylaw Notice 212. She then added:

That they have been making presentations and applications to numerous Government Departments to have the zoning changed once they became aware of it being in the ALR. These applications started in 2017 and they where [sic] for the purpose of accommodating a business venture which included a camp ground with amenities. That when the property was purchased by the Disputants, they had not been made aware of it being still in the ALR nor which Municipal Government boundary it was located within. With this fact, I find that the Zoning of the Property is still in question till all Government Ministries have made a determination.

[42] In contrast to the above reasoning and in relation to Bylaw Notice 209, the Adjudicator found that the Respondents did not have approved building permits for structures that they had added to the Property or even longer-standing buildings which were present when the Respondents purchased the Property (which the Respondents argued should be "grandfathered"). The Adjudicator upheld Bylaw Notice 209 due to the lack of permits that should have been acquired for the buildings they had added. Despite this, the Adjudicator came to a different conclusion with respect to Bylaw Notice 212, even though the Respondents were also trying to remedy that problem by applying for building permits from the PRRD.

POSITION OF THE PARTIES

- [43] The PRRD seeks judicial review of the Adjudicator's determination in relation to Bylaw Notice 212 under the Judicial Review Procedure Act, R.S.B.C. 1996, c. 241 [JRPA]. Specifically, the PRRD seeks the following orders:
- a) An order setting aside the decision of the Adjudicator on the basis that:
 - i. The Adjudicator exceeded her jurisdiction by cancelling Bylaw Notice 212 despite determining that the contravention alleged in it had occurred as alleged; or
 - ii. In the alternative, the Adjudicator made an unreasonable determination to cancel Bylaw Notice 212 that was not justified based on the underlying facts or law; and
 - b) An order declaring that the contravention alleged in Bylaw Notice 212 did take place and that the penalty set out in Bylaw Notice 212 is immediately due and payable by the Respondents to the PRRD; or, in the alternative, directing the Adjudicator to reconsider the contravention alleged in Bylaw Notice 212 in accordance with the reasons and directions that this Court may issue.
- [44] The Respondents say that the Adjudicator abided by her jurisdiction under the Bylaw Enforcement Act and that her interpretation of her jurisdiction was reasonable. In the alternative, the Respondents say that, if substantive review is available, her determination that no contravention took place is reasonable. In any event, if the Adjudicator's decision is found to be unreasonable or without jurisdiction, the Respondents ask that the Court exercise its discretion to deny the relief sought by the PRRD.

DISCUSSION

- [45] The interpretation of the Zoning Bylaw is not in dispute. Section 6 of the Zoning Bylaw clearly provides that there is a prohibition with respect to more than two dwellings, and that a campground is not a permitted use.

- [46] In addition, the mandatory requirements of the Bylaw Enforcement Act are clear and limit or constrain the jurisdiction that may be exercised by the Adjudicator. In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, the Court stated:
- [68] Reasonableness review does not give administrative decision makers free rein in interpreting their enabling statutes, and therefore does not give them licence to enlarge their powers beyond what the legislature intended. Instead, it confirms that the governing statutory scheme will always operate as a constraint on administrative decision makers and as a limit on their authority. Even where the reasonableness standard is applied in reviewing a decision maker's interpretation of its authority, precise or narrow statutory language will necessarily limit the number of reasonable interpretations open to the decision maker -- perhaps limiting it to one. Conversely, where the legislature has afforded a decision maker broad powers in general terms -- and has provided no right of appeal to a court -- the legislature's intention that the decision maker have greater leeway in interpreting its enabling statute should be given effect.
- [Emphasis added.]
- [47] I interpret ss. 21(2) and (3) of the Bylaw Enforcement Act as limiting the Adjudicator's jurisdiction in a binary fashion: if the Adjudicator is satisfied that the alleged contravention occurred, the Adjudicator "must order" and uphold the imposition of the penalty; or, if Adjudicator is satisfied that the contravention did not occur as alleged, the Adjudicator "must cancel" the bylaw notice: see *Romegioli v. Langley (Township)*, 2018 BCSC 1867 at para. 16; *Hildebrand v. Penticton (City)*, 2020 BCSC 353 at para. 32.
- [48] Simply put, the legislative regime describes what an adjudicator can and cannot do: *Lundquist v. Central Kootenay (Regional District)*, 2019 BCSC 1303 at para. 57.
- [49] Therefore, the central question before the Adjudicator was whether the PRRD had proven that the structures on the Property were violations of the Zoning Bylaw on a balance of probabilities: Bylaw Enforcement Act, s. 21(1).
- [50] The substantive argument between the parties on this judicial review was whether or not the Adjudicator indeed found that no contravention of the Zoning Bylaw had taken place--a decision that would justify (if not require) the cancelling of the Bylaw Notice as she did.
- [51] Again, the PRRD states that the Property contains more than two dwelling units, which is not permitted in the A-2 zone. In addition, the PRRD states that the Property also contains a campground, including RV sites with electrical and sewer infrastructure, which is not permitted in the A-2 zone. The evidence before the Adjudicator as to the number of dwellings was substantial and, indeed, confirmed by the evidence and submissions of the Respondents. The Respondents also confirmed the existence of the campground, but asserted that it was not in use, which I take to really mean that it was not operating, but otherwise functionable.

[52] I confess to having some difficulty understanding the reasoning of the Adjudicator even after reviewing the record and the entirety of her remarks and Written Reasons. However, when read and considered as a whole and in context, I agree with the PRRD that the Adjudicator did find that the Property did not comply with the Zoning Bylaw, but she considered other reasons as a basis upon which to cancel Bylaw Notice 212.

[53] In particular:

- a) The Adjudicator's Oral Comments as to the reason for the cancellation were that the Respondents were "doing the best [they] can", suggesting some sympathy for the Respondents, an irrelevant consideration;
- b) The only clear reference to a finding that no contravention occurred is found in the Adjudication Judgment by the ticking of the box for "Did Not Take Place". Yet, a clear contradiction arises from the following comments where the Adjudicator said that the Respondents were "actively attempting to rectify the situation". The evidence manifestly showed that the only "situation" was that the Property did not comply with the Zoning Bylaw. If no contravention had occurred, there was no need for the Adjudicator to refer to anything being "rectified";
- c) In the Written Reasons, the Adjudicator repeated that the Respondents were attempting to "rectify" the issues with the Zoning Bylaw, again indicative of the Property being offside the Zoning Bylaw;
- d) Also in the Written Reasons, the Adjudicator inexplicably found that the zoning of the Property was "still in question till all Government Ministries have made a determination." On the evidence before the Adjudicator, the interpretation of the Zoning Bylaw was not in issue, and its application to the Property was well established. However, the evidence at the hearing was that all formal avenues to change the zoning and allow the structures had been exhausted. Further, the Adjudicator's reference to the Respondents continuing to pursue informal avenues did not mean that the zoning infractions in relation to the Property, as alleged by the PRRD, had not occurred; and
- e) Finally, the Adjudicator's Written Reasons also inexplicably relies on the Respondents' communications with BC government agencies to seek their intervention as a reason to cancel the ticket. Yet, in relation to Bylaw Notice 209, she had no difficulty finding a violation even after acknowledging that the Respondents had applied for building permits that had not yet been fully resolved by the PRRD.

[54] The Zoning Bylaw was to be interpreted by reference to its plain text and in a manner taking account its context and purpose: *North Cowichan (Municipality) v. 1909988 Ontario Limited*, 2021 BCCA 414 at para. 94, leave to appeal to SCC ref'd, 40040 (23 June 2022). There is no suggestion that the Adjudicator misconstrued the plain text of the Zoning Bylaw in terms of what was allowed and not allowed.

- [55] The Respondents argue that they were not "using" the campground and, as such, they were not in breach of the Zoning Bylaw. With respect, I do not accept that the simple non-use of a structure located on the Property that is a violation of the Zoning Bylaw means that the structures are still allowed. They are not. The Zoning Bylaw, properly interpreted, is that these further structures are not allowed to be "used" in the sense of them being located on the Property. Section 6 of the Zoning Bylaw speaks of "use [of] any land " and does not speak to the actual use of structures or "Dwellings" that are, or are not, allowed.
- [56] Black's Law Dictionary, 6th ed. (1991) defines "use" as the ability to avail oneself of, or to hold or in some way benefit from something. Similarly, the Oxford English Dictionary, 11th ed. (2008) defines "use" as the ability or power to exercise or manipulate something. Accordingly, even if there were no persons camping on the grounds, this does not necessarily lead to the conclusion that the campground was not being "used". The Respondents exercised control over, and had the ability to benefit from, the campground. Its existence on the Property is sufficient to find a breach of the Zoning Bylaw.
- [57] Further, the fact that there were more than two dwellings on the Property was well acknowledged by the Respondents in the evidence and in their submissions, when Mr. Pringle said that the camp shacks were being used as employee housing. This stood as an independent breach of the Zoning Bylaw beyond any issues relating to the campground.
- [58] The only way to rationalize and reconcile the Adjudicator's decisions is that she found that the Property did not comply with the Zoning Bylaw, as alleged. In my view, based on the record and the positions advanced even by the Respondents, that finding was entirely reasonable in the circumstances: Hildebrand at paras. 26-27; Romegioli at para. 39; Leaf v. Langley (Township), 2018 BCSC 335 at paras. 54-55; Yard Investment Inc. v. Langley (Township), 2018 BCSC 1658 at paras. 66-69.
- [59] Further, the Adjudicator's ticking of "Did Not Take Place" appears as the only anomalous support for the remedy she apparently considered was available to her in excusing the Respondents from the zoning infractions.
- [60] However, the remedy for a contravention of a bylaw is statutory and not equitable, given the public nature of statutory provisions such as zoning bylaws: Langley (Township) v. Wood, 1999 BCCA 260 at paras. 11-17 [Wood]; Vancouver (City) v. Maurice, 2005 BCCA 37 at paras. 33-34. In Wood, the landowner, who had an extra dwelling on the property that was not permitted under the zoning bylaw, sought relief from the Court to keep the dwelling, for reasons relating to previous dealings between her and Langley. The court denied any relief for that reason and found that there was no basis to deny Langley Township a statutory injunction against the continuation of the infraction.

- [61] To similar effect is the decision in *North Pender Island Local Trust Committee v. Conconi*, 2010 BCCA 494 [Conconi]. At para. 14, the court also referred to the purpose of the zoning bylaw in question. At paras. 37-38, the court upheld the granting of a statutory injunction in favour of the government toward enforcing the bylaw, as it was a statutory remedy that engaged the public interest. The court further stated that such an injunction may only be denied in exceptional circumstances.
- [62] Courts have also consistently stated that there can be no estoppel or waiver of a public right: *Wood* at paras. 12-14; *Immeubles Jacques Robitaille inc. v. Quebec (City)*, 2014 SCC 34 at paras. 26-30.
- [63] The above comments are instructive, although of course no statutory injunction is sought here. I would add that the Respondents did not advance any estoppel or waiver arguments at the hearing in any event.
- [64] Accordingly, to the extent that the Adjudicator relied on other reasons--such as sympathy and the Respondents' continued exploration of other options--she exceeded her authority under the Bylaw Enforcement Act.
- [65] The Respondents have not pointed to any authority that engage ongoing attempts to rectify zoning, land use infractions or due diligence as a defence to enforcement of zoning or land use bylaws, such as Bylaw Notice 212.
- [66] In *Leaf* at paras. 74 and 81-82, the Court considered the due diligence defence in relation to noise violations from barking dogs. *Sisett v. Central Okanagan (Regional District)*, 2019 BCSC 2091 also involved dogs, which had escaped from a backyard, in contravention of a bylaw.
- [67] The considerations of a due diligence defence in the context of the bylaws in *Leaf* and *Sisett* (at para. 30) were consistent with it being treated as a "strict liability" offence, by which an accused can defend on the basis that they took all reasonable steps to avoid the particular event: *R. v. Sault Ste. Marie (City)*, [1978] 2 S.C.R. 1299 at 1325-26. There, the Supreme Court of Canada also refers to offences of "absolute liability" where it is not open to an accused to exculpate themselves by showing that they were free of fault. Further, at 1326, the Court stated:

Offences of absolute liability would be those in respect of which the Legislature had made it clear that guilt would follow proof merely of the proscribed act. The overall regulatory pattern adopted by the Legislature, the subject matter of the legislation, the importance of the penalty, and the precision of the language used will be primary considerations in determining whether the offence falls into the third category.

- [68] Here, the strictures of s. 21 of the Bylaw Enforcement Act point to this being an absolute liability offence where proof of the proscribed act inexorably leads to guilt.

- [69] It is worth noting here that the Respondents did not advance any due diligence defence at the hearing before the Adjudicator, as acknowledged by their counsel at this hearing. In *Yard Investment Inc.* at paras. 52-55, Justice Kent confirmed that judicial review is generally based on the record: JRPA, s. 1 (definition of "record of proceeding"). In addition, Kent J. stated that a judicial review is considered in the context of the arguments advanced by the parties at that time and, generally, new arguments that may have been advanced at that time should not be considered: para. 52, citing *British Columbia Nurses' Union v. Health Services Association of British Columbia*, 2017 BCSC 343 at para. 48.
- [70] There is no mention in the various comments or statements of the Adjudicator that she considered and applied any due diligence defence. She simply said the zoning was "still in question".
- [71] In any event, these zoning infractions were known to the Respondents by as early as 2019, and it is beyond argument that the Respondents would have had ample time to comply with the Zoning Bylaw in the ensuing two years before enforcement steps were taken by the PRRD. The record before the Adjudicator indicated that the Respondents had no further outstanding applications to the ALC or the PRRD regarding the zoning of the Property. In fact, the record showed that the Respondents' applications to the ALC had been repeatedly denied and all official channels exhausted as of October 2021.
- [72] I also agree with the PRRD that due diligence at this stage of the matter could not reasonably include simply writing to BC government agencies in the hope that some political intervention might arise. To accept such an argument is to invite arguments, based on vague and speculative future actions that might resolve the issues, to permit the continuation of ongoing infractions. It is in the public interest to ensure, through land use restrictions, that infractions do not arise and that any infractions are addressed within a reasonable timeframe.
- [73] As stated above, the Adjudicator adopted this approach in relation to the Building Bylaw infraction, notwithstanding the Respondents referring to taking future steps to resolve that matter.
- [74] The Respondents now argue that there are exceptional circumstances that would allowed the Adjudicator to cancel Bylaw Notice 212, such as were discussed in *Conconi* at para. 38. They also cite *City of Vancouver v. Maurice et al.*, 2002 BCSC 1421 at para. 20, *aff'd* 2005 BCCA 37, involving a breach of a bylaw arising from the erection of tents on city streets. In this Court, Justice Lowry as he then was, stated:
- [20] Examples of circumstances that could be said to be exceptional can be seen in the authority the City cites: *British Columbia (Minister of the Environment, Lands & Parks) v. Alpha Manufacturing Inc. et al* (1997), 150 D.L.R. (4th) 193 (B.C.C.A.) at para. 32 and *Capital (Regional District) v. Smith* (1998), 61 B.C.L.R. (3d) 217 (C.A.) at para 18. Exceptional circumstances might be found in instances where there was a right that pre-existed the enactment contravened, where there is a clear and unequivocal expression that the unlawful

conduct will not continue, where there is such uncertainty that it can be said that the breach is not being flouted, or where the events do not give rise to the mischief the enactment was intended to preclude.

[75] I see no exceptional circumstances here that would justify a cancellation of Bylaw Notice 212. Nor do I see any exceptional circumstances to justify the Adjudicator ignoring the only option that was open to her after having found the contravention occurred as alleged.

CONCLUSION AND REMEDY

[76] In conclusion, I find that the Adjudicator did find that there was a contravention as alleged in Bylaw Notice 212 and she was required, in that event, to uphold the penalty. The Adjudicator exceeded her jurisdiction under the Bylaw Enforcement Act by introducing other reasons to cancel the ticket.

[77] I acknowledge that, under s. 2(2) of the JRPA, any relief arising on a judicial review is discretionary, given the use of the word "may": *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62 at para. 56.

[78] The Respondents ask that the Court exercise that discretion and refuse relief. They say in part that this is a continuing offence, if the PRRD is correct, and that future ticketing may still take place. I acknowledge that the circumstances that are faced by the Respondents do invite some level of sympathy for their plight; however, I am in no better position that was the Adjudicator to ignore the clear statutory principles that apply. Further, the Respondents say that the PRRD is still able to issue tickets if the PRRD is of the view that the infractions are continuing. This submission is unpersuasive and, if nothing else, further speaks to the fact that those contraventions existed in December 2021 when Bylaw Notice 212 was issued.

[79] I cannot discern any basis to refuse the relief sought by the PRRD.

[80] I conclude that relief is appropriate in the circumstances. I order that the penalty set out in Bylaw Notice 212 is immediately due and payable by the Respondents to the PRRD.

[81] The PRRD is entitled to its costs of this judicial review on the usual scale.

"Fitzpatrick J."

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