REVISED AGENDA - VICTORIA CITY COUNCIL

Thursday, May 16, 2024

COUNCIL CHAMBERS - 1 CENTENNIAL SQUARE, VICTORIA BC

To be held immediately following the Committee of the Whole Meeting

The City of Victoria is located on the homelands of the Songhees and Esquimalt Nations

Pages

A. TERRITORIAL ACKNOWLEDGEMENT

B. INTRODUCTION OF LATE ITEMS

C. APPROVAL OF AGENDA

D. REPORTS OF COMMITTEE

D.1 Committee of the Whole

D.1.a Report from the May 2, 2024 Committee of the Whole Meeting 1

Link to the May 2, 2024 Committee of the Whole Agenda

D.1.a.a 530 Chatham Street and 1824, 1900, 1907, 1908,1924 and 2010 Store Street: Rezoning Application No. 00796 and associated Official Community Plan Amendment (Downtown)

D.1.a.b Bylaw Amendments Pursuant to Bill 44: Housing Statutes (Residential Development) Amendment Act, 2023, Bill 46: Housing Statutes (Development Financing) Amendment Act, 2023, & Bill 47:Housing Statutes (Transit-Oriented Areas) Amendment Act, 2023

D.1.a.c Bastion Square Projects and Upgrades

*D.1.b Report from the May 16, 2024 COTW Meeting

Placeholder for time-sensitive items pending approval at the May 16, 2024 COTW Meeting

*D.1.b.a 320 Cook Street and 1075 Pendergast Street: Rezoning Application No. 00854 and Development Variance Permit Application No. 00288 (Fairfield)

E. BYLAWS

*E.1 Bylaw for 1661 and 1663 Richardson Street: Rezoning Application No. 00864 7

Addendum: Updated recommendation

Link to the February 15, 2024 COTW Meeting

A report recommending:

1st, 2nd and 3rd readings of: Zoning Regulation Bylaw, Amendment Bylaw (No. 1334) No. 24-026**Adoption of:**
Zoning Regulation Bylaw, Amendment Bylaw (No. 1334) No. 24-026

The application proposes to rezone the land known as 1661/1663 Richardson Street from the R1-G Zone, Gonzales Single Family Dwelling District to the R-2 Zone, Two Family Dwelling District to permit an existing non-conforming two-family dwelling to be stratified.

E.2 Amendment Bylaws for Parking Fines and Street Occupancy Fees and Fines 11

A report recommending:

- **1st, 2nd and 3rd readings of:**
  - Bylaw Notice Adjudication Bylaw, Amendment Bylaw No. 4, No. 24-023
  - Streets and Traffic Bylaw, Amendment Bylaw No. 17, No. 24-024
  - Ticket Bylaw, Amendment Bylaw No. 15, No. 24-033

The purpose of these bylaws is to increase penalties and discounts for certain parking contraventions, to increase fines for certain parking and street occupancy offences, to align street occupancy requests with mobility goals, and to encourage compliance with established processes.

F. NEW BUSINESS

F.1 Transient Accommodation Business Licence Appeal – 867 Humboldt Street 27

A report regarding documents from the Appellants and the City's Licence Inspector for Council's consideration under Section 8(1) of the Business Licence Bylaw for a transient accommodation business licence for a Bed and Breakfast application for 867 Humboldt Street.

G. NOTICE OF MOTIONS

*H. CLOSED MEETING

Addendum: Updated Closed meeting rationale

MOTION TO CLOSE THE MAY 16, 2024 COUNCIL MEETING TO THE PUBLIC

That Council convene a closed meeting that excludes the public under Section 90 of the *Community Charter* for the reason that the following agenda items deal with matters specified in Sections 90(1) and/or (2) of the *Community Charter,* namely:

Section 90(1) A part of a council meeting may be closed to the public if the subject matter being considered relates to or is one or more of the following:

Section 90(1)(g) litigation or potential litigation affecting the municipality;

Section 90(1)(i) the receipt of advice that is subject to solicitor-client privilege, including communications necessary for that purpose; and

Section 90(2) A part of a council meeting must be closed to the public if the subject matter being considered relates to one or more of the following:

Section 90(2)(b) the consideration of information received and held in confidence relating to negotiations between the municipality and a provincial government or the federal government or both, or between a provincial government or the federal government or both and a third party.

I. APPROVAL OF CLOSED AGENDA

J. NEW BUSINESS

J.1 Intergovernmental Relations - Community Charter Section 90(2)(b)

*J.2 Litigation and Legal Advice - Community Charter Sections 90(1)(g) and 90(1)(i)

K. CONSIDERATION TO RISE & REPORT

L. ADJOURNMENT

COMMITTEE OF THE WHOLE REPORT
FROM THE MEETING HELD MAY 02, 2024

For the Council meeting of May 16, 2024, the Committee recommends the following:

E.1 530 Chatham Street and 1824, 1900, 1907, 1908, 1924 and 2010 Store Street: Rezoning Application No. 00796 and associated Official Community Plan Amendment (Downtown)

Alternate Option 1: Advance to OCP Consultation with Changes Rezoning Application

1. That Council instruct the Director of Sustainable Planning and Community Development to prepare the necessary Zoning Regulation Bylaw amendment that would authorize the proposed development outlined in the staff report dated February 29, 2024 for 1824, 1900, 1907, 1908, 1924 and 2010 Store Street and 530 Chatham Street.
2. That first and second reading of the zoning bylaw amendment be considered by Council and a public hearing date be set once the following conditions are met:

    a) Allow for a maximum density in Block B of approximately 4.4 FSR (14 storeys max), distributed across Block B, and allow for an 8th storey at W5 (an increase in FSR of 0.07 for a total of 2.05 FSR for Block A), to support the site's overall lower massing reconfiguration and waive the requirement for additional CALUC meeting.
    b) Revise plans to include an alternate interim harbour pathway route along Discovery Lane with 3m sidewalks, pedestrian lighting, and tree planting and a 5.0m SRW, east of buildings W1 and W2. This pathway will provide a public access route while the Harbour Pathway is closed to accommodate marine industrial uses on the waterfront.
    c) Revise plans to include a 5m underground parking setback from the property line on the west side of the plaza on Store Street to allow for mature trees.
    d) Revise plans to include frontage improvements surrounding the site to the satisfaction of the Director of Engineering, for the purposes of securing these improvements as a condition of Rezoning, include:
        i. Store Street, for the full street width from Chatham to Discovery Street, as an All Ages and Abilities shared use roadway that is traffic calmed, grade-raised, of higher quality materiality, and that supports time-limited vehicle closures for public events.
        ii. Chatham Street frontage that includes one-way protected bike lanes, widened sidewalks, street trees, and a midblock pedestrian crossing consistent with the Downtown Public Realm Plan, Downtown Core Area Plan and Greenway objectives.
        iii. Discovery Street, for the full street width from Store Street to Government Street, that accommodates an enhanced public realm and spaces for performance and festival uses, consistent with the Burnside Gorge Neighbourhood Plan, delineating the extent of work to be considered for cost sharing by the City on the portion of the roadway north of the centreline.

e) Revise plans to retain trees 276, 277, 278.
f) Revise plans to provide an underground parking setback on Chatham Street to allow for a 4.5m x 9m below-grade sanitary pump station expansion, including an SRW or road dedication.
g) Provide a landscape plan showing an enlarged plaza area on the air space parcel as an alternative amenity in the event that the development of a not-for-profit art gallery or other cultural facility is unsuccessful.
h) Provide a plan that illustrates the scope of works to enter into an agreement to cost share the design and construction related costs for improvements on Discovery Street north of centreline and up to property line that are above and beyond typical frontage improvements.
i) Remove references to undefined land-uses and automotive sales, parkade, parking lot and storage facility land uses on the plans and the rezoning booklet.
j) Provide a replacement tree plan to show how the siting and soil volume requirements of the tree bylaw will be met on private property.
k) Confirm that proposed buildings W1, W2 and W8 meet BC Building Code requirements for Access Route Design (BCBC 3.2.5.6.) and/ or revise plans to ensure this code requirement is met.
l) Provide a sewer attenuation report that identifies attenuation requirements for the development as a whole.
m) Confirm commitment to heritage designate the three existing heritage registered buildings on-site.

3. That subject to approval in principle at the public hearing, the applicant prepare and execute the following legal agreements, with contents satisfactory to the Director of Sustainable Planning and Community Development, Director of Engineering and Public Works, Director of Parks, Recreation and Facilities and form satisfactory to the City Solicitor prior to adoption of the bylaw:
    a) Provision of a Master Development Agreement to secure:
        i. Phasing with associated utility and frontage upgrades, with the first phase including the provision of an air space parcel for a not-for-profit art gallery or other cultural facility, a public plaza, a mid-block lane, utility relocation (including underground of Hydro on Discovery Street, and Telus / Shaw on Government Street) and 120,000 square feet (approximately 160 units) secured rental dwelling units. Subsequent phases (DA1,2,3) or (DA 5) can occur in any order, however DA1,2,3 must occur concurrently and provide the Harbour Pathway and its associated SRW.
        ii. Provision and maintenance of a continuous waterfront pathway (Harbour Pathway) from the property's southernmost boundary to its northern most boundary, including a 5m Statutory Right of Way over the entire portion of pathway that secures public access 24 hours a day, 7 days a week, with limited restrictions when required to support marine industrial uses.
        iii. Provision and maintenance of an alternate, interim pathway route along Discovery Lane with 3m sidewalks, pedestrian lighting, and tree planting and a 5.0m SRW, east of buildings W1 and W2. This pathway will accommodate a public access route while the Harbour Pathway is closed to accommodate marine industrial uses on the waterfront.
        iv. Interim site conditions.

v. Provision and maintenance of a SRW for a portion of the Harbour Pathway with a width of between 5m and 10m and an area no less than 478m2, open to public access 24 hours a day, 7 days a week.

vi. Provision and maintenance of a volumetric SRW between buildings W6 and W7 to secure public access between Store Street and the waterfront, and for the realignment of the storm drain, of an area no less than 745m2 and a width no less than 5.4m that includes underground utilities, a publicly accessible/ universally accessible elevator and is open to the public between 8am and 8pm.

vii. Provision and maintenance of a SRW over a public plaza at the corner of Chatham and Store Street of an area no less than 780m2 open to the public 24 hours a day, 7 days a week.

viii. Provisions and maintenance of a 6m wide volumetric SRW on the mid-block lane between Chatham and Discovery Streets to be open for public access between 8am and 8pm, 7 days a week.

ix. Provision and maintenance of a 6m wide SRW on Government Street for a linear park of approximately 442m2 and to secure the retention of the existing street trees.

x. Provision of a 3.0 m wide SRW at the northern most boundary of Development Area 2 and Development Area 3.

xi. Provision of an airspace parcel to be provided to a not-for-profit art gallery or other cultural institution at no cost and of a size no less than 1416m2.

xii. Provision of a plaza in the area designated for an air space parcel for an art gallery or other cultural institution should construction not commence prior to submitting a development permit within the last development area.

xiii. Encroachment agreements for decorative features that may extend over the City ROW, prior to applying for a building permit.

xiv. Provision of a 4.5m x 9m SRW on a portion of the plaza at Chatham and Store street to accommodate a below grade sewer pump station.

xv. Provision of a 5m underground parkade setback on Chatham Street to accommodate the location of mature trees.

xvi. Land use and noise and nuisance mitigation measures identified within report by a qualified professional at each DP phase to ensure residential and industrial land use compatibility.

xvii. Green building/ sustainability measures including a commitment to provide:

- green roofs as indicated on page 54 of the Rezoning Booklet dated June 16, 2023
- a rain garden and wetland water treatment feature at the waterfront edge, used to treat stormwater prior to its discharge into the harbour
- storm water treatment features as indicated on page 50 of the Rezoning Booklet dated June 16, 2023
- a report that demonstrates how the proposed stormwater designs will meet the City's Rainwater Management Standards required prior to DP issuance.

xviii. TDM measures where parking standards are not met to the satisfaction of the Director of Planning.

xix. Provision of proposed shoreline design and bank retention details, prior to a development permit application being submitted for development proposals within DA1 and DA2.
xx. Heritage designation and seismic upgrading of 1824, 1900 and 1910 Store Street in association with the DP applications for these properties.

b) Provisions of the following frontage improvements that are in addition to the standard works and services required in the Subdivision and Development Servicing Bylaw:
   i. Store Street, for the full street width from Chatham to Discovery Street, as an All Ages and Abilities shared use roadway that is traffic calmed, grade-raised, of higher quality materiality, and that supports time-limited vehicle closures for public events.
   ii. Chatham Street frontage that includes one-way protected bike lanes, widened sidewalks, street trees, and a midblock pedestrian crossing consistent with the Downtown Public Realm Plan, Downtown Core Area Plan and Greenway objectives.
   iii. Discover Street, for the full street width from Store Street to Government Street, that accommodates an enhanced public realm and spaces for performance and festival uses, consistent with the Burnside Gorge Neighbourhood Plan.
c) Housing agreement to secure no less than 120,000 square feet (approximately 160 units) of purpose-built market, residential rental units in perpetuity at building S1 in Phase 1.
d) Cost sharing agreement for the design and construction of frontage upgrades north of the centre line on Discovery Street between Store and Government Street.
e) All required main extensions or realignments of storm drains and sanitary sewers to the satisfaction of the Director of Engineering.
f) The Requirements of the Sanitary Attenuation Report.

4. That adoption of the zoning bylaw amendment will not take place until all of the required legal agreements that are registrable in the Land Title Office have been so registered to the satisfaction of the City Solicitor.
5. That the above Recommendations be adopted on the condition that they create no legal rights for the applicant or any other person, or obligation on the part of the City or its officials, and any expenditure of funds is at the risk of the person making the expenditure.

OCP Amendment

1. That Council instruct the Director of Sustainable Planning and Community Development to explore the possibility of amending the Official Community Plan to amend the Core Employment Urban Place Designation of 1824, 1900, 1907, 1908, 1924 and 2010 Store Street and 530 Chatham Street to change the location of permitted residential uses from the south half of the block bounded by Discovery, Chatham, Government and Store Street and to increase the density of this block from 3.0:1 FSR to approximately 4.4: 1 FSR and to permit residential uses within the block west of Store Street, south of Discovery Street and North of Swift Street, and to increase building heights.
2. That Council consider who is affected by the proposed changes to the Official Community Plan, and determine that the following persons, organizations and authorities will be affected:

a) those within a 200 m radius of the subject property
b) the Songhees and Esquimalt First Nations
c) the Port of Victoria/ Transport Canada
d) Gorge Waterway Initiative.

3. That Council provide an opportunity for consultation pursuant to section 475 of the *Local Government Act*, and direct the Director of Sustainable Planning and Community Development to:
   a) mail a notice of the proposed OCP Amendment to the persons organizations, and authorities listing in 2 a-d.

   b) post a notice on the City's website inviting affected persons, organizations and authorities to ask questions of staff and provide written or verbal comments to Council for their consideration.

F.1 <u>Bylaw Amendments Pursuant to Bill 44: Housing Statutes (Residential Development) Amendment Act, 2023, Bill 46: Housing Statutes (Development Financing) Amendment Act, 2023, & Bill47: Housing Statutes (Transit-Oriented Areas) Amendment Act, 2023</u>

1. That Council instruct the Director of Sustainable Planning and Community Development (the **"Director")** to prepare the necessary Zoning Regulation Bylaw amendments in order to:
   a) Comply with the requirements of Bill 44: Housing Statutes (Residential Development) Amendment Act, 2023 and allow the required number of housing units in accordance with the legislated requirements for small-scale multi-family housing while utilizing the zoning requirements contained in the Missing Middle Regulations (the **"SSMUH Bylaw")**, and
   b) Comply with the requirements of Bill 47: Housing Statutes (Transit-Oriented Areas) Amendment Act, 2023 and designate the Legislature Exchange as a transit-oriented area and eliminate parking requirements for residential uses in that area (the **"TOA Bylaw").**
2. That, pursuant to section 30 of the *Land Use Procedures Bylaw*, Council waives the requirement for the holding of a public hearing with respect to the TOA Bylaw.
3. That, after publication of notification in accordance with section 467 of the *Local Government Act*, first, second and third reading of the SSMUH Bylaw and TOA Bylaw be considered by Council.
4. That Council instruct the Director to draft a bylaw to amend the *Land Use Procedures Bylaw* to delegate Development Permits and Development Permits with Variances, related to small-scale multi-unit housing in restricted zones, to the Director.
5. That Council:
   a) Consider who would be affected by an Amenity Cost Charge Bylaw to support anticipated changes to zoning and land use as part of the ongoing OCP 10-year Update and the SSMUH Bylaw and determine that the following persons, organizations and authorities will be affected:
      i. the general public;
      ii. the development community;
      iii. the Esquimalt and Songhees Nations;
      iv. the Township of Esquimalt;
      v. the District of Saanich;

vi. the District of Oak Bay;
vii. Greater Victoria Public Library; and
viii. School District 61 Board.

b) Provide an opportunity for broad public consultation pursuant to section 570.3 of the *Local Government Act* and instruct the Director to engage the entities identified in 5.a) on amenity needs associated with projected growth to inform an Amenity Cost Charge Bylaw as part of the OCP 10-year Update Process currently underway.

c) Instruct the Director to report back to Council with a summary of the feedback received pursuant to the above resolution and any additional technical analysis required prior to seeking instructions to draft a bylaw.

6. That Council advance this matter for ratification at the May 2, 2024 daytime Council meeting.

F.2 Bastion Square Projects and Upgrades

That Council:

Direct staff to bring forward amendments to the Financial Plan Bylaw, 2024 to include $150,000 for Bastion Square Upgrades with funding from the Bastion Square Revitalization Trust.

Council Report
For the Meeting of May 16, 2024

To:	Council	**Date:**	May 6, 2024
From:	C. Kingsley, City Clerk		
Subject:	1661 and 1663 Richardson Street: Rezoning Application No. 00864		

RECOMMENDATION

That the following bylaw be given first, second and third readings:
1. Zoning Regulation Bylaw Amendment Bylaw (No. 1334) No. 24-026

That the following bylaw be adoped:
1. Zoning Regulation Bylaw Amendment Bylaw (No. 1334) No. 24-026

BACKGROUND

Attached for Council's initial consideration is a copy of the proposed Bylaw No. 24-026.

The issue came before Council on February 22, 2024 where the following resolution was approved:

1661 and 1663 Richardson Street: Rezoning Application No. 00864 (Gonzales)

1. *That Council instruct the Director of Sustainable Planning and Community Development to prepare the necessary Zoning Regulation Bylaw amendment that would authorize the proposed development outlined in the staff report dated January 18, 2024 for 1661/1663 Richardson Street.*
2. *That, pursuant to section 30 of the Land Use Procedures Bylaw, Council waives the requirement for the holding of a public hearing.*
3. *That, after publication of notification in accordance with section 467 of the Local Government Act, first, second and third reading of the zoning regulation bylaw amendment be considered by Council.*
4. *That the above recommendations be adopted on the condition that they create no legal rights for the applicant or any other person, or obligation on the part of the City or its officials, and any expenditure of funds is at the risk of the person making the expenditure.*

Respectfully submitted,

Curt Kingsley
City Clerk

Report accepted and recommended by the City Manager

List of Attachments:

- Bylaw No. 24-026

NO. 24-026

A BYLAW OF THE CITY OF VICTORIA

The purposes of this Bylaw are to amend the Zoning Regulation Bylaw by rezoning the land known as 1661/1663 Richardson Street from the R1-G Zone, Gonzales Single Family Dwelling District to the R-2 Zone, Two Family Dwelling District.

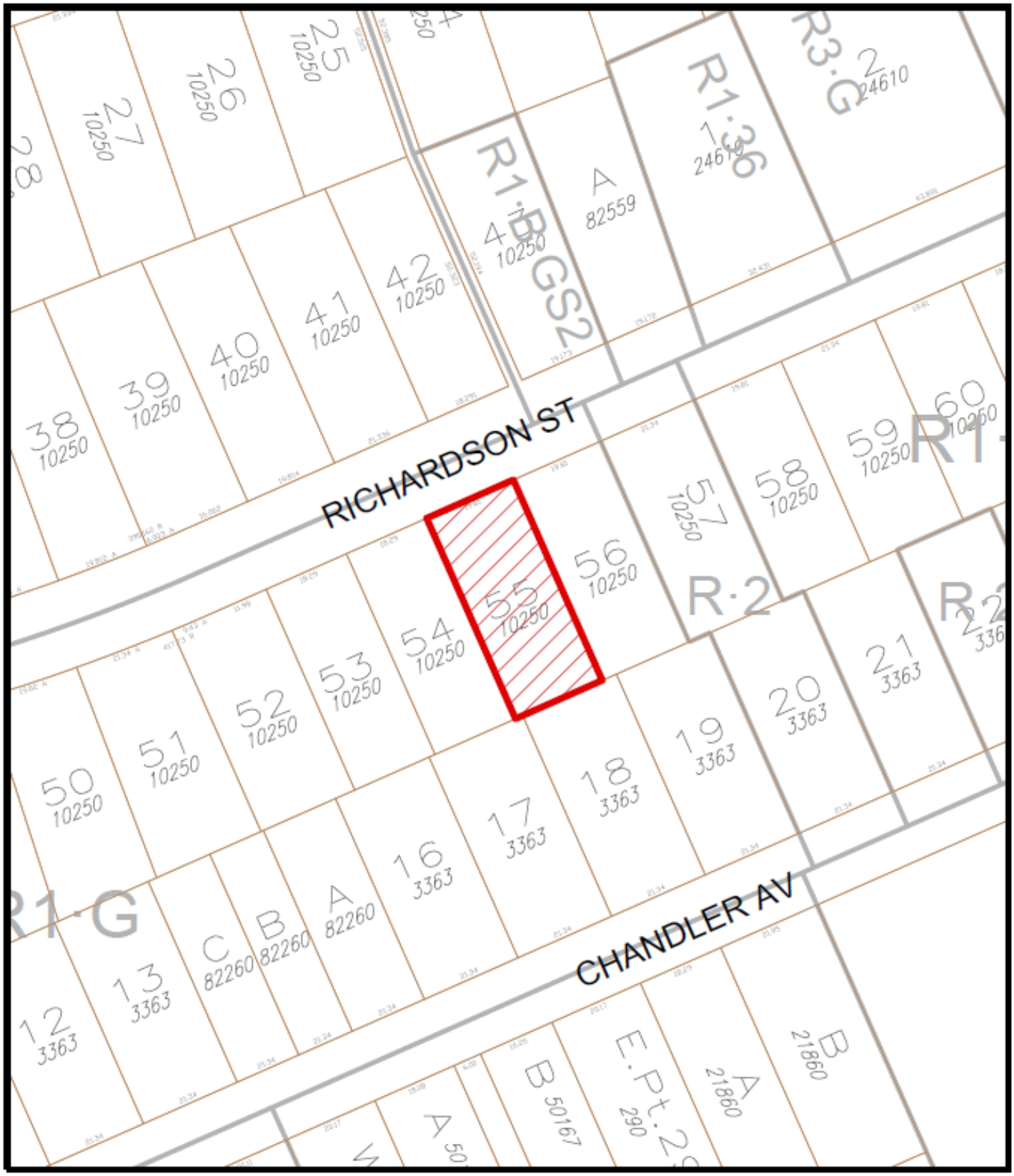
The Council of The Corporation of the City of Victoria in an open meeting assembled enacts the following provisions:

1 This Bylaw may be cited as the “ZONING REGULATION BYLAW, AMENDMENT BYLAW (NO. 1334)”.

2 The land known as 1661/1663 Richardson Street, legally described as PID: 005-184-053 Lot 55, Section 68 Victoria District, Plan 10250 and shown hatched on the attached map, is removed from the R1-G Zone, Gonzales Single Family Dwelling District, and placed in the R-2 Zone, Two Family Dwelling District.

READ A FIRST TIME the	day of	2024
READ A SECOND TIME the	day of	2024
READ A THIRD TIME the	day of	2024
ADOPTED on the	day of	2024

CITY CLERK MAYOR



N

1661 and 1663 Richardson Street
Rezoning No.00864

CITY OF VICTORIA

Council Report
For the Meeting of May 16, 2024

To:	Council	**Date:**	April 30, 2024
From:	Susanne Thompson, Deputy City Manager and Chief Financial Officer		
Subject:	Parking Fines and Street Occupancy Fees and Fines – Amendments to Bylaws		

RECOMMENDATION

That Council give first, second and third readings to:

1. Bylaw Notice Adjudication Amendment Bylaw No. 4, Bylaw No. 24-023
2. Streets and Traffic Bylaw Amendment Bylaw No. 17, Bylaw No. 24-024
3. Ticket Bylaw Amendment Bylaw No. 15, Bylaw No. 24-033

EXECUTIVE SUMMARY

On February 8, 2024, as part of the 2024 financial planning process, Council directed staff to bring forward amendments to bylaws to increase parking fines and street occupancy fees as follows:

1. Parking fines:
    a. Metered zones $60 with early payment discount of $30
    b. Time-limited zones $60 with early payment discount of $30
    c. Residential zones $80 with early payment discount of $40
    d. No stopping zones $80 with early payment discount of $40
    e. Commercial zones $80 with early payment discount of $50
2. Street occupancy fees:
    a. Public Works Service fee $50 per visit
    b. Sidewalk Occupancy fee $20 per 13 m^2
    c. Clarify the Bylaw by specifying a Boulevard Occupancy fee of $10 per 13 m^2 per day
    d. Lane Closure fees:
        - Local Roads - $50/lane/day
        - Collector Roads - $75/lane/day
        - Downtown or Secondary Arterial - $100/lane/day
        - Arterial - $250/lane/day
        - AAA bike lane - $100/lane/day

During the preparation of these bylaw amendments, staff identified a number of other related amendments that would provide the necessary staff tools to continue to align street occupancy requests with mobility goals and encourage compliance with established processes. The additional changes are as follows:

1. Include a delegation to Director to establish AAA bike lane not identified in the official community plan.
2. Make explicit Director's ability to require traffic management and traffic control plans, per current practice.
3. Impose fees for closure of an AAA bike lane on arterial streets equal to the occupation fee for closure of a sidewalk or vehicle lane on the arterial street.
4. New rush fee of $50 for late street occupancy permit requests.
5. Widening situations where the City can charge actual cost of crew attendance - from attendance after hours and weekends to attendance at anytime for anything other than installation or removal of signs to reserve space.
6. New fee of $70 per hour for traffic control plan and traffic management plan review. In circumstances where such plans are required, this review already occurs prior to issuance of an occupancy permit, and the fee reflects the average staff cost to the City per hour for traffic management or traffic control plan review.
7. Add requirement for compliance with traffic control and traffic management plans.
8. Add ability for Director to cancel an occupancy permit for failure to comply with any of the conditions of the permit.
9. Increasing/adding new minimum fines in Schedules F and G to the Streets and Traffic Bylaw, MTI amounts (Ticket Bylaw) and notice amounts (Bylaw Notice Adjudication Bylaw) for violations of 106(2) and 106(9).
10. Various housekeeping – e.g. remove reference to sidewalks where it is redundant, fix punctuation in section 9, add definitions as required to give meaning to new provisions.

To enable the above changes, three bylaws require amendments as follows:

The amendments to the *Bylaw Notice Adjudication Bylaw* will:

1. Increase penalties and discounts for certain parking contraventions
2. Increase penalties and discounts for occupying a street without a permit; and
3. Impose a new fine for non-compliance with a condition of a street occupancy permit.

In addition to the specific amendments identified by staff as listed above, in accordance with the February 8 Council direction the amendments to the *Streets and Traffic Bylaw* will:

1. Increase the minimum fines for certain parking and street occupancy offences;
2. Increase street occupancy and street closure fees; and
3. Clarify the Bylaw by imposing a specific boulevard occupancy fee.

The amendments to the *Ticket Bylaw* will:

1. Increase the fine for obstructing the street without a permit issued under section 106 of the Streets and Traffic Bylaw, Bylaw No. 09-079; and
2. Impose a fine for not complying with a condition of a permit issued under section 106 of the Streets and Traffic Bylaw, Bylaw No. 09-079.

Respectfully submitted,

Susanne Thompson
Deputy City Manager and Chief Financial Officer

Report accepted and recommended by the City Manager

NO. 24-023

BYLAW NOTICE ADJUDICATION BYLAW, AMENDMENT BYLAW (NO. 4)

A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to amend the *Bylaw Notice Adjudication Bylaw* to increase penalties and discounts for certain parking contraventions.

Contents

Under its statutory powers, including section 260 of the *Community Charter* and sections 2, 4, and 6 of the *Local Government Bylaw Notice Enforcement Act*, the Council of the Corporation of the City of Victoria in an open meeting assembled enacts the following provisions:

Title

1 This Bylaw may be cited as the Bylaw Notice Adjudication Bylaw, Amendment Bylaw (No. 4)".

Amendments

2 Bylaw No. 16-017, the Bylaw Notice Adjudication Bylaw, is amended by striking from Schedule LL the row with "106(2)" in the Bylaw Section column and replacing it with the following:

106(2)	Obstruct street	$500.00	$100.00	$100.00

3 Bylaw No. 16-017, the Bylaw Notice Adjudication Bylaw, is further amended by adding the following new row to Schedule LL, immediately below the line with "106(2)" in the Bylaw Section column:

106(9)	Fail to comply with a condition of permit	$500.00	$100.00	$100.00

4 Bylaw No. 16-017, the Bylaw Notice Adjudication Bylaw, is further amended by repealing Schedule MM and replacing it with a new Schedule MM that is attached to this Bylaw as Appendix 1 and that forms part of this Bylaw.

Commencement

5 This Bylaw comes into force on adoption.

READ A FIRST TIME the	day of	2024
READ A SECOND TIME the	day of	2024
READ A THIRD TIME the	day of	2024
ADOPTED on the	day of	2024

CITY CLERK MAYOR

APPENDIX 1

SCHEDULE MM
STREETS AND TRAFFIC BYLAW CONTRAVENTIONS AND PENALTIES - PARKING

Bylaw Section	Description	A Penalty	B Discount Amount	C Surcharge Amount
48	Stopping where prohibited	$80.00	$40.00	$0.00
49	Parking where prohibited	$80.00	$40.00	$0.00
50	Parking in City lane	$60.00	$30.00	$0.00
51	Parking in limited time zone	$60.00	$30.00	$0.00
53	Parking in a residential zone	$80.00	$40.00	$0.00
54	Parking without a residential permit	$80.00	$40.00	$0.00
55	Parking in a truck loading zone	$80.00	$30.00	$0.00
56	Parking in a hotel zone	$60.00	$30.00	$0.00
57	Parking in a general loading zone	$60.00	$30.00	$0.00
58	Parking in a school loading zone	$60.00	$30.00	$0.00
59	Parking in a church loading zone	$60.00	$30.00	$0.00
60	Parking in a parking or loading zone for persons with disabilities	$150.00	$75.00	$0.00
61	Parking in a taxi stand	$60.00	$30.00	$0.00
62	Parking in a bus zone	$80.00	$30.00	$0.00
63	Parking in a shuttle bus zone	$60.00	$30.00	$0.00
65	Parking in a safety zone	$80.00	$40.00	$0.00
66	Improper parking in an angle parking zone	$60.00	$30.00	$0.00
67	Parking in a reserved parking area	$60.00	$30.00	$0.00
68	Parking in a special parking zone	$60.00	$30.00	$0.00
69	Parking in a compact parking spot	$60.00	$30.00	$0.00
70	Parking in a passenger zone	$60.00	$30.00	$0.00
71	Parking in a metered zone	$60.00	$30.00	$0.00
72A(1)	Parking in an electric vehicle charging zone without charging	$60.00	$30.00	$0.00
72A(2)	Parking non electric vehicle in electric vehicle parking zone	$80.00	$30.00	$0.00

Bylaw Section	Description	A Penalty	B Discount Amount	C Surcharge Amount
72A(4)	Charging electric vehicle beyond permitted time	$60.00	$30.00	$0.00
72A(5)	Tamper, deface, damage or destroy charging station	$350.00	$175.00	$0.00
72A(6)	Unplug or plug electric vehicle not under custody	$60.00	$30.00	$0.00
75	Trailer parking in metered zone	$60.00	$30.00	$0.00
76	Parking in a temporarily reserved zone	$60.00	$30.00	$0.00
77	Improper objects inserted in pay station	$350.00	$175.00	$0.00
78	Parking in ticket controlled parking zone	$60.00	$30.00	$0.00
79	Parking in sightseeing stand	$100.00	$50.00	$0.00
80	Parking in horsedrawn sightseeing stand	$100.00	$50.00	$0.00
81	Parking in a tourist parking zone	$60.00	$30.00	$0.00
82	Unloading merchandize or freight	$60.00	$30.00	$0.00
83	Prohibited parking at night	$80.00	$40.00	$0.00
84	Sleeping in a parked vehicle overnight	$60.00	$30.00	$0.00
85	Parking with inadequate space between vehicles	$60.00	$30.00	$0.00
86	Parking on a one way street	$60.00	$30.00	$0.00
87(2)(b), (c), (e) to (k), (n), (o)	Miscellaneous stopping, standing and prohibitions	$60.00	$30.00	$0.00
87(2)(d), (l), (m)	Miscellaneous stopping, standing and parking prohibition	$80.00	$40.00	$0.00
88	Parking in relation to a curb	$60.00	$30.00	$0.00
90	Parking adjacent to a yellow curb	$80.00	$40.00	$0.00
95	Parking commercial vehicles in residential zones	$60.00	$30.00	$0.00
96	Parking trailer left on street	$60.00	$30.00	$0.00
102(1)	Prohibited items on street and sidewalk	$102.50	$51.25	$0.00

Bylaw Section	Description	A Penalty	B Discount Amount	C Surcharge Amount
110	Parking, stopping, standing on sidewalk	$80.00	$40.00	$0.00
117	Chalk on vehicle	$102.50	$51.25	$0.00

NO. 24-024

STREETS AND TRAFFIC BYLAW, AMENDMENT BYLAW (NO. 17)

A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to amend the *Streets and Traffic Bylaw* to:

1. Increase the minimum fines for certain parking and street occupancy offences;

2. Increase street occupancy fees;

3. Clarify the Director of Engineering's power to require traffic control and traffic management plans in connection with street occupancy;

4. Empower the Director of Engineering to make orders identifying AAA bikeroutes; and

5. Require compliance with the conditions of street occupancy permits.

Contents

Under its statutory powers, including sections 8, 35 to 46, 62, 194, and 260 -263 of the *Community Charter*, section 124 of the *Motor Vehicle Act*, and section 14 of the *Victoria City Act, 1919* the Council of the Corporation of the City of Victoria in an open meeting assembled enacts the following provisions:

Title

1 This Bylaw may be cited as the "Streets and Traffic Bylaw, Amendment Bylaw (No. 17)".

Definition

2 In this Bylaw, "**S&T Bylaw**" means Bylaw No. 09-079, the Streets and Traffic Bylaw.

Amendments

3 The S&T Bylaw, is amended by striking the phrase "street or sidewalk" wherever it appears and replacing it with the word "street".

4 The S&T Bylaw is further amended by adding the following definition to section 4, immediately above the definition of "air horn":

""AAA bikeroute"

includes any cycle route that has been constructed and is identified in the City's Official Community Plan Bylaw, 2012 on "Map 8: All Ages and Abilities Cycling

Network", and also includes any portion of a street that is the subject of an order under section 9(s) of this Bylaw;" .

5 The S&T Bylaw is further amended by adding the following two new definitions to section 4, immediately above the definition of "trailer":

""traffic control plan"

has the same meaning as in the British Columbia Ministry of Transportation and Infrastructure document titled "2020 Traffic Management Manual for Work on Roadways", as amended from time to time;

"traffic management plan"

has the same meaning as in the British Columbia Ministry of Transportation and Infrastructure document titled "2020 Traffic Management Manual for Work on Roadways', as amended from time to time;".

6 The S&T Bylaw is further amended at section 9 as follows:

(a) By striking out the period at the end of subparagraph (q)(iii) and replacing it with a semi-colon,

(b) By striking out the period at the end of subparagraph (r)(ii) and replacing it with a semicolon, and

(c) By adding the following new paragraph to section 9:

"(s) the streets or portions of streets where traffic, classes of traffic, vehicles or drivers are regulated as the Director of Engineering considers advisable to support the prioritization of cycle traffic including different provisions, including exceptions, for different classes of traffic, vehicles or drivers."

7 The S&T Bylaw is further amended at subsection 106(3) as follows:

(a) By repealing subsection 106(3)(a) and replacing it with the following:

"(a) In the application, state the period for which it is expected that the permit is required and provide any other information, including but not limited to a traffic control plan or traffic management plan, required by the Director;",

(b) by repealing subsection 106(3)(b) and replacing it with the following:

"(b) pay to the City the following fees that apply to the occupation:

(i) for each $13m^2$ of a street or portion thereof:

(A) $10.00 per day on a boulevard;

(B) $15.00 per day on any part of a street not otherwise listed in this subsection 106(3)(b);

(C) $20.00 per day on a sidewalk;

(D) $20.00 per day in a metered zone or a pay station zone;

(ii) In addition to the fee required under subparagraph (b)(i), if the occupation requires closure of a travelled portion of the street, the following fees must be paid to the City:

(A) for closure of a AAA bikeroute, the greater of $100 per day or the applicable rate per day per closure as set out in subparagraph (b)(ii)(B);

(B) for closure of a sidewalk or any lane that is not a AAA bikeroute:

a. $50 per day on a local street;

b. $75 per day on a collector street;

c. $75 per day on a secondary collector street;

d. $100 per day on a secondary arterial street; and

e. $250 per day per sidewalk or any lane on an arterial street;

(iii) $50.00 for each attendance of a City crew during the crew's regular working hours that is required for installation or removal of signs to reserve the space in connection with the occupation of a street;

(iv) $50 for each application submitted within 48 hours the proposed start of the proposed occupation, regardless of whether the permit is issued within 48 hours of the City receiving the application;

(v) the actual cost of a City crew that is required for traffic control measures other than those set out in subparagraph (b)(iii) in connection with the occupation of a street; and

(vi) $70 per hour or portion thereof for traffic management plan or traffic control plan review by City staff." .

8 The S&T Bylaw is further amended by striking out the current text of subsection 106(5) and replacing it with the following text:

"The City must provide an applicant with an estimate of the costs described in subparagraphs (3)(b)(v) and (vi).".

9 The S&T Bylaw is further amended at section 106 by adding new subsections 106(9) and 106(10) as follows:

"(9) The holder of a permit issued under this section must comply with each condition of the permit, including but not limited to the terms and conditions of any required traffic management plan or traffic control plan.

(10) The Director may cancel a permit issued under this section immediately, and without prior notice, if in the opinion of the Director the permit holder fails to comply with any of the conditions of the permit, including but not limited to the terms and conditions of any required traffic management plan or traffic control plan.".

10 The S&T Bylaw is further amended by:

(a) Repealing Schedule F and replacing it with a new Schedule F that is attached to this Bylaw as Appendix 1 and that forms part of this Bylaw; and

(b) Repealing Schedule G and replacing it with a new Schedule G that is attached to this Bylaw as Appendix 2 and that forms part of this Bylaw.

Commencement

11 This Bylaw comes into force on adoption.

READ A FIRST TIME the	day of	2024
READ A SECOND TIME the	day of	2024
READ A THIRD TIME the	day of	2024
ADOPTED on the	day of	2024

CITY CLERK MAYOR

Appendix 1

SCHEDULE F

Streets and Traffic Bylaw

Minimum Fines for Traffic Offences other than Sections 19 to 44

The minimum penalties set out in the second column of the following table apply to contraventions of the corresponding sections shown in the first column of the table:

Section numbers	*Minimum penalties*
48, 49, 53, 54, 65, 83, 87(2)(d),(l)&(m), 89, 90, 110, 112	$40.00
50, 51, 56 to 59, 61, 63, 66 to 71, 72A(1), 72A(4), 72A(6), 75, 76, 78, 81, 82, 84 to 86, 87(2)(b),(c),(e) to (k),(n)&(o), 88, 95, 96	$30.00
60	$75.00
72A(5), 77	$175.00
55, 62, 72A(2), 79, 80	$50.00
Part 4 sections, including a statutory or regulatory provision adopted under that Part	$102.50
102(1), 117	$51.25
106(2), 106(9)	$400
107, 109(1)(b)	$100.00
114	$77.50
115	$57.50 for 1st contravention $67.50 for 2nd contravention $102.50 for 3rd or subsequent contravention
provisions not referred to above	$42.50

Appendix 2

SCHEDULE G

Streets and Traffic Bylaw

Voluntary Penalties Payable under Offence Notices

The voluntary penalties set out in the second and third columns of the following table apply to contraventions of the corresponding sections shown in the first column of the table:

Section numbers	*Voluntary penalty if paid within 14 days from date of offence notice*	*Voluntary penalty if paid 15 or more days from date of offence notice*
48, 49, 53, 54, 65, 83, 87(2)(d),(l)&(m), 89, 90, 110, 112	$40.00	$80.00
50, 51, 56 to 59, 61, 63, 66 to 71, 72A(1), 72A(4), 72A(6), 75, 76, 78, 81, 82, 84 to 86, 87(2)(b),(c),(e) to (k),(n)&(o), 88, 95, 96	$30.00	$60.00
60	$75.00	$150.00
72A(5), 77	$175.00	$350.00
55, 62, 72A(2)	$50	$80
79, 80	$50.00	$100.00
Part 4 sections, including a statutory or regulatory provision adopted under that Part	$51.25	$102.50
102(1), 117	$51.25	$102.50
106(2), 106(9)	$875.00	$1000.00
107, 109(1)(b)	$50.00	$100.00
114	$38.75	$77.50

Section numbers	*Voluntary penalty if paid within 14 days from date of offence notice*	*Voluntary penalty if paid 15 or more days from date of offence notice*
115		$57.50 for 1st contravention $67.50 for 2nd contravention $102.50 for 3rd or subsequent contravention
provisions not referred to above		$42.50

NO. 24-033

TICKET BYLAW, AMENDMENT BYLAW (NO. 15)

A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to amend the *Ticket Bylaw* to:

1. Increase the fine for obstructing the street without a permit issued under section 106 of the Streets and Traffic Bylaw, Bylaw No. 09-079; and

2. Impose a fine for not complying with a condition of a permit issued under section 106 of the Streets and Traffic Bylaw, Bylaw No. 09-079.

Contents

Under its statutory powers, including sections 260-263 of the *Community Charter*, the Council of the Corporation of the City of Victoria in an open meeting assembled enacts the following provisions:

Title

1 This Bylaw may be cited as the "Ticket Bylaw, Amendment Bylaw (No. 15)".

Amendments

2 The Ticket Bylaw No. 10-071 is amended at Schedule JJ by removing the row with the text "Obstruct street/sidewalk" in Column 1 and replacing it with this:

Obstruct street	106(2)	$1000.00	$875.00

3 The Ticket Bylaw No. 10-071 is further amended at Schedule JJ by adding a new row immediately below the row with the text "Obstruct street" in Column 1, as follows:

Fail to comply with a condition of permit	106(9)	$1000.00	$875.00

Commencement

4 This Bylaw comes into force on adoption.

READ A FIRST TIME the	day of	2024
READ A SECOND TIME the	day of	2024
READ A THIRD TIME the	day of	2024
ADOPTED on the	day of	2024

CITY CLERK MAYOR

Council
For the Meeting May 16, 2024

To:	Council	**Date:**	May 8, 2024
From:	Curt Kingsley, City Clerk		
Subject:	Transient Accommodation Business Licence Appeal – 867 Humboldt Street		

RECOMMENDATION

That Council receive this report for information and either uphold or overturn the Licence Inspector's denial of a transient accommodation business licence for a Bed and Breakfast application for 867 Humboldt Street.

EXECUTIVE SUMMARY

This report presents documents from an Appellant and the City's Licence Inspector for Council's consideration under the Section 8(1) of the Business Licence Bylaw.

The Business Licence Bylaw provides for the licensing and regulation of businesses and establishes the Licence Inspector's authority to refuse a licence. The Bylaw is attached as Appendix A.

Business licences are issued by the City of Victoria on a yearly basis. If an application is not compliant with the City's requirements, a Licence Inspector may deny a business licence. In this instance, the Licence Inspector notifies the applicant of this decision and advises them how to seek Council's reconsideration in accordance with section 60(5) of the Community Charter. The City Clerk's Office coordinates the appeal process.

An Appellant may seek an opportunity to be heard by Council for a denied business licence in accordance with the Community Charter, section 60(5). This entitles the applicant who is subject to the decision to have Council reconsider the matter. In this case, the City and appellants' counsel agreed to use the process set out in the Short-term Rental Business Licence Appeal Process Policy, with the modification that the appellants were provided with one week longer than normal to make their initial submission. The Policy is attached as Appendix B. The Policy establishes the following process:

1. An applicant may start an appeal by submitting a request to the City Clerk.
2. The City Clerk replies to an Appellant to acknowledge the request.
3. An Appellant makes a written submission. (Appendix C).
4. The Licence Inspector makes a written submission in response to the Appellant (Appendix D).
5. An Appellant may also make a written submission in response to the Licence Inspectors

reasons for denial of the License (Appendix E).

6. Once this process is complete, the City Clerk's Office informs the Appellant and Licence Inspector of the date that Council will consider the appeal.
7. The City Clerk's Office consolidates these documents and submits them to Council for Council to determine whether the License Inspector's denial of the License is upheld or overturned.

Council's role is to review this information and to either grant or deny an appeal. Denying an appeal means a Licence Inspector will not issue a business licence. Granting an appeal means that the Licence Inspector will issue a business licence as soon as practicable.

In this instance the owner at 867 Humboldt Street was denied a transient accommodation business licence and has exercised the Community Charter right to have council reconsider the matter. The submissions of both the operator and the Licence Inspector are attached as appendices as noted above.

Respectfully submitted,

Curt Kingsley
City Clerk

Report accepted and recommended by the City Manager

Attachments
Appendix A: Business Licence Bylaw
Appendix B: Short-term Rental Business Licence Appeal Process Policy
Appendix C: Appellant's Submission
Appendix D: Licence Inspector's Response to Appellant's Submission
Appendix E: Appellant's Response to the Licence Inspector

BUSINESS LICENCE BYLAW

BYLAW NO. 89-071

This consolidation is a copy of a bylaw consolidated under the authority of section 139 of the *Community Charter*. (Consolidated on July 1, 2015 up to Bylaw No. 14-101)

This bylaw is printed under and by authority of the Corporate Administrator of the Corporation of the City of Victoria.

NO. 89-071

BUSINESS LICENCE BYLAW

A BYLAW OF THE CITY OF VICTORIA

(Consolidated to include Bylaws No. 89-185, 90-004, 90-093, 90-222, 92-014, 92-095, 93-014, 93-086, 93-122, 93-135, 94-026, 95-029, 95-077, 95-097, 95-113, 96-003, 98-006, 98-044, 99-042, 01-070, 01-092, 01-152, 02-111, 03-109, 04-117, 08-097, 10-074, 10-084, 13-011 and 14-101)

to consolidate the provisions for the licensing and regulation of businesses and to provide for voluntary penalties and the issuing of tickets.

PURSUANT to the powers vested in it by the Victoria City Act, 1919 as amended, by the Municipal Act R.S.B.C. 1979, c.290, and other powers thereunto enabling, the Municipal Council of The Corporation of the City of Victoria enacts as follows:

1 This Bylaw may be cited as the “BUSINESS LICENCE BYLAW.”

2 (1) This bylaw is subject to the provisions of the Interpretation Bylaw, 1974.

(2) In this bylaw,

“automatic teller machine” means a device that

(a) is linked to a financial institution’s account records, and that is able to carry out transactions that include account transfers, deposits, cash withdrawals, balance inquiries, payments of amounts owed, or other financial transactions, and

(b) is not located in the same building as offices of the financial institution that owns the device;

“financial institution” means a bank, credit union, or trust company.

3 No provision of this bylaw shall depend for its validity on any other provision of this or of any other bylaw, it being Council’s intention that, notwithstanding that one or more of the provisions of this or of any other bylaw may be invalid, as many as possible of the provisions of this bylaw shall remain in force and effect, as though such invalid provision or provisions were never enacted.

4 No person shall carry on any of the trades, businesses, professions, occupations, callings, employments or purposes set out in the Schedule of Fees attached to and forming part of this bylaw, unless:

(a) he holds a valid and subsisting licence for that purpose, issued under the provisions of this bylaw or of another bylaw of the City enacted for that purpose;

(b) he had paid in advance to the City the licence fee prescribed in this bylaw, and if no licence fee is presscribed in this bylaw then such licence fee as may be prescribed in another bylaw having application;

(c) he displays such licence in a conspicuous place on the premises, if any, to which the licence applies.

6 Except as otherwise provided by bylaw, each licence shall be in writing, shall be issued by the Licence Inspector, and shall identify the licensee and the nature of the business authorized.

7 An application for a licence shall be made in writing on a form prescribed by the Licence Inspector.

8 (1) Before issuing any licence, the License Inspector may require evidence to his reasonable satisfaction that the applicant has complied with any and all applicable bylaws, regulations and statutes, and may require the applicant to give full particulars of all convictions of any offences recorded against the applicant anywhere in Canada during the two years immediately preceding the date of application.

(2) The License Inspector may also obtain a report from any police force on the applicant's criminal record, and no liability for defamation shall attach to the City or any of its employees or to any member of any police force for communicating such information in good faith, whether or not the information is accurate.

(3) The Licence Inspector may issue or renew a business licence for a business that holds a Liquor Primary or Liquor Primary Club Licence issued under the Liquor Control and Licensing Regulation, B.C. Regulation No. 244/2002, only if the applicant for the business licence

(a) enters with the City into a Good Neighbour Agreement, in the form attached as Schedule B to this bylaw, that includes the conditions set out in paragraph (b); and thereby

(b) agrees that the applicant will:

(i) ensure that noise emissions from the business do not disturb the neighbourhood and comply with the City's bylaws dealing with the regulation of noise,

(ii) ensure that the business does not play amplified music, between 11:00 p.m. and the business' closing time, outside of the building where the business is located,

(iii) post a sign at the entrance of the place of business advising of the dress code, if any, the admission fee and the identification requirements in connection with permitted entry to the business,

(iv) require on-duty employees to wear distinctive identification badges displaying an identification number,

(v) maintain a list that fully identifies all employees by name and identification number,

(vi) employ security personnel to patrol the outdoor areas of the place of business, to monitor the activity of patrons in those areas, particularly at closing time, and to ensure orderly dispersal of patrons as they leave the place of business,

(vii) employ reasonable screening measures to ensure that patrons entering the business premises are at least 19 years of age and that no weapons or illegal drugs are brought onto the business premises,

(viii) not permit patrons to carry or consume alcoholic beverages in areas that are not licensed for that purpose, including the outdoor areas of the place of business,

(ix) when requested, allow those patrons who have consumed liquor at that place of business the use of one of the business' telephones, free of charge, for the purpose of telephoning a taxi or other transportation,

(x) each night after the business closes, inspect its outdoor areas and ensure that they are free of litter, garbage and broken glass,

(xi) ensure that at all times the queue of patrons waiting for entry into the place of business does not impede or obstruct pedestrian traffic along a sidewalk or interfere with access or egress to another place of business,

(xii) immediately remove all graffiti that is placed from time to time on the exterior of the building in which the business is located.

(4) The requirements set out in subsection (3)(b) are conditions that the applicant must comply with throughout the term of its business licence and any renewal term.

9 Until the contrary is proved a person shall be deemed to carry on a trade, business, profession, occupation, calling, employment or purpose without a valid and subsisting licence if he performs a single transaction which is normally performed only by persons engaged in the trade, business, profession, occupation, calling, employment or purpose.

10 (1) Except as otherwise expressly provided in this bylaw every licence shall be valid for a term of one year, commencing on the 16th day of January and terminating on the 15th day of January next, provided that if a licence is issued after the 16th day of January in any year it shall be valid only until the 15th day of January next, but the full licence fee shall nevertheless be payable.

(2) A person who holds a licence under this bylaw must renew the licence and pay the annual licence fee on or before January 15 for as long as that person continues to operate the business.

(3) If a licence is renewed after February 15, the licence holder must pay to the City a late fee of $25 in addition to the applicable annual licence fee.

(4) Subsection (3) does not apply to licence holders described under paragraphs 10(a) and (d), 11, 12 and 14 in the Schedule of Licence Fees.

11 (1) No licence shall be transferable from one person to another, and no refund shall be payable in respect of a licence on the grounds that the holder of such licence has ceased to carry on business before its expiry.

(2) Notwithstanding subsection (1) a licence under paragraph 18 in the Schedule of Licence Fees shall, if in good standing, be transferred from one person to another, upon written application of the transferor and the transferee.

12 Any person holding a licence shall be entitled, on written application duly made to and approved by the Licence Inspector, to change his place of business, subject to compliance with any bylaws of the City relating to the location, nature, condition, or approval of the premises to be used or occupied for it, or to any other bylaws relating to the application for or subject matter of the licence, but no person shall be entitled to carry on business at two or more locations at the same time under one licence.

13 Any License Inspector, any person designated by the Director of Finance and any Police Officer may at any reasonable time enter upon any premises for the purpose of ascertaining whether the provisions of this bylaw are being complied with, and provided that the Inspector, Police Officer or other designated person produces proper identification when asked, no person shall hinder, delay or obstruct him.

14 Notwithstanding anything contained in this bylaw the Council may, by unanimous vote of all the members present, refuse in any particular case to grant the request of the applicant for a licence under the provisions of this bylaw.

15 (1) In addition to any power of refusal or revocation of licences vested in it by the preceding section or by any other law, the Council may by the votes of at least two thirds of all its members refuse to issue a licence or may revoke a licence already issued on the grounds that:

(a) not more than two years before such refusal or revocation, the applicant for or holder of the licence as the case may be;

(i) was convicted anywhere in Canada of an offence involving dishonesty;

(ii) was convicted, found guilty of or liable for any contravention or offence relating to the conduct of a business similar to that which the licence relates;

(iii) was convicted, found guilty of, or liable for any contravention or offence, in Victoria, against this bylaw or against any bylaw authorizing the issuance of a business licence or regulating the conduct of a business; or

(b) the applicant for or holder of the licence in his application for a licence, was guilty of misrepresentation, nondisclosure or concealment of any material fact, relating to the subject matter of the licence or required to be stated in, the application.

(c) In this section "applicant" or "holder" includes the director of a corporation and partner of a firm.

(2) A Licence Inspector may suspend a licence for a reasonable length of time if the holder of that licence

(a) is convicted of an offence indictable in Canada;

(b) is convicted of an offence under any municipal bylaw or statute of British Columbia in relation to the licensed business or the land or building named in the licence;

(c) has, in the opinion of the Licence Inspector, been guilty of gross misconduct that

(i) is related to the licensed business or the land or building named in the licence; and

(ii) warrants the suspension of the licence;

(d) no longer meets the lawful requirements for carrying on the licensed business or for the land or building named in the licence; or

(e) has, in the opinion of the Licence Inspector,

(i) conducted the licensed business or performed a service in a particular manner; or

(ii) sold, offered for sale, displayed for sale or distributed to a person actually or apparently under the age of 16 years anything;

that may be harmful or dangerous to the health or safety of a person actually or apparently under the age of 16 years.

(3) Sections 513(2) to (4) of the Municipal Act (B.C.) apply to an appeal from a decision to suspend a licence under subsection (2).

16 Before any of the powers under the preceding two sections are exercised by the Council, written notice shall be given to the applicant for or holder of the licence, as the case may be, stating briefly any allegation or factor which the Council will consider, and inviting the applicant or holder to appear in person or by agent before the Council at the time and place stipulated in the notice, to make representations with or without the production of evidence in support thereof.

17 The proceedings conducted pursuant to the preceding section shall be open to the public unless at the request of the applicant for or holder of the licence the Council resolves to exclude the public, but the Council may deliberate in private before making its decision.

18 If the applicant for or holder of the licence does not appear in person or by agent at the time appointed pursuant to Section 16 the Council may proceed in his absence.

19 No refund shall be made in respect of any part of the fee paid for a licence that has been revoked.

20 Where the Council has refused a licence pursuant to Section 14 or 15 no fresh application for the same licence shall be entertained within three months after such refusal except with the unanimous consent of the members of Council present.

21 The provisions of this bylaw apply, to the extent that they are consistent, to any other bylaw enacted by virtue of the powers conferred on the City by the provisions of Section 18 of the Victoria City Act, 1919, as amended.

22 The amount of the licence fee payable to the City for a licence shall be as stipulated in the Schedule of Licence Fees, unless a licence fee is payable pursuant to the provisions of another bylaw.

23 [Repealed]

24 (1) Before issuing a business licence pursuant to paragraph 21 of the Schedule of Licence Fees, where an applicant is applying for such licence for the first time, the Licence Inspector, as a condition of issuing the licence, may require the applicant to furnish a letter of credit or bond in the amount of $500.00, the return of which shall be conditional upon the applicant carrying on the business continuously for at least six months from the date of issuance of the business licence.

(2) Where any person has been required to furnish a letter of credit or bond pursuant to this section, such security shall be returned to that person when the person has carried on business continuously within the City for six months from the date of issuance of the business licence.

25 (1) No person shall carry on any trade, business, profession, occupation, calling, employment or purpose mentioned in this bylaw on any street, sidewalk, public place or public square unless such person is expressly permitted to do so by any other bylaw of the City.

(2) For the purposes of this section, “the carrying on of any trade, business, profession, occupation, calling, employment or purpose” includes any advertising by means of handbills, pamphlets, circulars, leaflets or other printed, typed or written materials.

26 (1) A person commits an offence and is subject to the penalties imposed by this bylaw, the Ticket Bylaw and the *Offence Act* if that person:

(a) contravenes a provision of this bylaw;

(b) consents to, allows, or permits an act or thing to be done contrary to this bylaw; or

(c) neglects or refrains from doing anything required by a provision of this bylaw.

(2) Each day that a contravention of a provision of this bylaw occurs or continues shall constitute a separate offence.

27 [Repealed]

28 Upon the request of a Bylaw officer or a Police Officer, any person who is carrying on business on any street, sidewalk, public place or square shall identify himself or herself and provide his or her permanent address.

29 [Repealed]

30 [Repealed]

31 Bylaw No. 80-195, the "Business Licence Bylaw" and all amendments are repealed.

32 A business licensed under the *Liquor Control and Licensing Act* must not sell, or offer for sale, alcoholic beverages at a retail price of less than $3.00 per Standard Serving, inclusive of taxes.

33 For the purpose of section 32, the minimum price of an alcoholic beverage containing a fraction of one Standard Serving is to be calculated pro rata.

34 For the purpose of section 32, a Standard Serving is:

(a) 1 fluid ounce of spirits having an alcoholic content of 17% or more, served on its own or in a mixed beverage;

(b) 5 fluid ounces of wine having an alcoholic content of 1.5% or more;

(c) 12 fluid ounces of beer, cider, or a cooler, having an alcoholic content of 1.5% or more.

Passed and received third reading by the Municipal Council the **8th** day of **June** 1989.

Reconsidered and adopted by the Municipal Council the **22nd** day of **June** 1989.

"M. JOHNSTON"	**"E. SIMMONS"**
CITY CLERK	ACTING MAYOR

SCHEDULE OF LICENCE FEES

Classification of Business	License Fee (per annum, unless otherwise stated) $
1. A person carrying on the business of selling newspapers by hawking	25.00
2. A hawker, selling original paintings, drawings, sketches or etchings only	300.00
3. A hawker, selling arts and crafts only	5.00
4. Any designated area hawker, as defined in the Street Vendors Bylaw	300.00
5. Any other hawker, and any peddler	250.00
6. (1) A person, who, in person or by telephone, either on his own behalf or as agent for another, sells or solicits or takes orders for the sale, by retail, of goods, wares or merchandise to be supplied by any person resident or doing business outside the City,	300.00
(2) Where orders for cosmetics, health food products, kitchenware, costume jewellery, or household cleaning products are solicited in the home of a prospective purchaser at a gathering attended by more than one prospective purchaser	100.00
7. Any person selling property by auction (except Crown officers, sheriffs and bailiffs)	300.00
8. A person carrying on the business of a hospital for profit	280.00
9. A person carrying on the business of a school for profit	30.00
10. A person owning or keeping a cab, carriage, cart, wagon, dray, truck, motor car, automobile, or other conveyance or vehicle for hire, other than a school bus for which no license is required	
(a) if a limousine with a driver, for each limousine	140.00
(b) if any other conveyance or vehicle with a driver, including a taxi within the meaning of the Taxi Bylaw, for each conveyance or vehicle	140.00
(c) if conveyances or vehicles without drivers, per business location	500.00

	(d) if a pedicab carriage, per pedicab	140.00
	(e) if a moped, motor cycle or bicycle rental business, per business location	60.00
11.	Except as provided in Clause 12, any person who transports passengers in a vehicle, or other conveyance, other than a vessel or a passenger bus service on a fixed route between a place in the City and a place outside the City, for each vehicle or other conveyance	140.00
12.	Any person who transports passengers in a horse drawn vehicle for special events only	140.00
13.	Any person carrying on the business of a passenger bus service on a fixed route in the City or between any place in the City and any place outside the City, per business location	280.00
14.	Any person who transports passengers in a vessel, for each vessel	140.00
15.	Any person carrying on the business of a steamship company	140.00
16.	Any person carrying on any airline business with or without flight arrivals or departures within the City of Victoria	280.00
17.	A transient trader, as defined in the Victoria City Act, 1919, s.18(1)(v)	1,000.00
18.	Subject to Clause 19, a person letting individual rooms, suites of rooms, or lodgings for hire, either in a hotel, rooming house, apartment house, lodging house or elsewhere, and whether or not board or meals are supplied to the occupants thereof	$100.00, plus $5.00 for each room let or available for letting
19.	Any persons who (a) have 2 or fewer rooms or suites for rent in a dwelling unit where the dwelling unit is occupied by its owner, the dwelling unit remains as a single legal title, and the interval at which rent is payable on the suite or rooms is one month or longer, or (b) let a room or suite of rooms under a registered lease with an initial or renewal term of 99 years or more are not required to take out or hold a license under Clause 18.	

20.	Each person carrying on the business calling or profession of accountant, architect, insurance adjuster, public stenographer, real estate agent, barrister, solicitor, physician, surgeon, medical practitioner, or specialist, engineer, land surveyor, optometrist, refractionist, dentist, dental surgeon, osteopath, chiropractor, faith-healer, mental-healer, or other healer of human diseases or ailments, or veterinarian, whether as principal, partner or employee, for each person	100.00
21.	Any person carrying on flower sales from outside premises in which the business of government liquor sales is conducted, but not on any sidewalk, boulevard, or street, for each business	100.00
22.	Any person carrying on the business of an amusement centre, including billiard hall, bowling alley or dance club	60.00
23.	Any person carrying on the business of a barber or hairdresser	100.00
24.	Any person carrying on the business of a bingo hall	280.00
25.	Any person carrying on the business of a radio or television broadcasting station	250.00
26.	Any person carrying on the business of a dealer in secondhand or used motor vehicles and motor vehicle repairs	200.00
27.	Any person carrying on the business of a dealer in new automobiles or in both new and used automobiles shall also be entitled to carry on the business of selling automobile accessories, gasoline, oil and supplies and repairing automobiles or motor cars without another license	500.00
28.	Any person carrying on the business of a casino	280.00
29.	Any person carrying an the business of catering	60.00
30.	Any person carrying on the business of a laundry or dry cleaners	100.00
31.	Any person carrying on the business of stockbroker, commodity trader, auto broker or investment dealer	200.00
32.	Any person carrying on the business of a credit union	280.00
33.	Any person carrying on the business of a day care centre	30.00
34.	Any person carrying on a retail business which includes 10 or more distinctive line or class of goods, wares or merchandise	3,000.00
35.	[Repealed]	

36.	Selling beverages for consumption in the place where the beverages are sold		
	(a.1)	licensed liquor primary business, as defined under B.C. Regulation 244/2002, located inside the Downtown Area shown on the map in Schedule C	$300 plus $7 per each unit of licensed liquor primary person capacity
	(a.2)	licensed liquor primary business, as defined under B.C. Regulation 244/2002, located outside the Downtown Area shown on the map in Schedule C	$300 plus $6 per each unit of licensed liquor primary person capacity
	(a.3)	licensed liquor primary clubs, as defined under B.C. Regulation 244/2002, and licensed cultural facilities operated by a not for profit society:	
		(i) $100 for licensed liquor primary person capacity not over 299,	
		(ii) $200 for licensed liquor primary person capacity of 300 to 599,	
		(iii) $400 for licensed liquor primary person capacity of 600 to 899,	
		(iv) $800 for licensed liquor primary person capacity of 900 or more.	
	(b)	B.C. food primary licensed business, as defined under B.C. Regulation 244/2002	100.00
	(c.1)	licensed food primary business with a lounge endorsement, as defined under B.C. Regulation 244/2002, located inside the Downtown Area shown on the map in Schedule C	$200 plus $7 per each unit of licensed liquor primary person capacity
	(c.2)	licensed food primary business with a lounge endorsement, as defined under B.C. Regulation 244/2002, located outside the Downtown Area shown on the map in Schedule C	$200 plus $6 per each unit of licensed liquor primary person capacity
37.	Any person carrying on the business of a liquor store		280.00
38.	Any person carrying on the business of a railway office		140.00

39.	Any person carrying on the business of a rental service including the rental of chattels	60.00
40.	Any person carrying on the business of a social club which offers games of chance	150.00
41.	Any person operating any theatre, or motion picture theatre	
	(a) where the seating capacity is less than 975	500.00
	(b) where the seating capacity is more than 975	500.00
42.	Any person carrying on the business of a tug boat company	280.00
43.	Any person carrying on the business of a wholesale or wholesale and retail merchant or trader	200.00
44.	Any person carrying on the business of a bank	
	(a) for the first business location	1,000.00
	(b) for each additional business location	700.00
45.1	Any person owning or operating any lawful automatic vending or slot machine	
	(a) for each washer or dryer, per machine	11.00
	(b) for any other vending machine	15.00
45.2	Despite section 45.1, any person having possession or control of a lawful automatic or slot machine, or any other machine, that dispenses lottery tickets for sale to a customer or for subsequent sale by a vendor to a customer: for each machine	100.00
45.3	Any person having possession or control of an automatic teller machine: for each machine	700.00
46.	Each person carrying on any of the trades, businesses, professions, occupations, callings, employments, or purposes mentioned in Section 18(1) of the Victoria City Act, 1919 but not expressly mentioned in this Schedule, for each enterprise	100.00
47.	Each person carrying on any business not otherwise mentioned in this Schedule, for each such business	100.00
48.	Any person carrying on the business of a laundromat in a commercial location	100.00
49.	Any person carrying on the business of a trust company	700.00

50.	Any person carrying on the business of an insurance company	280.00
51.	Any person carrying on a bicycle courier business, as that business is defined in the Bicycle Courier Bylaw	150.00
52.	Any person carrying on the business of a street entertainer, as defined in the Street Vendors Bylaw	25.00
53.	Any person carrying on an outdoor market business that, for a fee, permits individuals to use or occupy a space, table or booth outdoors on public property for the purpose of retail marketing of goods or services	100.00
54.	Any person carrying on the business of teletheatre wagering that involves betting on horse races from a remote location where the live races are shown electronically on a screen	280.00

Schedule B
Liquor-Primary Business Good Neighbour Agreement

WHEREAS representatives of the Corporation of the City of Victoria (the "City"), Victoria Police Department (the "Police Department"), and the owners, _____ _____ _____ _____ _____ _____ _____ _____of the liquor-primary business, _____ _____ _____ (the "Liquor-Primary Business"), located at _____ _____, Victoria, B.C., recognize that liquor licensed establishments have a civic responsibility beyond the legislated requirements of the Liquor Control and Licensing Act to control the conduct of their patrons; and

WHEREAS the City, the Police Department and the Liquor-Primary Business agree that in recognizing this principle, the following measures will be implemented by the Liquor-Primary Business , up to the opening for business and will continue to be in effect at all times; and

WHEREAS the City of Victoria Business Licence Bylaw, s. 8(3)(b) imposes certain conditions with which the holder of a business licence for a Liquor-Primary Business) must comply;

Conditions of license (as provided under City of Victoria Business Licence Bylaw No. 89-71)

1. As there is recognition that the Liquor-Primary Business exists within proximity of transient & residential accommodations and other commercial buildings, the Liquor-Primary Business undertakes to ensure that noise emissions do not disturb the neighbourhood and comply with the City of Victoria Noise Bylaw.

2. The Liquor-Primary Business will not play amplified music outside of the building after 23:00h.

3. The Liquor-Primary Business will post a sign at the entrance to the licensed premises advising of the identification requirement and any dress code or admission fee.

4. The Liquor-Primary Business staff shall wear distinctive identification badges displaying an identification number at all times while on duty in the licensed premises, and the manager shall at all times maintain a list identifying every staff member by name and identification number.

5. The Liquor-Primary Business shall employ staff or security personnel to patrol the external area and to monitor the activity of patrons immediately outside the Liquor-Primary Business, particularly at closing time, to ensure orderly dispersal.

6. The Liquor-Primary Business staff shall make every reasonable effort to scrutinize patrons as they enter to ensure that all patrons are at least 19 years of age and that no weapons or items of contraband are brought into the Liquor- Primary Business.

7. Patrons shall not be allowed to carry open beverages or to consume them in areas that are not licensed for such purpose including outside of the Liquor- Primary Business.

8. Patrons of the Liquor-Primary Business who have consumed liquor shall be allowed free use of a telephone for the purposes of calling a taxi or other transportation, if requested.

9. The Liquor-Primary Business' staff shall undertake to inspect the outside of the premises each night after closing to ensure that there is no litter, garbage or broken glass left in the area around the Liquor-Primary Business.

10. The Liquor-Primary Business shall ensure at all times that the line-up into the business does not impede or obstruct pedestrian traffic along the sidewalk or interfere with access or egress to another place of business.

11. The Liquor-Primary Business agrees to remove immediately all graffiti placed from time to time on the property that is owned or leased by the Liquor-Primary Business.

Other terms and conditions of this Good Neighbour Agreement

12. The Liquor-Primary Business staff shall monitor the conduct of all patrons within the Liquor-Primary Business and terminate alcoholic beverage service to persons exhibiting signs of intoxication.

13. The Liquor-Primary Business shall support and cooperate with Victoria City Police in Licensed Premises Checks and any crime prevention initiatives for liquor-licensed establishments.

14. When incidents occur that require police involvement, all Liquor-Primary Business staff shall cooperate with police members and shall not impede or obstruct the investigation in any way.

15. There shall be no tolerance for criminal activity within the Liquor-Primary Business, and police will be consulted should a "criminal element" become present.

16. The Liquor-Primary Business and Victoria City Police agree to meet a minimum of once every calendar year to discuss issues and concerns.

17. The Liquor-Primary Business agrees to support the hiring of qualified people from the community when appropriate.

18. The Liquor-Primary Business recognizes its role within the community, and agrees to work with the City, its departments and any task forces to resolve mutual concerns.

19. Any proposed changes to these guidelines will first be discussed and be resolved with Victoria City Police and/or the City.

20. Nothing contained or implied herein shall prejudice or affect the City's rights and powers in exercise of its functions pursuant to the *Local Government Act* and the rights and powers of the City under all of its public and private statutes, bylaws, and regulations, all of which may be as fully and effectively exercised in relationship to the Lands and the Premises as if this agreement had not been entered into.

The City and the Liquor-Primary Business recognize that participation in this agreement is a condition of the City Business Licence and that its success is based on licensee compliance. The Liquor-Primary Business recognizes that should non-compliance with the terms of the agreement arise, or if complaints to the Victoria Police Department regarding negative community impacts are in the opinion of the Corporate Administrator attributable to the Liquor-Primary Business, the City

will provide written notice to the Liquor-Primary Business of such impacts or non-compliance. The Liquor-Primary Business shall have 30 days from receipt of the Notice in which to address and correct the negative impacts specified in the Notice to the satisfaction of the Corporate Administrator, in his or her sole discretion. If, upon the expiry of the thirty (30) day period, the negative impacts specified in the Notice have not been addressed and corrected to the satisfaction of the Corporate Administrator, this matter will be brought to the attention of City Council with a recommendation that the Business Licence be suspended or revoked, as the evidence of noncompliance warrants.

WHEREAS the Liquor-Primary Business has entered into this agreement, the City and Victoria City Police commend them for their recognition of their civic responsibilities and their commitment to fostering a good working relationship with the City and their neighbours.

Signed this __ day of _____, at Victoria, B.C.

_____
Liquor-Primary Business

_____
Liquor-Primary Business

_____
Mayor

_____
Corporate Administrator

_____
Victoria City Police

Schedule C – Map of Downtown Zone

Note: Shaded areas are within the Downtown Zone.

CITY OF VICTORIA	**COUNCIL POLICY**	
	No.1	Page 1 of 2

SUBJECT:	**Short-Term Rental Business Licence Appeal Process Policy**	
PREPARED BY:	Monika Fedyczkowska	
AUTHORIZED BY:	Council	
EFFECTIVE DATE:	April 23, 2020	**REVISION DATE:**
REVIEW FREQUENCY:	Every 3 years	

A. PURPOSE

The purpose of the Short-Term Rental Business Licence Appeal Process Policy [the Policy] is to establish a process for applicants for short-term rental business licences to have Council reconsider a Licence Inspector's decision to reject their application in accordance with section 60 of the Community Charter.

B. DEFINITIONS

Appellant means "an applicant for a short term rental business licence who is appealing a decision by a Licence Inspector to Council"

City Clerk means "the City Clerk and delegates"

Council means "the Council of the City of Victoria"

Short-term Rental Business Licence means "a business licence established under the Short-term Rental Regulation Bylaw"

C. POLICY STATEMENTS

Under the Community Charter, section 60(5), if a municipal officer or employee exercises authority to grant, refuse, suspend, or cancel a business licence, the applicant or licence holder who is subject to the decision is entitled to have Council reconsider the matter.

Applicants must apply for a new short-term rental business licence each year.

D. PROCEDURES

1. Appeal Procedure
    a. An Appellant may start an appeal by submitting a request for an appeal to the City Clerk within 30 days after receiving notice from a Licence Inspector of a decision to reject the short-term rental business licence.
    b. The City Clerk must reply to the Appellant to acknowledge the request for an appeal and explain the appeal process.
    c. An Appellant must make a written submission to the City Clerk within 14 days. A written submission may include:
        i. Reasons that Council should grant the appeal to issue a short-term rental business licence
        ii. Any supporting documents

d. A Licence Inspector must submit a document to the City Clerk responding to the Appellant's written submission. The Licence Inspector's document must include:
    i. Reasons for refusing to issue a short-term rental business licence
    ii. Any supporting documents
e. An Appellant must provide a written submission in response to a Licence Inspector's response to the City Clerk within 7 days
f. A Licence Inspector must prepare a report for Council that includes:
    i. Reference(s) to relevant City Bylaw provisions
    ii. Direction to Council on what they should/should not consider, and
    iii. The following documents:
        1. The Appellant's business licence application
        2. The letter from a Licence Inspector giving notice of refusal to issue a business licence
        3. The Appellant's request to the City Clerk to appeal the refusal
        4. The City Clerk's acknowledgment of the request
        5. The Appellant's written submission and any supporting documents
        6. The Licence Inspector's written response and any supporting documents
        7. The Appellant's written response to the Licence Inspector's response
g. The City Clerk will inform the Appellant of the date that Council will consider the appeal.

2. Council's Decision
    a. Council may grant or deny an appeal by a majority vote.
    b. Council will provide reasons for a decision, which may be accomplished by way of the rationale by Council members during deliberation preceding a vote if not included specifically in the motion of Council.
    c. If Council grants an appeal, a Licence Inspector must issue the relevant business licence as soon as practicable.
    d. If Council denies an appeal, an Appellant may not make a new business licence application for a business for 3 months, unless Council unanimously votes to allow an Appellant to apply for a short-term rental business licence sooner than 3 months.

E. REVISION HISTORY

Crease Harman LLP
BARRISTERS & SOLICITORS
Since 1866

800-1070 Douglas Street
Victoria, BC V8W 2C4

t. (250) 388-5421
f. (250) 388-4294

www.crease.com

Reply to: Spencer C. J. Evans
Email: SEvans@crease.com
File No: 2240199001

March 18, 2024

By Electronic Mail: legislativeservices@victoria.ca

City of Victoria
1 Centennial Square
Victoria, BC V8W 1P6

Attention: Mayor & Council

Dear Sirs & Madams:

RE: Transient Accommodation Business Licence Renewal Application
CFS# 250057 – 867 Humboldt Street, Victoria, BC

I act as counsel for Matthew Linnitt and Ashley Ceraldi (the **"Appellants"**), the owners of the property identified above (the **"Property"**), with respect to their appeal from the January 18, 2024 rejection of their application to renew the Transient Accommodation Business Licence for the Property (the **"Decision"**). Please accept this letter, and the supporting documents listed in **Schedule "A"** and **Schedule "B"**, as the complete submission of the Appellants for this appeal.

Background

At all material times, the Property was zoned RK-8 ZONE HUMBOLDT BED & BREAKFAST DISTRICT (the **"Zone"**). The permitted uses for the Zone are:

(a) all of the uses permitted in the R-K Zone, Medium Density Attached Dwelling District; and
(b) transient accommodation.[1]

[1] See Document 7 of **Schedule "B"**: Zoning Regulation Bylaw (No. 80-159), Schedule Part 2.69, RK-8 ZONE HUMBOLDT BED & BREAKFAST DISTRICT at p. 86.

The Appellants purchased the Property in June of 2022 (the **"Purchase"**). The Property had historically been used as a bed and breakfast (**"B&B"**) under the name 'Humboldt House'. Prior to the Purchase, the previous owners had completed substantial renovations of the bedroom units which included the installation of kitchen facilities (the **"Renovations"**).

The Property consists of six suites with common hallways. The only suite with its own exterior entrance is the one on the main floor occupied by the Appellants.[2]

The Appellants based their decision to purchase the Property on the Zone's site-specific transient accommodation permitted use and the Property's history of use as a B&B. Unbeknownst to the Appellants, the Renovations had been completed by the previous owners without the necessary permits or inspections.

After the Purchase the Appellants moved into the Property and spent most of the first year doing minor repairs and cosmetic changes.

Beginning in March of 2023, the Appellants began the process of applying for a business licence. For a number of weeks, the City staff tried to convince the Appellants to apply for a short-term rental licence instead of a transient accommodation licence. On April 4, 2023 the Appellants submitted an application for a transient accommodation business licence to run a B&B at the Property.[3]

On May 4, 2023 the City issued a transient accommodation licence to the Appellants (the **"2023 Business Licence"**).[4]

On July 7, 2023 bylaw officer Barry McLean and business licence inspector John Kitson attended to inspect the Property (the **"Inspection"**). They noted that the current layout of the structure was different from the records kept at City Hall, and that some of the Renovations had been unpermitted. However, they told the Appellants this was not unusual, nothing needed to be done immediately, and no further enforcement action would be taken. Mr. McLean and Mr. Kitson said that they could not see anything wrong with how the Appellants were operating as a B&B and there was no reason to revoke the 2023 Business Licence.

[2] See Document 1 of **Schedule "A"**: Photos of units at 867 Humboldt Street at pp. 16 – 19.
[3] See Document 5 of **Schedule "A"**: Transient – Business Licence Application at p. 44.
[4] See Document 2 of **Schedule "A"**: 2023 Business Licence at p. 20.

On July 26, 2023 Mr. McLean sent an email to Mr. Linnitt, confirming that the Inspection had revealed there was unpermitted work on the Property and that this would be dealt with in a new file. Mr. McLean also believed the Appellants were "operating short-term rentals in self-contained suites"; he warned that they were operating outside of the parameters for the 2023 Business Licence and said that they should apply for a short-term rental licence.[5]

Not long after sending the July 26, 2023 email, Mr. McLean called Mr. Linnitt and asked him if the Appellants planned to apply for a short-term rental licence. Mr. Linnitt told him "no", as they already had a licence to operate a transient accommodation business. Mr. McLean said that was "fine", but asked Mr. Linnitt to request that Airbnb change the Property's classification on their website to a B&B so it would stop appearing on the City's short-term rental list.

Mr. McLean explained that his department's focus was on short-term rentals and that if the Appellants made it explicit that they were operating a B&B on Airbnb it would result in less attention being paid to the Property by enforcement staff.

Given what Mr. McLean had said during the Inspection and in his phone call, the Appellants' understanding was that it was the long-term rental enforcement staff who believed they were operating a short-term rental without a licence, not him.

Following the phone call with Mr. McLean, for the remainder of 2023 the Appellants received no further communication from the City relating to concerns about how they were operating their B&B.

The Decision

In early January of 2024, the Appellants applied to renew the 2023 Business Licence.[6]

On January 10, 2024 Bylaw Officer Nelson Duarte conducted an inspection of the Property. Mr. Duarte reported that the structure at the Property was "comprised of 6 separate self-contained dwelling units with kitchens and bathrooms; 2 suites on the lower level/basement occupied by [the Appellants] and [their] family, 2 suites on the main floor – 1 rented to a long-term tenant, and 1 used for transient accommodation/short term rentals, and 2 suites on the upper floor – both used for transient accommodation/short term rentals." Mr. Duarte also found that "Each of the rental

[5] See Document 6 of **Schedule "A"**: Email from Barry McLean at p. 46.
[6] See Document 8 of **Schedule "A"**: Transient – Business Licence Application at p. 50.

units has a private entrance and the only shared spaces appears to be the hallways and laundry facilities in the basement."[7]

On January 18, 2014 Supervisor – Bylaw and Licensing Services Andrew Dolan sent a letter to the Appellants rejecting their application to renew the 2023 Business Licence. Mr. Dolan cited Mr. Duarte's findings in his conclusion that the Appellants were not operating a "traditional" B&B and that the use and configuration of the structure located at the Property had "changed significantly from what was approved."[8]

Mr. Dolan's reasoning was based on his opinion that, under the Zoning Regulation Bylaw (No. 80-159) (the **"Bylaw"**), the Zone allowed the Appellants to operate a B&B and use up to six bedrooms for transient accommodation within a single family dwelling (**"SFD"**), and that "transient accommodation cannot occupy an entire self-contained dwelling unit."[9]

Mr. Dolan directed the Appellants to "cease operating transient accommodation/short term rentals immediately."[10]

On February 1, 2024 Mr. Linnitt met with Mr. Dolan to discuss the Decision.

Mr. Dolan told Mr. Linnitt that the Property was "significantly different than what it's supposed to be." Mr. Linnitt asked him to clarify what was different from the previous year when the 2023 Business Licence was granted. Mr. Dolan explained that in 2023 they "weren't inspecting for B&B licences." Mr. Linnitt asked what licence he received, and Mr. Dolan answered that he thought "it was an investigation for short-term rentals", indicating that he did not consider the Appellants to be operating a B&B.[11]

Mr. Dolan explained that the Property had a "very site specific zoning for bed and breakfast", but that the approved use of the structure was "single family dwelling with six bedrooms, B&B." In Mr. Dolan's opinion, the approved building plans "show bedrooms because that's what the zoning would permit." He made it clear he believed the zoning only permitted the operation of a "traditional bed and breakfast".[12]

---

[7] See Document 3 of **Schedule "A"**: Letter from Andrew Dolan at p. 21.
[8] See Document 3 of **Schedule "A"**: Letter from Andrew Dolan at p. 21.
[9] See Document 3 of **Schedule "A"**: Letter from Andrew Dolan at p. 21.
[10] See Document 3 of **Schedule "A"**: Letter from Andrew Dolan at p. 21.
[11] See Document 4 of **Schedule "A"**: Transcript of audio recording at pp. 23 – 24.
[12] See Document 4 of **Schedule "A"**: Transcript of audio recording at pp. 24 – 25.

By this, Mr. Dolan meant a "shared space", "very traditional", articulating his reasoning to Mr. Linnitt as "You're inviting people into your home, whether you offer them breakfast or not, they're in your dwelling unit basically. It's not separate. It's not self-contained. It's what you would imagine a B&B was back in the day."[13]

The problem with the Property, Mr. Dolan continued, was that "what you bought isn't a single family dwelling. You've bought six self-contained suites." He reasoned that the Appellants could not operate a B&B or a short-term rental in a self-contained suite, citing the new provincial legislation concerning short-term rentals,[14] expected to come into effect in May of 2024. [15]

Mr. Linnitt reiterated that the Property had been approved for transient accommodation in 2023, and that he did not see anything in the Bylaw which said that transient accommodation could not be provided in a self-contained dwelling unit. In answer to this, Mr. Dolan referred Mr. Linnitt to Schedule "D" of the Bylaw, Home Occupations. [16]

Mr. Dolan then indicated that the real problem with the Property might be that the Renovations had been done without the required inspections, implying that the Appellants' application was rejected due to public safety concerns.[17]

Mr. Dolan suggested that because the Property has "very specific zoning for bed and breakfast", the Appellants "might benefit from reverting it back to what it was." This suggestion was based on Mr. Dolan's impression that the Province might limit B&Bs to only two rooms.[18]

Mr. Linnitt argued that the vagueness and ambiguity in the Bylaw was leading to selective enforcement, citing the example of other transient accommodation businesses which provided suites with kitchens. Mr. Dolan denied that the Bylaw was being enforced selectively, explaining that the City "started investigating and conducting inspections for bed and breakfasts just this year because we found that many of them are in fact not operating and they've moved from the bed and breakfast model to the short-term rental model where they're renting self-contained suites."[19]

---

[13] See Document 4 of **Schedule "A"**: Transcript of audio recording at p. 25.
[14] See Document 1 of **Schedule "B"**: Bill 35, *Short-Term Rental Accommodations Act* (**"Bill 35"**) at pp. 53 – 56.
[15] See Document 4 of **Schedule "A"**: Transcript of audio recording at p. 25.
[16] See Document 4 of **Schedule "A"**: Transcript of audio recording at pp. 25 – 26.
[17] See Document 4 of **Schedule "A"**: Transcript of audio recording at p. 26.
[18] See Document 4 of **Schedule "A"**: Transcript of audio recording at p. 27.
[19] See Document 4 of **Schedule "A"**: Transcript of audio recording at p. 29.

Mr. Dolan indicated that permits and inspections may be able to give the Appellants options to bring the Property into compliance, but suggested that this would not resolve the licencing issue.[20] Later, Mr. Dolan indicated that if the Appellants "go down the path of returning [the Property] to a single family dwelling with six bedrooms" and get an occupancy permit, he would be happy to issue a business licence.[21] By this, Mr. Dolan presumably meant that the kitchen appliances would need to be removed.

The Applicable Law

Subsection 15(1) of the *Community Charter*, S.B.C. 2003, c. 26 (the **"*Community Charter*"**) provides that a council may provide for a system of licences, *inter alia*, and paragraph 15(1)(f) provides for the reconsideration or appeal of decisions made with respect to the granting, refusal, suspension or cancellation of such licences.[22]

Section 60 of the *Community Charter* states:

> **Business licence authority**
> 60 (1) An application for a business licence may be refused in any specific case, but
> (a) the application must not be unreasonably refused, and
> (b) on request, the person or body making the decision must give written reasons for the refusal.
> (2) In addition to the authority under section 15 (1) (e) [licences, permits and approvals — suspension and cancellation], a business licence may be suspended or cancelled for reasonable cause.
> (3) Before suspending or cancelling a business licence, the council must give the licence holder notice of the proposed action and an opportunity to be heard.
> (4) Despite section 155 (2) (b) [restriction on delegation of hearings], a council may, by bylaw under section 154 [delegation of council authority], authorize a municipal officer or employee to suspend or cancel a business licence.
> (5) If a municipal officer or employee exercises authority to grant, refuse, suspend or cancel a business licence, the applicant or licence holder who is subject to the decision is entitled to have the council reconsider the matter.[23]
> [Emphasis added]

As stated above, one of the permitted uses of the Property is "transient accommodation". This term is defined in Schedule A of the Bylaw as:

---

[20] See Document 4 of **Schedule "A"**: Transcript of audio recording at p. 31.
[21] See Document 4 of **Schedule "A"**: Transcript of audio recording at p. 39.
[22] See Document 2 of **Schedule "B"**: *Community Charter* at p. 57.
[23] See Document 2 of **Schedule "B"**: *Community Charter* at p. 58.

a) the use of land or a building for the temporary accommodation of visitors, and without limitation includes hotels, motels and bed and breakfast accommodation; but
b) does not include the accommodation of visitors without receipt of payment or other consideration, where that accommodation is incidental to and normally associated with the permitted residential use of a dwelling unit.[24]
[Defined terms emphasized in original]

None of the terms "hotel", "motel", or "bed and breakfast" are defined in Schedule A or elsewhere in the Bylaw, nor does the Bylaw make any significant distinctions between these types of businesses.

A "dwelling unit" is defined as "any suite of rooms used or intended to be used by one family exclusively for the purpose of providing space for a residence."[25]

A "self-contained dwelling unit" is defined as "a suite of rooms in a building designed for occupancy of one family which has a separate entrance, and kitchen and bathroom facilities."[26]

A "single family dwelling" is defined as "a detached building having exterior walls and containing only one self-contained dwelling unit."[27]

Schedule D of the Bylaw, referred to by Mr. Dolan, applies in cases where "home occupations" are permitted pursuant to the provisions of the Bylaw. Schedule D states that where a building is used as a single family dwelling, up to two bedrooms can be used for transient accommodation as a home occupation, but this use "cannot occupy an entire self-contained dwelling unit".[28]

Home occupation may be permitted in the first use listed in the Zone, i.e., all of the uses permitted in the R-K Zone, Medium Density Attached Dwelling District. But the second permitted use is transient accommodation, so the Appellants do not need to rely on the home occupation use to operate their B&B.

---

[24] See Document 4 of **Schedule "B"**: Zoning Regulation Bylaw (No. 80-159), Schedule A – DEFINITIONS at p. 78.
[25] See Document 4 of **Schedule "B"**: Zoning Regulation Bylaw (No. 80-159), Schedule A – DEFINITIONS at p. 64.
[26] See Document 4 of **Schedule "B"**: Zoning Regulation Bylaw (No. 80-159), Schedule A – DEFINITIONS at p. 75.
[27] See Document 4 of **Schedule "B"**: Zoning Regulation Bylaw (No. 80-159), Schedule A – DEFINITIONS at p. 76.
[28] See Document 5 of **Schedule "B"**: Zoning Regulation Bylaw (No. 80-159), Schedule D – HOME OCCUPATIONS at pp. 81 – 83.

In the decision *0757107 BC Ltd. v. Lake Cowichan (Town)*, 2008 BCSC 961 (**"*Lake Cowichan*"**), the Supreme Court of British Columbia affirmed the principle that "Local authorities have no inherent power to interfere arbitrarily with the common law right of land owners in the use and improvement of property."[29]

The authority to regulate the use of land, buildings and other structures is derived from section 479 of the *Local Government Act*, R.S.B.C. 2015, c. 1.[30]

In interpreting a zoning bylaw, the British Columbia Court of Appeal has held that "it is necessary to interpret the provisions of the zoning by-law not on a restrictive nor on a liberal approach but rather with a view to giving effect to the intention of the municipal council as expressed in the by-law upon a reasonable basis that will accomplish that purpose."[31]

However, our Court of Appeal concluded that since the effect of defining terms in the schedule to a zoning bylaw is "to restrict the meaning that might otherwise be attributed to such terms", where no such restriction has been imposed upon the meaning of an undefined term it can be inferred that the intention was for it to have a broad meaning. In *Neilson* it was held that where a golf course was a permitted use, anything that could be regarded as reasonably coming within the operation of a golf course was permitted.[32]

In *Lake Cowichan* this principle was applied to the interpretation of the undefined term "bed and breakfast".[33]

Argument

The Appellants bring this appeal under subsection 60(5) of the *Community Charter*, and submit that the renewal of the 2023 Business Licence was unreasonably refused contrary to paragraph 60(1)(a).

The term "bed and breakfast" is not defined in the Bylaw nor in any applicable legislation. It is therefore to be given a broad interpretation in line with the *Neilson* and *Lake Cowichan* decisions.

---

[29] See Document 9 of **Schedule "B"**: *Lake Cowichan* at p. 92, para. 20.
[30] See Document 9 of **Schedule "B"**: *Lake Cowichan* at p. 92, para. 20. [The decision cites section 903 of the legislation then in effect, now section 479.]
[31] See Document 10 of **Schedule "B"**: *Neilson v. Langley (Township)*, [1982] B.C.J. No. 2313 (**"*Neilson*"**) at p. 99, para. 18.
[32] See Document 10 of **Schedule "B"**: *Neilson* at p. 99, para. 19.
[33] See Document 9 of **Schedule "B"**: *Lake Cowichan* at p. 92, para. 22.

Anything reasonably coming within the operation of a bed and breakfast should be permitted under a bed and breakfast transient accommodation licence.

The word "hotel" is also not defined in the Bylaw. These businesses operate under the same transient accommodation licencing scheme as bed and breakfasts, and it is not uncommon to find cooking facilities in hotel rooms.[34] There is no clear policy rationale for permitting hotels to operate with cooking facilities in their rooms but not bed and breakfasts.

In this case, Mr. Duarte and Mr. Dolan have applied a narrow definition which requires a bed and breakfast to operate along a "traditional" model, that is, where guests occupy bedrooms within the owner's home and share cooking and eating areas.[35] There is nothing in the Bylaw which mandates or even supports this reading, and this interpretation is contrary to rulings of the BC Supreme Court and Court of Appeal.

Mr. Dolan's statement that the Property has a "very site specific zoning for bed and breakfast" is correct in that the Zone is referred to as RK-8 ZONE HUMBOLDT BED & BREAKFAST DISTRICT, but the words "BED & BREAKFAST" do not have any substantive effect. The second use permitted in the Zone is transient accommodation; this would include use as a hotel, which presumably would permit renting suites with cooking facilities.

The Zone's permitted use for transient accommodation is actually much broader than other similarly zoned properties. For example, the second use permitted in both R1-A6 ZONE, ROCKLAND BED & BRAKFAST DISTRICT[36] and R2-28 ZONE, SUPERIOR BED & BREAKFAST DISTRICT[37] is "transient accommodation that is located in a building that is used as the principal residence of the operator of the transient accommodation."

There is still the issue that the Renovations were conducted without permits or approvals, but the Appellants submit that this can and should be dealt with outside of the business licence context. The Appellants did not know about this issue until the inspection in July of 2023 – when they were told that no enforcement action would be taken.

---

[34] See Document 7 of **Schedule "A"**: Photos of Parkside Hotel rooms at pp. 47 – 49.
[35] See Document 3 of **Schedule "A"**: Letter from Andrew Dolan at p. 21 and Document 4 of **Schedule "A"**: Transcript of audio recording at p. 25.
[36] See Document 6 of **Schedule "B"**: Zoning Regulation Bylaw (No. 80-159), Schedule Part 1.71, R1-A6 ZONE, ROCKLAND BED & BREAKFAST DISTRICT at p. 85.
[37] See Document 8 of **Schedule "B"**: Zoning Regulation Bylaw (No. 80-159), Schedule Part 2.85 - R2-28 ZONE, SUPERIOR BED & BREAKFAST DISTRICT at p. 87.

On February 1, 2024, Mr. Dolan suggested there was a public safety risk in allowing guests to rent rooms that had not received the necessary permits.[38] But this was not brought up in his January 18, 2024 letter.[39] In any case, the Appellants are willing to work with the City to address any permit or safety issues if this will enable them to renew the 2023 Business Licence.

Mr. Dolan's reference to Schedule "D" of the Bylaw was incorrect. Schedule "D" applies only to homes occupations, defined as:

> … making, servicing, or repairing goods, or providing services for hire or gain by any person, wholly within a dwelling unit occupied by that person, but does not include the following except as provided in Schedule D:
> a) the sale of goods on or from the dwelling unit or its premises;
> b) the provision of escort services within a multiple dwelling;
> c) small-scale commercial urban food production.[40]

The first sentence of Schedule "D" states that "Where home occupations are permitted pursuant to provisions of this bylaw, the following conditions shall apply to their use…"[41] The Appellants are not relying on home occupations being permitted by the Bylaw to operate their B&B; they are relying on the transient accommodation use provided in the Zone.

There is no basis for Mr. Dolan's conclusion that transient accommodation units cannot occupy an entire self-contained dwelling unit at the Property. It was an error for Mr. Dolan to reject the renewal of the 2023 Business Licence on this basis.

Conclusion

Finally, the issue of Bill 35 should not be left unaddressed – Mr. Dolan made much of this legislation in his explanation for the Decision. Beginning on May 1, 2024, short-term rentals will be limited to hosts' principal residence and will limit each host to not more than one "secondary suite" or other "accessory dwelling unit".[42]

---

[38] See Document 4 of **Schedule "A"**: Transcript of audio recording at p. 26.
[39] See Document 3 of **Schedule "A"**: Letter from Andrew Dolan at p. 21.
[40] See Document 4 of **Schedule "B"**: Zoning Regulation Bylaw (No. 80-159), Schedule A – DEFINITIONS at p. 68.
[41] See Document 5 of **Schedule "B"**: Zoning Regulation Bylaw (No. 80-159), Schedule D – HOME OCCUPATIONS at p. 81.
[42] See Document 1 of **Schedule "B"**: Bill 35, *Short-Term Rental Accommodations Act*, s. 14 at p. 56.

A secondary suite is defined as "an accessory dwelling unit that is located in and forms part of a primary dwelling unit".[43]

An accessory dwelling unit is defined as …

> a building, or part of a building, that
> (a) is a self-contained residential accommodation unit,
> (b) has cooking, sleeping and bathroom facilities, and
> (c) is secondary to a primary dwelling unit located on the same property;[44]

This language would, admittedly, capture many transient accommodation providers. But section 3 provides an exemption for hotels, motels and any prescribed accommodation service providers.[45] It is not clear whether any regulations will be enacted to prescribe B&Bs as exempt service providers. The current provincial policy guidance treats B&Bs the same as other short-term rentals.

Regardless of what effect Bill 35 will have, it has not yet come into effect. If the renewal of the 2023 Business Licence was denied because the new legislation might prohibit the Appellants from operating their B&B, then this was incorrect and unreasonable.

Humboldt House has been a popular B&B in Victoria for many years, contributing significantly to the local economy. The Appellants run a small family business, mistakenly caught up in the City's efforts to crack down on short-term rentals. Shutting them down without notice would be unreasonable and unfair, and would have a catastrophic financial impact on their family.

Bylaw officers have misapplied the R-K zoning restrictions on transient accommodation as a 'home occupation' to the Appellants' business, despite the fact that they have been operating under the Zone's second, unrestricted transient accommodation use.

There is no bylaw prohibiting transient accommodation units from having kitchenettes. This is commonplace among other transient accommodation businesses, like the Parkside Hotel across the street from the Property.

Municipal governments have no inherent right to restrict the use of private property. The Court has directed that undefined terms in zoning bylaws are therefore to be given a liberal interpretation. Anything reasonably coming within the operation of a B&B should be considered a B&B.

---

[43] See Document 1 of **Schedule "B"**: Bill 35, *Short-Term Rental Accommodations Act*, s. 1 at p. 54.
[44] See Document 1 of **Schedule "B"**: Bill 35, *Short-Term Rental Accommodations Act*, s. 1 at p. 53.
[45] See Document 1 of **Schedule "B"**: Bill 35, *Short-Term Rental Accommodations Act*, s. 3 at p. 55.

The City should reverse the Decision and renew the 2023 Business Licence.

If the operation of B&Bs becomes limited to two suites in an owner's principal residence, whether by way of a bylaw or provincial legislation, then the Appellants submit that the City should work with small businesses to bring them into compliance or transition them to operating under hotel licences – not shut them down without notice.

Kind regards,

CREASE HARMAN LLP
Per:
Spencer Evans

Spencer C. J. Evans
SCJE/

Schedule "A": List of Supporting Documents

Document	Date	Description	Page
1	June 2023	Photos of units at 867 Humboldt Street	16
2	January 2023	2023 Business Licence	20
3	January 18, 2024	Letter from Andrew Dolan	21
4	February 1, 2024	Transcript of audio recording	22
5	April 4, 2023	Transient – Business Licence Application	44
6	July 26, 2023	Email from Barry McLean	46
7	March 17, 2024	Photos of Parkside Hotel rooms	47
8	December 18, 2023	Transient – Business Licence Application	50

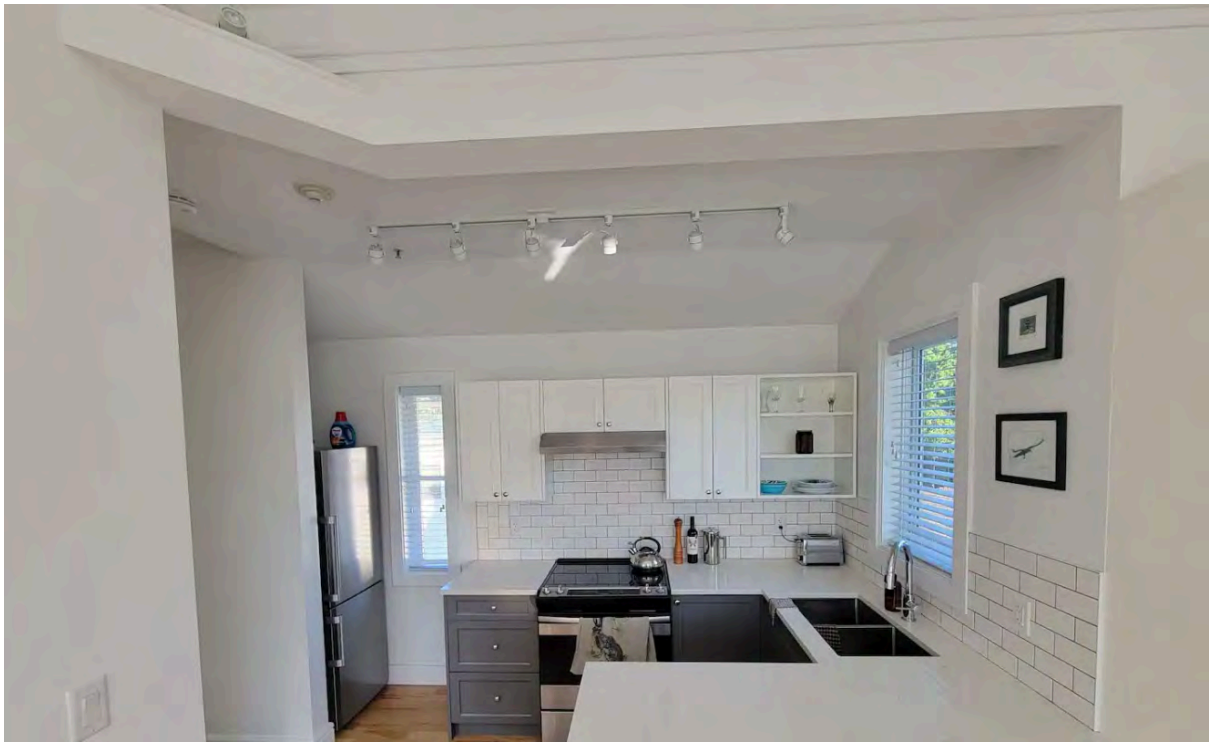
Schedule "B": List of Authorities

SCHEDULE “A”

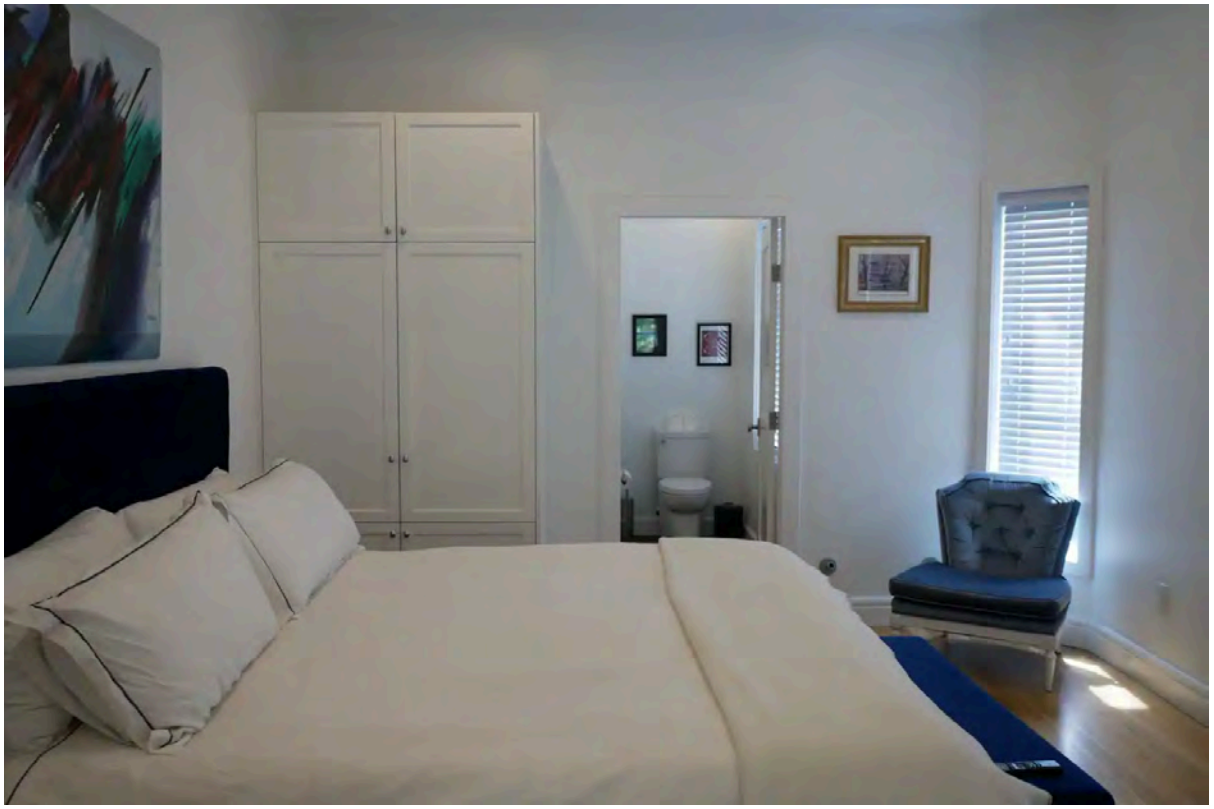
867 Humboldt St.

Exterior

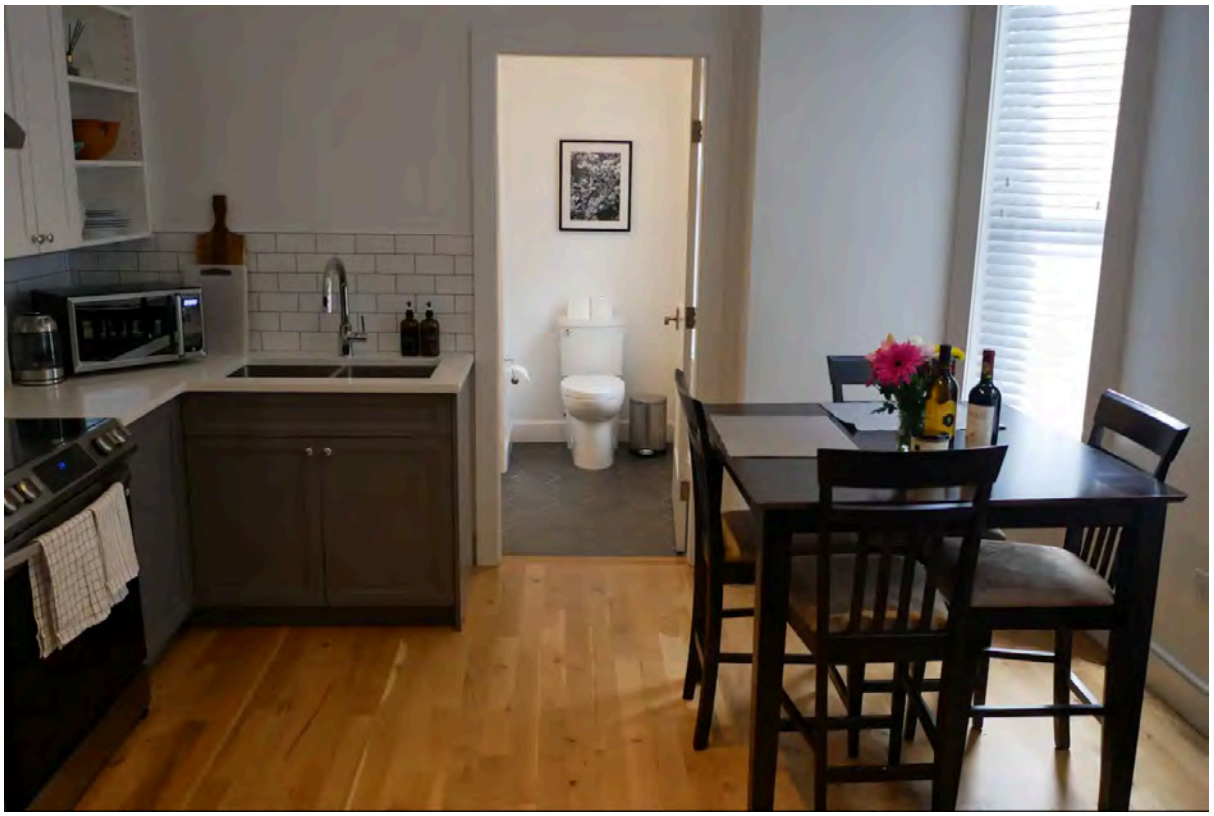
Gazebo



Edwards



Mikado



CITY OF VICTORIA
1 Centennial Square
Victoria, BC V8W 1P6
www.victoria.ca

BUSINESS LICENCE

THIS LICENCE MUST BE POSTED IN A CONSPICUOUS PLACE ON THE BUSINESS PREMISES, IS NON-TRANSFERABLE, AND IS VOID ON CHANGE OF OWNERSHIP OR CHANGE OF LOCATION.

BUSINESS & MAILING ADDRESS:

HUMBOLDT HOUSE
867 HUMBOLDT ST
VICTORIA BC V8V 2Z6

LICENCE NO: **00044580**

LICENCE FEE: **$130.00**

BUSINESS LOCATION:

867 HUMBOLDT ST

EXPIRES ON: **Jan 15, 2024**

LICENCEE:

LINNITT, MATTHEW
867 HUMBOLDT ST
VICTORIA BC V8V 2Z6

HAS PAID THEIR REQUIRED LICENCE FEE AND IS ENTITLED TO CARRY ON THE BUSINESS DESCRIBED AS:

TRANSIENT ACCOMMODATION - BED & BREAKFAST

IN A LAWFUL MANNER AND THIS LICENCE IS ISSUED SUBJECT TO THE PROVISIONS OF ALL BY-LAWS OF THE CITY OF VICTORIA, NOW OR HEREAFTER IN FORCE, AND TO ALL AMENDMENTS THAT MAY HEREAFTER, DURING THE CURRENCY OF THIS LICENCE BE MADE TO SAID BY-LAWS. IN THE EVENT THE NAME OR NATURE OF THE BUSINESS IS CHANGED, OR THE ADDRESS FROM WHICH THE BUSINESS IS CARRIED ON IS CHANGED, THE CITY OF VICTORIA MUST BE NOTIFIED AT 250.361.0572 OR VIA E-MAIL AT BUSINESSLICENCE@VICTORIA.CA

CITY OF VICTORIA

1 CENTENNIAL SQUARE, VICTORIA, BC V8W 1P6 | victoria.ca

Bylaw Services

#12 Centennial Square, Victoria, BC V8W 1P7
E bylawservices@victoria.ca T 250.361.0215 F 250.361.0205

January 18, 2024

Matthew Linnitt / Ashley Ceraldi
867 Humboldt St.
Victoria, BC
V8V 2Z6

Re: Application for a 2024 B&B license – 867 Humboldt St. / Bylaw File#250057

Dear Matthew and Ashley,

You made application for a Transient Business License (see attached) to operate a Bed & Breakfast on your property at 867 Humboldt Street. Bylaw Officer Nelson Duarte attended and conducted an inspection of your property on January 10, 2024 to determine your eligibility to be issued a business license for 2024. The property at 867 Humboldt Street is zoned RK-8, Humboldt Bed & Breakfast District, and the approved use of the structure according to building permit records is single-family dwelling (SFD) with 6 room bed & breakfast.

The Zoning Regulation Bylaw defines "transient accommodation" as the use of land or a building for the temporary accommodation of visitors, and without limitation includes hotels, motels and bed and breakfast accommodation. The RK-8 zoning allows you to operate a bed and breakfast and use up to 6 bedrooms for transient accommodation within your SFD, however transient accommodation cannot occupy an entire self-contained dwelling unit. → where is this in the bylaws?

The inspection conducted by Bylaw Officer Duarte revealed that the structure is comprised of 6 separate self-contained dwelling units with kitchens and bathrooms; 2 suites on the lower level/basement occupied you yourselves and your family, 2 suites on the main floor – 1 rented to a long-term tenant, and 1 used for transient accommodation/short term rentals, and 2 suites on the upper floor – both used for transient accommodation/short term rentals. Each of the rental suites has a private entrance and the only shared spaces appears to be the hallways and laundry facilities in the basement.

As a result, I have concluded that you are not operating a traditional Bed & Breakfast, and that the use and configuration of the structure has changed significantly from what was approved. As a result, you do not qualify for a Transient Business License, therefore your business license application is rejected and you are directed to cease operating transient accommodation/short term rentals immediately. Please note that you will receive a second letter concerning other bylaw violations observed during the inspection relating to work without permit to convert the structure and install additional dwelling units.

ince
hen?

Please contact me by email at adolan@victoria.ca or telephone at 250-361-0578 if you have any further questions or concerns. Thank you.

Regards,

Andrew Dolan
Supervisor – Bylaw and Licensing Services
City of Victoria

AUD-20240201-WA0000

ash@pointblankcreative.ca

0:00:01.4 Speaker 1: This probably came as a bit of a surprise, or not? Because I know you've been inspected a couple of times.

0:00:07.8 Speaker 2: Yeah, and my experience with the city has been, for the most part, really good. I've... Anybody that's wanted to come in, just come in. And...

0:00:17.4 Speaker 1: Yeah.

0:00:18.5 Speaker 2: I had this inspection last year, and the licensing officer said, I don't see anything untoward about what you're doing here. And I said that, my communications with them and both the building inspector at that time was, I'm just trying to operate a business. I want to do everything I can do to come into compliance with any laws that you have. If you can provide me with them if there's anything I'm doing that's outside of the boundaries, provide me with them and I'll come into compliance. And they said there's nothing unusual or untoward about what you're doing, and they gave me a business license, right. And as a result of that, they just... What... The downstream effects of what's happening now... The downstream effects of what's happening now...

0:00:58.5 S1: Yeah.

0:00:58.7 S2: Is that I bought a business that I expected to be operational. And what's being told to me now is that it's not. Because it was told to me last year that it was, my... From what I understand, the statute of limitations for pursuing action against the seller at that point is no longer viable. And so I'm out of, potentially, any money that they would be due to me for selling me something that wasn't actually what they were telling me they were selling me.

0:01:32.9 S1: Well, I don't know about that because there is provincial legislation around disclosure and making a proper disclosure.

0:01:39.5 S2: Yeah.

0:01:39.8 S1: But there's also honors on you to do your own due diligence to make sure that what you're buying is what you're supposed to be buying. Because in this case, it's significantly different than what it's supposed to be.

0:01:56.6 S2: Different from what it was last year when I got a business license?

0:02:00.9 S1: Last year, we weren't inspecting for B&B licenses. There was...

0:02:04.4 S2: What was the license that I got?

0:02:05.9 S1: I think it was an investigation for short-term rentals, but you had already been sent an invoice for bed and breakfast. So we haven't actually...

0:02:15.7 S2: I have a business license approval.

0:02:17.3 S1: For bed and breakfast.

0:02:18.1 S2: For bed and breakfast.

0:02:19.0 S1: But you're not operating a bed and breakfast.

0:02:22.6 S2: Okay. These are the rules...

0:02:23.4 S1: Yeah.

0:02:23.4 S2: That I need to know.

0:02:24.4 S1: And here's the thing.

0:02:25.7 S2: Yeah.

0:02:25.8 S1: So let's just go through this one step at a time, okay?

0:02:28.9 S2: Sure.

0:02:30.9 S1: So there's a letter I sent you. So first of all, there's two different things. There's what the property is zoned.

0:02:36.5 S2: Yeah.

0:02:36.9 S1: So that's what the property will allow you to have on it. And then there's what is the approved use of the structure.

0:02:43.6 S2: Okay.

0:02:44.6 S1: And they're totally different. So for example, if you might have a lot that is zoned duplex and people will assume, well, then I have a duplex. Well, you can have a duplex, but if the structure on it is a single family dwelling, you need to go through the process to convert it to a duplex.

0:03:01.1 S2: Okay.

0:03:01.9 S1: Okay. Because that's permissible under the zoning. You couldn't go through the process to convert it to a triplex because the R2 zoning only allows for two. A lot of people make that mistake. And realtors are forever making that mistake. Oh, it's duplex zone. There can be a duplex there and they see a duplex and they assume it's a duplex. Well, it may not be a duplex. It could be a duplex, but right now it's a single family dwelling. In this case, for your property, it has a very site specific zoning for bed and breakfast. Back between 1980 and 2000, a number of very site specific zonings were issued for certain properties to operate bed and breakfasts. This was before the introduction of short term rentals and the new blown up thing that we're dealing with today. So it was a transient accommodation and there were some parking requirements. The approved use of the structure was single family dwelling. Okay, single family dwelling with six bedrooms, B&B.

0:04:08.2 S2: Where does it say that?

0:04:11.7 S1: All of these permits.

0:04:17.0 S2: I see six room.

0:04:21.6 S1: Six room bed and breakfasts. Six bed and breakfast units.

0:04:26.6 S2: Okay.

0:04:27.6 S1: And then when you look at the approved building plans, they show bedrooms because that's what the zoning would permit. Single family dwelling with bedrooms being operated as a bed and breakfast, a traditional bed and breakfast. In most cases, if it were just a residential zoning like R1, you would be only permitted to have a single family dwelling with two bedrooms. Because you had the very site specific zoning, which I'll give you as well, the zoning permitted the owner at the time to have six bedrooms so four more than what normal zoning would allow. But those are bedrooms. So that's shared space. It's very traditional. You're inviting people into your home, whether or not you offer them a breakfast or not, they're in your dwelling unit basically. It's not separate. It's not self-contained. It's what you would imagine a B&B was back in the day. Okay. What you have, what you bought isn't a single family dwelling. You've bought six self-contained suites. Now, granted, you're occupying two in the basement for yourself and your family that leaves four, one of which I understand is rented long-term and the other three are rented short-term.

0:05:44.4 S2: The other three we got licenses, the bed and breakfast license [0:05:49.2] ____.

0:05:49.2 S1: So you cannot operate a bed and breakfast in a self-contained suite. You cannot operate a short-term rental in a self-contained suite. And with the new provincial government legislation that's coming out in May, they're going to really clamp down on that really really hard. And we're all kind of waiting for the shoe to drop on what that's going to look like because we don't have much more information on what the public has been given.

0:06:16.6 S2: I've read through it all and it seems like what they're going for is illegal non-conforming stuff. And that's not us. We have...

0:06:24.2 S1: No, you're illegal.

0:06:25.8 S2: Well, we are approved for transient. And when I look at the bylaws for transient accommodations, it doesn't say anything about whether or not it's a self-contained dwelling unit or it's a bedroom...

0:06:39.2 S1: Oh it absolutely does.

0:06:40.0 S2: Where is the transient?

0:06:41.6 S1: Let me get it.

0:06:41.9 S2: Yeah, I'd like to see that.

[pause]

0:10:01.6 S1: Okay, so this is schedule D of the zoning regulation by lawsuits. If you turn to page two, I'm sorry, page three, and I've highlighted it for you. And I've also given you the definition of a self-contained dwelling units.

0:10:33.0 S2: Okay.

0:10:37.6 S1: Okay. So let's take the B&B of the short term rentals thing out of the equation for the minute. Let's say you weren't doing that. Let's just say you bought this structure. We would be enforcing upon you for work without permit. So regardless of whether it is being used for short-term rentals or long-term rentals, you could convert all six of those units to long-term rentals. You're still gonna have bylaw violations with regard to building, plumbing and electrical work that's been done without permit to convert them. Because there's been kitchens installed, there's been some things that have been moved around. The floor plan isn't what's shown on the approved floor plans. So that's an issue. That's an issue though, that we would grant you time to resolve over time. 'Cause it takes time, it takes money. It's not something that can be done overnight.

0:11:31.9 S1: The way that we approach work without permit is that we do inspections to make sure that there's no imminent health hazards. Now we're bylaw officers, we're not building, plumbing, or electric experts, but we can use our common sense and we can look to see if there's... Can you smell sewer gas, can you... Are there wires hanging on the walls, that sort of thing. Are there bedrooms without windows. Assuming that we don't see any of those things, then we can take a position that is okay, there are some bylaw violations, but they're not like imminent, they're not an imminent hazard. We can give the property owner time to investigate their options and resolve them. And time could be several years before we decided to take the next step in enforcement.

0:12:17.2 S1: You add to that though that guests are staying here, guests that are coming from other places that are staying in units that contain work without permit and work without permit, even if it's done by the most qualified person if it's not inspected and signed off, it's potentially unsafe. So we have to kind of look at the interest of public safety. So when you're bringing guests in from other places, they're assuming that they're gonna rent a place that's legal and safe. So it kind of bumps it up a little bit in priority for us to enforce upon. I don't envy you finding yourself in a situation. I really don't. Unfortunately it happens a lot. It happens a lot because realtors don't make full disclosure, property owners don't make full disclosure, the lawyers that represent people in the sales don't do any research and do their due diligence. And the owners more often than not, don't know or just don't take the time to look into it. Okay.

0:13:30.0 S2: The schedule D for home occupations.

0:13:31.7 S1: Yeah.

0:13:38.2 S2: What is my home listed as again?

0:13:38.3 S1: It is a single family dwelling with six...

0:13:40.8 S2: Bedrooms.

0:13:41.8 S1: Transient bedrooms. Yes.

0:13:43.1 S2: Right. And so, I mean.

0:13:44.3 S1: And I've got some photographs of the approved plans here. Unfortunately, they're not easy to see, but I'll give you these to take. You can ask to get a copy of the full approved plans from the permits and inspections department. And you can look at those yourself. 'Cause you're gonna want to look at what options that you have.

0:14:07.5 S2: Yeah, this looks exactly like... I know exactly what these are talking about.

0:14:14.3 S1: Yeah. So when Nelson did the last inspection, he's drawn a rough sketch. Now it's not the scale but this is basically what we're seeing is that we're seeing that this differs from that in that the bedrooms are now suites and they're self-contained with kitchens and bathrooms. There isn't any shared space. There isn't the one kitchen or a room where the guests eat breakfast, that kind of thing. It's all been changed.

0:14:41.1 S2: And I mean, the room where the... There was never a room in this house with where the...

0:14:48.6 S1: Yeah, I think there was some...

0:14:49.5 S2: The guests have breakfast.

0:14:49.6 S1: Yeah. There was some sort of...

0:14:49.7 S2: There was never a thing... I've been in lots of conversations with the previous owners and how they operated it.

0:14:53.9 S1: But there was one kitchen at the end of the day. There wasn't multiple kitchens.

0:14:58.2 S2: That's fair. So, in order... Basically what you're telling me is in order to run this as like to maintain a transient permit the kitchens have to come up.

0:15:11.8 S1: It has to be... Now I can't give you advice, but what I can say is in cases like this where the property has been changed to a use that's other than what's approved, you're going to have to either legalize it how it is or revert it back to what it should be. Because this has very specific zoning for bed and breakfast, you might benefit from reverting it back to what it was.

0:15:42.6 S2: Yeah. I have no intent...

0:15:44.7 S1: The only problem is we don't know about the province because we didn't think their legislation was going to affect bed and breakfast, just bedrooms. But we just heard at an information session yesterday that they may consider bed and breakfasts up to a maximum of two rooms. They may quash the whole over two rooms deal.

0:16:11.6 S2: Are they allowed to just fundamentally change zoning?

0:16:16.3 S1: Their provincial legislation trumps all local government bylaws.

0:16:19.9 S2: So there's no protection with regard to the zoning that's been there for 20 years?

0:16:27.9 S1: Not to my knowledge, no. They can come in and cancel the whole legal nonconforming thing. It is an issue and it's got lots of local governments scratching their heads and running around. Our city solicitors are running around. We are running around going, how are we going to manage this? Because let's just say that you were operating this business as it should be run, as it is zoned, a single family dwelling with six rooms for them, for the province to then come in and say, Nope, you can only have two rooms. To me personally, as Andrew, not officer of... As Andrew, that's highly unfair. That's a hardship. So what do we have to do then to protect those owners so that they can continue to operate? We don't know. We really don't know. So...

0:17:20.8 S2: Okay. I guess my question is what qualifies as a kitchen, because there's a lot of infrastructure in here. What do I... Because I mean the difficulty is Parkside Transient Accommodations...

0:17:38.4 S1: I know. I know. I know.

0:17:41.5 S2: And I was just there. They got two self-contained full units. They even have laundry in those units.

0:17:45.2 S1: There is not a definition of kitchen which is challenging, but...

0:17:49.4 S2: So if there's no definition of kitchen, then it's very hard for a self-contained dwelling unit to carry any weight as a term, a legal term because it's not defined.

0:18:01.9 S1: Well, no self-contained dwelling unit is.

0:18:05.2 S2: But it says kitchen in it, and if kitchen doesn't mean anything, then self-contained dwelling unit doesn't mean anything.

0:18:10.4 S1: Welcome to my world.

0:18:11.8 S2: So here's my... And this is Matthew as just an owner. This is totally impersonal.

0:18:16.6 S1: Yeah, no, absolutely.

0:18:18.6 S2: But I have to seek damages. Like this is... I was given a license based on what it was last year to operate.

0:18:30.0 S1: Well, you were given a license based upon what you applied for.

0:18:32.6 S2: But it was a four bed and breakfast I have it. And it gave me a license, four bed and breakfast. They said there were no issues here. And I said, if there are issues here, I will come into compliance with them. And then they said, no issues. I spent a ton of money furnishing...

0:18:46.0 S1: No. You were sent a letter.

0:18:47.1 S2: Not just a letter. I have the license approved saying we...

0:18:51.6 S1: Yeah. It doesn't mean anything.

0:18:53.5 S2: That's a business license...

0:18:55.0 S1: Because you applied for four rooms. You don't have rooms. You have suites.

0:18:58.9 S2: Then why did they approve the license?

0:19:02.5 S1: Because we were not...

0:19:06.0 S2: They came in there, they took pictures. The building inspector and the business license inspector were both inside there. I'm just saying...

0:19:12.1 S1: I can't comment on that.

0:19:14.5 S2: I'm just saying with ambiguous phrases like this around what even a kitchen is, and with the transient term applying, like the way Parkside's using it and then selectively enforcing it on a small business owner, they have the kitchen. I mean, this is the same thing.

0:19:33.3 S1: No, we're not selectively enforcing it. Matt, we're not selectively enforcing it.

0:19:36.2 S2: How is...

0:19:36.3 S1: We're enforcing it based upon our capacity. We haven't... For years and years the city has assumed, rightly or wrongly that the bed and breakfast operators were operating the way they should be. We started investigating and conducting inspections for bed and breakfasts just this year because we found that many of them are in fact not operating and they've moved from the bed and breakfast model to the short-term rental model where they're renting self-contained suites. So I've looked at six or seven now, and I've only found two that are operating the way that they're supposed to be operating, and there's 35 out there.

0:20:18.7 S2: So they're all getting shut down.

0:20:20.3 S1: I wouldn't say they're all getting shut down. We have to inspect them all to see what they're doing, but we have to enforce our own bylaws and we have to wait and see what the provincial...

[overlapping conversation]

0:20:31.3 S2: So I'm expecting that it's like self-contained dwelling unit is not acceptable. And under the transient definition that Parkside is also going to see the same enforcement.

0:20:45.2 S1: Yeah. You should see that we've got 800 odd short-term rental problems, including Parkside, and we're all in this, the operators ourselves, we're all in this waiting game to see what shoe drops from the province which is not a great...

0:21:00.5 S2: Yeah, it's not a place where any sort of business owner can do business because it's

ambiguous. It's nonsense. If the word kitchen doesn't mean anything, we're in the land of...

0:21:14.4 S1: Well, that's your...

0:21:15.1 S2: Well, you said, it doesn't have a definition? If it doesn't have a definition, then it doesn't mean anything. If I take the stoves out, is it not a kitchen? What I want to know is converting these things back into bedrooms so they don't have... And the only thing that I have to do, apparently... I mean, separate entrance. Every bedroom has its own entrance.

0:21:34.5 S1: Not an exterior entrance.

0:21:35.0 S2: None of these have their own separate entrances. None of them have an exterior entrance.

0:21:39.5 S1: But there are entrances into an area that's not your accommodation. It's not shared. It's the shared hallway.

0:21:44.5 S2: I mean, the interior building is shared.

0:21:50.7 S1: Okay.

0:21:50.8 S2: And then you go into your bedrooms. That's the way all houses are. Each person...

0:21:55.6 S1: But it's separate from your dwelling unit.

0:21:58.8 S2: Insofar I also...

0:22:00.5 S1: Is always not in your space. It is in your space in that you own it, but it's not in your inner sanctum. It's not in your dwelling units.

0:22:07.1 S2: My children's shoes are on the floor. I mean...

0:22:08.9 S1: Yeah. At the end of the day, here's what it comes down to. At the end of the day, permits and inspections are the folks that you're going to have to speak to. Think about...

0:22:19.0 S2: Well, permits and inspections has nothing to do with the letter you sent me saying I don't have a business license. The reason that I'm not being allowed to conduct business according to this has nothing to do with permits and inspections. But what it says...

0:22:31.9 S1: It absolutely does because you are renting self-contained suites, which is what you're not allowed to rent. You're allowed to rent bedrooms, not self-contained suites.

0:22:40.3 S2: Right. But you're saying that the word self-contained...

0:22:43.5 S1: So I rejecting your license because you're not operating a bed and breakfast.

0:22:46.6 S2: Self-contained dwelling unit, a self-contained suite cannot have a kitchen.

0:22:53.1 S1: Self-contained suite cannot be rented out short-term...

0:22:56.7 S2: I'm just trying to figure out...

0:22:58.5 S1: And that's what you're doing.

0:22:58.7 S2: I'm just trying to figure out what the word self-contained dwelling unit mean. And it says, okay, family which has a separate entrance doesn't have that. Bathroom facilities, I don't know if you guys have a definition for that. Each one has a bathroom. That's fine. Kitchen is the thing here. I can change those.

0:23:19.0 S1: That's the discussion you need to have with permits and inspections folks.

0:23:23.3 S2: So permits and inspections will say that these are now bedrooms and not self-contained suites.

0:23:27.4 S1: Permits and inspections may be able to give you some options as to what you can do to bring this into compliance. But as far as the licensing is concerned.

0:23:37.2 S2: This is insane. Bring me the compliance with a word that doesn't mean anything.

0:23:42.2 S1: We can talk this round and round for hours, but at the end of the day...

0:23:44.7 S2: I know we can but I didn't do this...

0:23:45.6 S1: I can only make a decision based upon the investigation that was conducted. The investigation that was conducted shows that the layout of your structure is vastly different than what was approved. The zoning and the approved use of the structure is for single family dwelling and bedrooms rented overnight as B&Bs. You're not renting bedrooms, you're renting suites. It's not what was intended. Therefore, we're not going to issue a business license for it. You've got the added thing about the new provincial legislation coming in. We not know how that's going to impact, like I said, take the licensing out of it. Take the business end out of it. As far as the structure is concerned, you're still going to have an issue. So it's a matter of whether you want to rezone it perhaps and go to self-contained suites that are long-term rentals, or you want to revert it back to a single family dwelling with bedrooms.

0:24:52.1 S1: And you know what, if across the street there, they grant you an occupancy permit that says single family dwelling with bedrooms all good. But when the provincial legislation comes out, if the provincial legislation says what we think it's going to say, B&Bs can be to a maximum of two rooms, then you're going to have an extra two rooms that have nothing to do with.

0:25:18.4 S2: And that happens in May?

0:25:20.6 S1: Yeah, apparently.

0:25:24.2 S2: Yeah. Well, I mean, the truth is at this point, I have my own...

0:25:30.2 S1: Well, you have options.

0:25:33.4 S2: I have my own options and I have my own concerns about what this is. I also have my own concerns about what in the past has been told to me and what's changing. And essentially at this point, what I'm pretty much bound to do is to seek legal representation and I will probably be seeking damages.

0:26:01.7 S1: Damages from?

0:26:04.7 S2: What this is costing me is anywhere from $20,000 to $40,000 a month. Last year I bought this place...

0:26:14.0 S1: But why didn't you come down to city hall and check.

0:26:17.5 S2: Did you see the market last year?

0:26:19.0 S1: Don't care about the market. It doesn't matter, if you're making that big of an investment in something, you better be damn sure you're buying something...

0:26:26.9 S2: So what I did do, is I went to city hall and I said, I would like to apply for a license to run a bed and breakfast. And then they sent two inspectors, a building inspector and a business license inspector to my home...

0:26:40.5 S1: [inaudible]

0:26:41.7 S2: They walked through and then they gave me that. And now based on no change at all, it's being rejected with ambiguous terminology. And that to me, it feels, and I know you're not doing this, it's the uniform. So there's difference, but it feels malicious because a year ago I had both those inspectors there and I said, if there is something that I need to change, tell me now and I will change it. And then they said...

0:27:15.1 S1: You were sent a letter with regard to the bylaw violations.

0:27:17.5 S2: And it said specifically, no more enforcement action is going to be taken. That's exactly what it said.

0:27:24.2 S2: With regard... But it did point out that there were things that needed to be fixed.

0:27:29.0 S2: Yeah. Well, yeah. And that's permitting. That's not licensing. They said there was zero issues. There's two inspectors there. The building inspector said, yeah, there's some permitting issues. This is rampant across the city. Not a big deal. We'll deal with that when it comes to it. I also said to him, please send me any information that you have about what I need to do to come into compliance about that. The business license inspector said to me specifically, there is nothing I can see here that I can take issue with, and so I'm going to grant you a license to conduct business. And so under that approval from the city, I went and invested a ton of money into furnishing all of these suites. I mean, the business has a reputation. It has significant...

0:28:21.0 S1: It has been around a long time. It's been a bed & breakfast for as long as I can remember.

0:28:23.8 S2: And now I just had to cancel on everyone with no real explanation as to why. And then I got to rebuild that whole reputation on all those people. And like...

0:28:34.9 S1: The only thing I'd say is, you're not the only one that's going to be in this boat.

0:28:37.0 S2: Yeah, and so I mean...

0:28:39.3 S1: That doesn't make it easier. But it is what it is.

0:28:46.8 S2: It's just I don't feel I've done anything wrong here. I think at every turn, I've come to the city and asked what it is I need to do. I haven't got a straight answer out of anyone with regard to the permitting thing, and then with regard to the licensing thing, I was, there's nothing you have to change. And so I didn't... And now...

0:29:10.2 S1: To my knowledge, the license inspector didn't inspect the property.

0:29:13.2 S2: He was in there with me. And the other...

0:29:15.1 S1: It was a bylaw officer?

0:29:15.9 S2: A bylaw officer and a business license inspector.

0:29:18.1 S1: Business license inspector?

0:29:18.7 S2: No, a business license inspector.

0:29:21.1 S1: I'd look into that.

0:29:21.6 S2: The business license inspector was there with me, and I spoke with him specifically about it and nothing was raised.

0:29:28.8 S1: Okay.

0:29:29.7 S2: And till now, I mean, the truth is, those two individuals had full access and understanding of what was going on in that building and they didn't raise any concerns.

0:29:43.1 S1: Well, they did raise concerns.

0:29:46.1 S2: But they didn't...

0:29:46.2 S1: They sent a letter with regard to the bylaw violations.

0:29:49.4 S2: Yeah.

0:29:49.7 S1: I'll be happy to send you another letter that more painstakingly points out what the issues are with permits.

0:29:56.5 S2: If the permits need to get done, I don't feel that's a huge hurdle. I feel the inspections can come in, they can look at what I have and they can.

0:30:04.4 S1: The problem is right now and the problem that you're going to have is we don't have enough information for you to decide whether it's in your interest to revert it back to a single-family dwelling with six-room bed & breakfast, if in fact the provincial legislation is going to trump our bylaw.

0:30:24.8 S2: Well, if the province comes in and does it, that's the province doing something. This is the city doing something.

0:30:30.8 S1: Yeah we don't have any option. We can't. If they say this is how it shall be done, this is how it shall be done.

0:30:37.8 S2: Yeah, and then in May you can say we can't do this but you're doing this a week after it was due in January, right? That's a very different thing, right? You're really taking the initiative here to kneecap a business that's been around for 20-plus years based on...

0:30:55.8 S1: No, you did that to yourself.

0:30:56.7 S2: This is based on vibes.

0:30:57.9 S1: You did that to yourself when you bought a property that was not configured the way that it's supposed to be configured and assuming that you could just go ahead and operate it.

0:31:09.3 S2: I didn't assume that. I applied for a business license and got it. That's not an assumption.

0:31:15.0 S1: One has nothing to do with the other, unfortunately.

0:31:17.1 S2: That's consulting the city.

0:31:19.4 S1: Because for many years these B&B licenses have been, they'll get a review and they'll be approved. If you submit a business license application for bed and breakfast and you apply for six bedrooms or six rooms and the staff member looks at the approved use and sees single-family dwelling with six rooms, you're submitting something saying, well, this is true to my best of my knowledge.

0:31:50.1 S2: He walked through every room with me. Every single one.

0:31:53.1 S1: That I can't comment 'cause I don't know.

0:31:54.9 S2: Yeah, and he was in there with me looking at every room and said, no, this is fine. And so now it's not. It does not seem it's based on any clear definition of anything. And it's, you know what, we don't like it. And nothing changed. And the difficulty is now, yeah, maybe potentially I was sold something that wasn't what it was supposed to be sold as. You have a certain amount of time to pursue damages for something like that. That time has now expired.

0:32:31.2 S1: I don't know if that's in fact true 'cause it's a civil court process. If you are in fact getting a solicitor, I would get them to look into that real estate act requirements for disclosure. Because the previous owner has done all of this work.

0:32:52.4 S2: Yeah, I know. I mean, it is what it is.

0:32:58.0 S1: You are a smart guy, you don't get to be a pilot without...

0:33:00.1 S2: Yeah, and I do understand that he did. And it only came to my attention afterwards that all that work was done without permits. Every house I looked at had work done without permits.

0:33:15.3 S1: He had to throw a stone in the city and not hit a legal suite or something.

0:33:18.8 S2: Yeah, that's just normal. And so when you're doing your due diligence on a house, un-permitted work, it's yeah, that's something I can deal with. That's very different than this isn't at all allowed to operate as a bed and breakfast, which is exactly what it was. And had the...

0:33:37.7 S1: Well, it is allowed to operate as a bed and breakfast under the conditions that were initially granted us, which were bedrooms, not suites. Now, let's just say the provincial legislation wasn't coming out and we didn't have to worry about that, then your best course of action would be to revert it back to single family dwelling and talking to the permits people to say, what does that mean? Do I need to just take out the stove? Do I need to take out the counters? What will enable me to say that it's not a kitchen? That's their call.

0:34:12.9 S2: Right.

0:34:12.9 S1: And then you're back to being a single family dwelling with six bedrooms and no problem. You continue on. We do have this added complication. We just don't know what's going to happen.

0:34:22.6 S2: And that's May when that comes up?

0:34:25.1 S1: Well, the provincial act comes into effect in May.

0:34:31.2 S2: And we don't have the terms?

0:34:33.6 S1: Well, very generally, I think. We don't really have a lot of the specifics. We know that they are increasing the fines for violations. We know that they are looking at having their own enforcement branch. What that looks like, we have no idea. The province has pretty big boots and they can go areas that we can't as far as penalties and access to information and that sort of stuff. You can look at it a couple of ways. You've benefited from having been able to operate the amount of time that you've operated. And you've benefited by getting a bit of a heads up that the provincial act could potentially impact your business even further. But again, we just don't know. The whole thing could get vetoed. Politics is politics.

0:35:31.6 S2: Yeah.

0:35:33.7 S1: My advice to you is to look at your options.

0:35:40.1 S2: Yeah.

0:35:40.5 S1: Give it some thought and see what happens.

0:35:44.3 S2: Right.

0:35:46.0 S1: I mean...

0:35:46.1 S2: So if the permitting office says these are bedrooms and not self-contained suites.

0:35:50.6 S1: Well, they're not gonna tell you that they're bedrooms and self not...

0:35:53.6 S2: No, if I make whatever changes they require...

0:35:57.5 S1: Sure.

0:35:57.5 S2: Get to the point where they say, these are bedrooms not self-contained suites.

0:36:03.8 S1: Yeah.

0:36:04.0 S2: At that point, according to business license, aside from what's coming down from...

0:36:10.1 S1: Sure. Demolishing your business.

0:36:11.3 S2: And I'm good for six. Right?

0:36:13.4 S1: Yeah. But it has to be single family dwelling, and it has to be six rooms. It has to be what that approved use is supposed to be.

0:36:19.4 S2: Right. And...

0:36:19.7 S1: So whatever process you need to do...

0:36:22.1 S2: What's the definition of single family dwelling on top of the six bedrooms? Like what does that mean?

0:36:27.9 S1: Well, it's like, it'll be a self-contained dwelling unit. But even this, but there again, even the definition of single family dwelling is somewhat ambiguous because it has changed over the years. Because there's no definition of family. Right? We run across it when you get groups of kids that are going to university and they get together and they rent a big house, and they say, well, we are a family. Right? These days...

0:36:57.6 S2: Yeah. I see what you're saying.

0:36:58.7 S1: Right?

0:37:00.0 S2: Yeah, yeah.

0:37:00.4 S1: You know, it's not the old, a lot of these definitions go way back, and they're just not modernized. So we have to kind of be more than reasonable when you kind of what you allow and what don't you allow. But single family dwelling basically means it's intended for one group of persons. So one kitchen, right?

0:37:24.8 S2: Yeah.

0:37:25.8 S1: The kitchen is kind of the be all end all. You may end up with six rooms that have a wet bar.

0:37:34.1 S2: Yeah. Well, and that's just it. Like, 'cause that's traditionally what's in most places, not Parkside, is wet bars. Right? Small fridge, microwave, and then...

0:37:45.5 S1: But what were you doing through short term rental enforcement? Is there may not have to be a kitchen if there's an element of cooking.

0:37:54.3 S2: Yeah. A place to prepare food is another place where I've...

0:37:56.9 S1: Yeah, that's another...

0:37:57.5 S2: Word that I've heard, right?

0:38:00.4 S1: That's another issue. Right? Because, it doesn't have to be a full blown kitchen. Back in the day, a kitchen was a kitchen, everybody knew what a kitchen was. Today with microwaves and air fryers, you don't need a stove, you don't need an oven, you don't need any of those things. And many times we'll go do, our officers will go do an inspection of a place and yeah, there's a wet bar, there's no means of cooking. And then they get granted the license, and then our online investigators will start looking at the photos and start looking at the reviews. And then they go, Oh, it's great. We prepared our own breakfast and we did all this. And there's photos showing air fryers and toaster ovens and all of that stuff.

0:38:38.3 S2: 'Cause they put everything on the counter afterwards.

0:38:39.7 S1: But they put everything back, right? They do the, what we used to call the stove dance, you yank the stove out before the inspector comes and you yank it back in once they leave. So yeah, there's no black and white. It's a whole ton of gray areas. And that is the challenge both for the public like yourself and for enforcement as well.

0:38:57.2 S2: And from my perspective, all I'm trying to do is run a business.

0:39:01.8 S1: Absolutely.

0:39:02.1 S2: And I've been like, trying to find out, like, I kind of feel like I'm in, have you ever read Kafka's Trial? You know, there's like, okay, you're breaking these rules and then there's no rhyme or reason to the rules. Like, it's like I don't have a clear picture of what's required. And so coming into compliance is a nonsensical endeavor.

0:39:23.2 S1: Well, it is always the discussion because we...

0:39:24.9 S2: And it'll be the change... Right?

0:39:26.6 S1: The rules tell you what you can't do. More often than not, we don't tell you how you can get into compliance or tell you what you can do.

0:39:34.4 S2: Yeah.

0:39:34.9 S1: Yeah. It's challenging and I don't envy you in your position. And believe me, on a personal standpoint I have tremendous empathy for you. Right? I wouldn't wanna find out years after I bought my place that there was all sorts of problems in it. Right? Thankfully that's not the case, but yeah. I couldn't imagine being in that.

0:39:56.5 S2: Yeah. This is insane.

0:39:57.7 S1: Right. It's horrible.

0:40:00.2 S2: Yeah.

0:40:01.3 S1: But my job isn't to try and make your life miserable, my job is to try and help, my job is to educate and inform and then try and help you negotiate whatever pathway you need to negotiate to get to where you need to be.

0:40:18.0 S2: It's just difficult 'cause like there's a sentence here, it says, transient accommodation cannot occupy an entire self-contained dwelling unit.

0:40:24.3 S1: Yeah, that's from Schedule D.

0:40:26.4 S2: That, unless, unless Parkside is being shut down, I don't understand why we're having that enforced on us and then Parkside is not.

0:40:38.1 S1: But you're assuming it's not being enforced upon yours.

0:40:40.0 S2: I know it's not. I just want, I was just there the other weekend, people were staying in there. If they have a business license to operate that.

0:40:45.3 S1: That doesn't mean there's not legal action, injunctions, ticketing. It doesn't mean any of that's not going on. The fact that they're still operating doesn't mean that there's no enforcement.

0:40:55.0 S2: Okay.

0:40:55.7 S1: It could be just a matter of these people have decided, they've put so much money into it, they're just gonna go.

0:41:01.6 S2: Just gonna pay the fines?

0:41:02.3 S1: And deal with it, right? Because our fines of $350 or whatever pale in comparison from the money you're making.

0:41:09.4 S2: Yeah. That's what they're doing.

0:41:10.3 S1: That's why the province is coming in and they're jacking the fines up substantially so that these operators can't just treat it as cost of doing business. It's more than the cost of doing business and it's gonna hurt them, right?

0:41:24.5 S2: Yeah.

0:41:24.7 S1: That's why they're doing what they're intending to do, so.

0:41:27.9 S2: Okay.

0:41:29.9 S1: But for you, it's supposed to be a single family dwelling with six bedrooms, it's not. If you wanna go down the path of returning it to a single family dwelling with six bedrooms, then that's your choice.

0:41:43.2 S2: Yeah.

0:41:45.1 S1: If we get an occupancy permit from permits and inspections, it says that you've done that under the current rules, I'll be happy to issue a business license.

0:41:54.4 S2: Okay.

0:41:55.2 S1: But those rules may change.

0:41:57.1 S2: Yeah. And so I don't wanna just dump a ton of money before anything.

0:42:00.4 S1: And if they change then we have nothing to do with it.

0:42:01.5 S2: Yeah.

0:42:01.8 S1: Right?

0:42:03.1 S2: Yeah.

0:42:03.4 S1: Again, we don't know what we're waiting for.

0:42:08.5 S2: Right. Where would I request these in full?

0:42:10.5 S1: So if you go over to city hall.

0:42:11.9 S2: Yeah.

0:42:12.2 S1: Go up the spiral staircase.

0:42:13.9 S2: Yeah.

0:42:14.0 S1: When you get to the top, turn left...

0:42:15.8 S2: Yeah.

0:42:16.3 S1: You'll walk under an archway, you'll go up a couple stairs into the planning department.

0:42:21.6 S2: Yeah.

0:42:21.9 S1: And you'll walk right into a counter that says permits and inspections.

0:42:25.4 S2: Okay.

0:42:25.5 S1: You go in there, request the plans, talk to the staff about the process. The city's website is really, really helpful for the permit process.

0:42:36.8 S2: Yeah.

0:42:37.6 S1: And the staff out there are very helpful as well.

0:42:39.6 S2: Yeah. And they've been helpful and like I've been talking to them about getting the un-permitted work done.

0:42:45.7 S1: Yeah.

0:42:46.3 S2: But they've been very much of a mind to be like, this isn't an emergency, you don't have to push this. Right? Like that's...

0:42:52.5 S1: It's not.

0:42:53.5 S2: But now it is.

0:42:54.5 S1: It's the exception of the licensing issue.

0:42:56.4 S2: Yeah.

0:42:56.8 S1: Right? If, like I said, if you weren't operating this business and you weren't renting short-term rentals, that letter that you got from Barry...

0:43:07.1 S2: Yeah.

0:43:07.2 S1: Was how we handled work with without permit.

0:43:09.2 S2: Yeah.

0:43:09.6 S1: But you throw the licensing thing on top of that and it creates another urgency, right?

But it may take you, I mean, it may take you several months at minimum, and by that time we could be dealing with a completely different ballgame with the provincial legislation, so.

0:43:34.4 S2: Yeah. It's interesting. Yeah. If they go down to two, I mean, it's just like, and then I'll just have to rezone what allows long term, or, I mean, I just don't know. Right? The...

0:43:50.9 S1: It's really hard right now to make, to make a call, to make a decision because of this impacting legislation.

0:43:58.7 S2: Yeah.

0:43:58.9 S1: We kind have an idea, but we don't.

0:44:04.3 S2: Yeah.

0:44:04.5 S1: But listen, you have my card.

0:44:07.2 S2: Yeah.

0:44:07.3 S1: I've given you the information that I have available.

0:44:13.3 S2: Yeah.

0:44:14.0 S1: Happy to put you in touch with the right people.

0:44:16.8 S2: Yeah. Yeah.

0:44:18.1 S1: But unfortunately, whatever has happened in the past, the situation today is as it stands, that you've got some issues that need to be resolved.

0:44:30.9 S2: Yeah. Clearly. And yeah, I'm gonna talk to the, some counsel here and just see what the best of course action is with regard to either. Yeah. Like who... There's liability here somewhere and I just gotta figure out where it is.

0:44:49.1 S1: Fair enough.

0:44:52.7 S2: Yeah.

0:44:55.2 S1: Good. Thank you. This is Matthew Linnitt, Matthew Owens, 867 Humboldt. This is Mark. He is the manager of operations for the city bylaw.

0:45:02.4 S2: It's nice to meet you.

0:45:03.5 S1: He oversees the short term rentals section...

0:45:06.5 S2: Cool.

0:45:06.9 S1: Section.

0:45:07.3 S2: That's sounds fun.

0:45:09.9 Speaker 3: Yeah. What's going on?

0:45:11.1 S1: Yeah. So this is one of the B&B operations that we've done the inspection on, and we've found that it's not operating in compliance with the zoning or with the approved use of the structure. So now it's a matter of trying to figure out where we go and what we do and talking about the challenges that that building poses.

0:45:30.2 S3: All good? Good.

0:45:31.6 S2: Yeah.

0:45:35.0 S1: Alright. You are very welcome.

TRANSIENT – BUSINESS LICENCE APPLICATION

FINANCE DEPARTMENT
Business Licensing
1 Centennial Square
Victoria, B.C. V8W 1P6

For information, or assistance completing this form, please contact the Business Licence Office at 250.361.0572 or by email at businesslicence@victoria.ca. Or fax 250.361.0560. You can mail your completed application to the above address.

IMPORTANT: The information required by this application is necessary to fully evaluate your request for a Business Licence. Incomplete forms will **not** be processed. Completion of this application does **not** guarantee approval of a Business Licence. Approved licences will be issued **only** upon receipt of payment of Business Licence fee.

Conducting business without a Business Licence is an **offence** for which penalties are prescribed. The minimum penalty in this case is a fine of $250 per day, for each day that the offence continues, pursuant to Section 4 of the Business Bylaw. Please be advised this document is subject to the Freedom of Information and Protection of Privacy Act and access can be requested.

PART A: BUSINESS LICENSE APPLICATION

TYPE OF ACCOMODATION (check one)

- ☐ HOTEL
- ☐ MOTEL
- ☐ CONDOMINIUM # OF BEDROOMS
- ☐ HOSTEL
- ☑ OTHER: Bed and Breakfast

Business Location / Address: 867 Humboldt St

Business Name / Operating Name: Humboldt House

Partnership / Sole Proprietor(s): Partnership

Limited / Incorporated Company Name: Humboldt House

Please attach documents of Incorporation and Notice of Articles. (Photo copies accepted)

Mailing Address (if different from above): _____

Phone: 6045373541 Fax: _____ Cellular: _____

Emergency Contact Name / Phone: Ashley Arden 778-316-7233

Email Address: Matthew.Linnitt@gmail.com

Web Address: _____

Proposed Business Start Date: May 1st, 2023

Detailed Business Description:

The Humboldt House Bed and Breakfast has operated for years in Victoria. The previous owners purchased the business with the intent of renovating the rooms and re-opening the business. The Covid epidemic prevented them from re-opening. After the restrictions were lifted they chose to sell the property rather than re-open. We purchased the property about 7 months ago and are now seeking a license to operate.

IMPORTANT: Home Occupation means making, servicing, or repairing goods, or providing services for hire or gain by any person, wholly within a dwelling unit **occupied** by the applicant. In addition, **Schedule D – Zoning Regulation Bylaw** states, in part '…where any building is used as a single family dwelling, up to two (2) bedrooms may be used for transient accommodation as a home- occupation.' http://www.victoria.ca/EN/main/business/permits-licences/business-licences.html

PART B: APPLICANT'S INFORMATION

Applicant's Name *(*Individual completing form*)*: Matthew Linnitt

Applicant's Signature: _____ Date signed: April 4th, 20 23

IMPORTANT: Applicant has read and agrees to comply with the requirements of the Zoning Regulation Bylaw and the 'Business License Bylaw of the City of Victoria. This information is being collected for the purpose of determining the applicant's eligibility for a Business License in the City of Victoria pursuant to Bylaw(s). In providing this information you are consenting to its use for the above-mentioned purpose and declare that all information provided herein is correct. This information may be shared with applicable departments and related agencies during the approval process.

PART C: APPROVAL PROCESS (FOR OFFICE USE ONLY)

DEPARTMENT	DATE	APPROVAL	DATE	COMMENTS
☐ Planning				
☐ Building				
☐ Health				
☐ Fire				
☐ Police				
☐ Engineering				
☐ Bylaw				

FINAL APPROVAL by Business Licence Inspector _____

DATE APPROVED _____, 20 _____ BUSINESS LICENCE NUMBER _____

COMMENTS

TBL-3 (2003)

Fw: 867 Humboldt

Ash Arden <ash.arden@hotmail.com>
Wed 2024-03-06 7:06 PM
To: Ash Arden <ash.arden@hotmail.com>

1 attachments (10 KB)
image001.png;

---------- Forwarded message ---------
From: **Barry McLean** <bmclean@victoria.ca>
Date: Wed, Jul 26, 2023, 15:23
Subject: 867 Humboldt
To: Matthew Linnitt <matthew.linnitt@gmail.com>

Hello Matthew,

This is a follow up message regarding the inspection that Business Licence Inspector Kitson and I made on July 7, 2023. I apologize for not responding to you sooner.

The inspection revealed that there was work without permit on the property and that will be dealt with in a new file.

The other aspect of the inspection was that it was identified that you are operating short-term rentals in self contained suites. The business licence that you have is for a Bed & Breakfast and currently you are operating outside of those parameters. If you wish to continue to operate short-term rentals, you need to apply for a short-term rental licence. Please do so online.

If you have any questions, please reach out to str@victoria.ca

Thank you,
Barry
Barry McLean

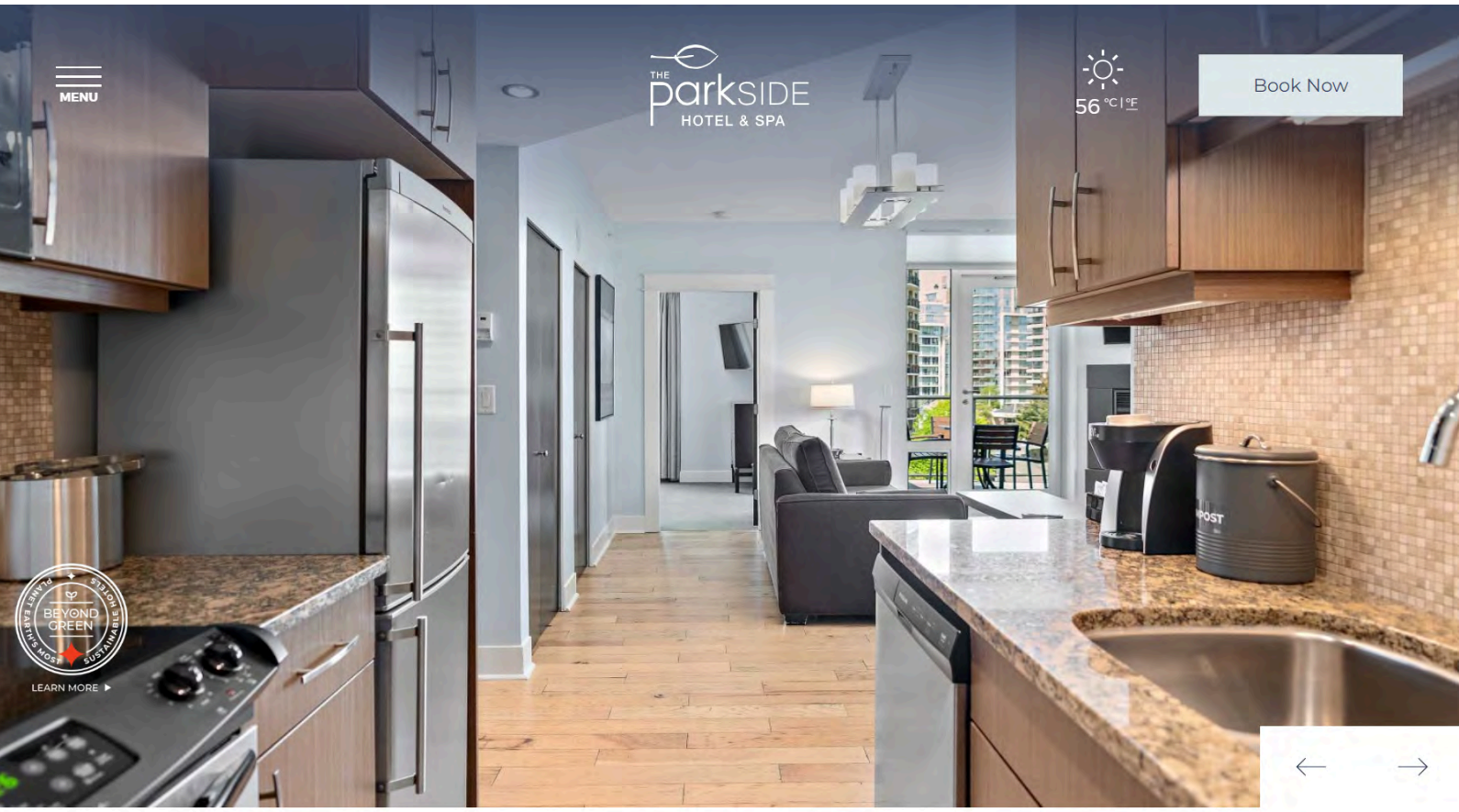
Bylaw Officer #946, Bylaw & Licensing Services
Legislative and Regulatory Services Department
City of Victoria
#12 Centennial Square
Victoria, BC V8W 1P7

T 250.361.0215 **C** 250.532.1494

City of Victoria logo - links to victoria.ca home page Facebook logo - links to City of Victoria Facebook page Twitter logo - links to City of Victoria Twitter page LinkedIn logo - links to City of Victoria LinkedIn page

The City of Victoria is located on the homelands of the Songhees and Esquimalt People.

Retrieved from: https://www.parksidevictoria.com/accommodations/two-bedroom-suite (March 17, 2024)



TWO BEDROOM SUITE

The two-bedroom suite features 1,000 square feet of luxury including, two separate bedrooms, two bathrooms, large kitchen and dining area, sitting area with fireplace and private balcony. Also includes a European-style washer/dryer.

Amenities

- Two bedrooms
- One king and one queen or two king size pillow-top beds
- Accommodates up to six guests
- Pull-out queen sofa bed
- Private balcony
- Two bathrooms (en-suite primary bathroom with soaker tub)
- Fully equipped kitchen
- Coffee maker (+ selection of coffee & teas)
- Stainless-steel appliances
- Granite countertops
- Refrigerator
- Full stove and oven
- Small dishwasher
- Microwave
- Bar seating
- European-style washer/dryer unit
- Dyson/tower fans & operable windows
- Iron & ironing board
- Safe
- Flat screen TVs with Chromecast ability
- Open-concept living & dining room
- Electric fireplaces
- Complimentary Wi-Fi
- Device charging station
- Bluetooth speaker
- Tyneham luxury bath products
- Bathrobes
- Northwest or northeast views of downtown Victoria and surroundings

Retrieved from: https://www.parksidevictoria.com/gallery (March 17, 2024)

Retrieved from: https://www.parksidevictoria.com/gallery (March 17, 2024)

CITY OF VICTORIA

1 Centennial Square
Victoria, BC V8W 1P6

250.361.0572
businesslicence@victoria.ca
victoria.ca

Transient Accommodation
Business Licence Application

For information, or assistance completing this form, please contact Business Licensing at 250.361.0572 or by email at businesslicence@victoria.ca. You can mail your completed application to the above address, fax it to 250.361.0214 or email it to the email address noted above.

IMPORTANT: Applications must be completed in full and accompanied by appropriate documentation. Incomplete forms will not be processed. Completion of this application does not guarantee approval of the application. Approved licences will be issued only upon receipt of payment of the business licence fee. Conducting business without a valid licence is an offence for which penalties are prescribed. The minimum penalty is a fine of $250 per day for each day that the offence continues, pursuant to Sec. 4(a) of the Business Licence Bylaw.

Part A: Property Information

Property Address: 867 Humboldt St Victoria, BC **Postal Code:** V8V 226

Type of Accomodation (CHECK ONE)

- ☐ Hotel ☐ Hostel
- ☐ Motel ☑ Bed & Breakfast

Number of Rooms Being Used For Transient Accomodation: 3

Coin Operated Machines

# of washers and dryers	0	units X $11.00 per unit =	
# of other machines	0	units X $15.00 per unit =	
Total number of machines	0	**Total fees: $**	

Part B: Applicant(s) Information

Registered Owner of the Property: ☑ Yes ☐ No

☐ **Sole Proprietor's name:** (If you plan to operate the business on your own, either under your own name or a business name):

☑ **Partnership name(s):** (If you plan to operate the business with one or more partners):
Matthew Linnitt Ashley Ceraldi

☐ **Limited/Incorporated company name:** (If you plan to operate the business as a separate legal entity, separate from yourself and your personal assets):

Mailing address: 867 Humboldt st Victoria BC, V8V 226
(APARTMENT / UNIT # / STREET ADDRESS)

Phone number: 604 537-3541 Email: Matthew.Linnitt@Gmail.com

CITY OF VICTORIA
1 Centennial Square
Victoria, BC V8W 1P6
250.361.0572
businesslicence@victoria.ca
victoria.ca

Transient Accommodation Business Licence Application

Incorporation Information: (if applicable)

Incorporation number: _____

If applying as a Limited/Incorporated Company, have you included documents of Incorporation and Notice of Articles?

☐ Yes

☐ I authorize the City of Victoria to obtain the documents of Incorporation and Notice of Articles and acknowledge that a $30 fee plus applicable taxes will be charged by the City of Victoria for this service [*Administrative Fees Bylaw No. 04-40*].

Applicant / Representative Signature: _____ Date Signed: 18 Dec 2023
(DAY / MONTH / YEAR)

IMPORTANT: In providing this information, you have consented to its use for the above-mentioned purpose and declare that all the information provided herein is correct. Applicant has read and agrees to comply with the stated regulations and requirements of the Business Licence Bylaw and all other applicable City Bylaws. Licences are valid from January 16 to January 15 of the following year.

Part C: Approval Process (For Office Use Only)

Processed By: _____ Date Signed: _____
(DAY / MONTH / YEAR)

SCHEDULE “B”

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Part 1 – Interpretation and Application

Definitions

1 In this Act:

"accessory dwelling unit" means a building, or part of a building, that

(a) is a self-contained residential accommodation unit,

(b) has cooking, sleeping and bathroom facilities, and

(c) is secondary to a primary dwelling unit located on the same property;

"applicant" means

(a) a supplier host who applies for the registration of a short-term rental offer under section 6 *[short-term rental offers must be registered]*, or

(b) a platform service provider that applies for registration under section 7 *[platform service providers must be registered]*;

"business licence number" means the number associated with a business licence;

"business licence requirement" means a requirement in an applicable short-term rental bylaw that a person have a business licence;

"coordination agreement" means an agreement described in section 4 (2) *[application of Act to participating First Nations]*;

"dwelling unit" means a building, or a part of a building, that

(a) is a self-contained residential accommodation unit, and

(b) usually has cooking, eating, living, sleeping and bathroom facilities;

"exempt land" means prescribed land where the principal residence requirement does not apply;

"First Nation law" means a law of a participating First Nation in relation to one or both of the following:

(a) short-term rental accommodation services or similar services;

(b) platform services;

"participating First Nation" means the Nisga'a Nation or a treaty first nation, if the Nisga'a Nation or the treaty first nation has entered into a coordination agreement under section 4 *[application of Act to participating First Nations]*;

"platform" means an online marketplace on which platform services are provided;

"platform offer" means a short-term rental offer made on a platform that uses the services of a platform service provider;

"platform representative" means a person responsible for representing a platform service provider in British Columbia;

"platform service" means the facilitation, provided by a platform service provider on a platform, of promotion and of transactions for reservations and payments in relation to short-term rental accommodation services located in British Columbia;

"platform service provider" means a person operating a platform and providing platform services;

"platform service provider information" means

(a) the name, telephone number, address, email address and, if applicable, fax number of the platform service provider and the platform representative, and

(b) any prescribed information;

"principal residence" means the residence in which an individual resides for a longer period of time in a calendar year than any other place;

"principal residence requirement" means the requirement imposed under section 14 (1) *[principal residence requirement]*;

"property host" means a person

(a) who is legally entitled to possession of a property where short-term rental accommodation services are

(a) who is legally entitled to possession of a property where short-term rental accommodation services are provided, and

(b) who has responsibility for arranging for the short-term rental offer;

"registrant" means,

(a) in relation to a short-term rental offer that is registered under Part 2 *[Registration]*, the supplier host who is responsible for the short-term rental offer, or

(b) a platform service provider that is registered under Part 2;

"registrar" means the registrar appointed under section 5 (1) *[appointment of registrar, delegation and authentication]*;

"registration number" means the number assigned to a short-term rental offer or platform service provider by the registrar at the time of registration;

"registration requirement" means,

(a) in the case of a short-term rental offer, the requirement to register that is imposed under section 6 (1) *[short-term rental offers must be registered]*, and

(b) in the case of a platform service provider, the requirement to register that is imposed under section 7 (1) *[platform service providers must be registered]*;

"related bylaw" means a local government bylaw made under the *Community Charter*, the *Local Government Act* or the *Vancouver Charter*, other than a short-term rental bylaw, that restricts or otherwise impacts short-term rental accommodation services or similar services;

"residence" means any of the following:

(a) a dwelling unit;

(b) a secondary suite or other accessory dwelling unit;

(c) a prescribed dwelling;

"responsible official" means a person appointed or delegated to carry out a power or duty for the purposes of a review under either of the following:

(a) section 11 *[review of decision of registrar]*;

(b) section 29 *[review of administrative penalty]*;

"secondary suite" means an accessory dwelling unit that is located in and forms part of a primary dwelling unit;

"short-term rental accommodation service" means the service of accommodation in the property of a property host, in exchange for a fee, that is provided to members of the public for a period of time of less than 90 consecutive days or another prescribed period, if any, but does not include a prescribed accommodation service;

"short-term rental bylaw" means a local government bylaw made under the *Community Charter*, the *Local Government Act* or the *Vancouver Charter* in relation to one or both of the following:

(a) short-term rental accommodation services or similar services;

(b) platform services;

"short-term rental information", in relation to a short-term rental offer, means

(a) the name of the property host and the address of the relevant property where the short-term rental accommodation services are to be provided,

(b) the name, telephone number, address, email address and, if applicable, fax number of each supplier host, including the property host,

(c) if applicable, the registration number,

(d) if required under an applicable short-term rental bylaw, the applicable business licence number, and

(e) any prescribed information, including in relation to an owner of the relevant property;

"short-term rental offer", in respect of a property of a property host, means an offer by a supplier host to provide short-term rental accommodation services at the property;

"similar services" means prescribed services in relation to short-term accommodation;

"supplier host", in respect of a short-term rental offer, means

(a) the property host, and

(b) the following persons, if applicable:

(i) a person who, acting on behalf of, under the direction of or as agent of the property host, has responsibility for arranging for the short-term rental offer, which may include managing the short-term rental accommodation services;

(ii) a prescribed person.

Interpretation

2 For the purposes of this Act, a short-term rental bylaw, related bylaw or First Nation law is a short-term rental bylaw, related bylaw or First Nation law, as applicable, even if the short-term rental bylaw, related bylaw or First Nation law relates to a period of accommodation that differs from the period of time described in the definition of "short-term rental accommodation service".

What this Act does not apply to

3 This Act does not apply to hotels, motels and any other accommodation service providers that may be prescribed for the purposes of this section.

Application of Act to participating First Nations

4 (1) This Act does not apply within the Nisga'a Lands or the treaty lands of a treaty first nation unless the Nisga'a Nation or the treaty first nation has entered into a coordination agreement under this section.

(2) The minister may, on behalf of the government, enter into a coordination agreement with the Nisga'a Nation or a treaty first nation if the Nisga'a Nation or the treaty first nation

(a) wishes that this Act or the regulations, or a part of this Act or the regulations, apply within the Nisga'a Lands or the treaty lands of the treaty first nation, and

(b) wishes, in order to enforce a First Nation law as a participating First Nation, to coordinate with the minister in respect of the performance of duties, or exercise of powers, under this Act.

(3) The minister may not delegate to any person any of the minister's powers to enter into a coordination agreement under this section.

Part 2 – Registration

Appointment of registrar, delegation and authentication

5 (1) The minister may appoint a registrar under the *Public Service Act*.

(2) Employees may be appointed under the *Public Service Act*, and the registrar may retain other persons, whom the registrar considers necessary to exercise the registrar's powers and perform the registrar's duties under this Act.

(3) The registrar may delegate to a person or class of persons any of the registrar's powers or duties under this Act.

(4) The delegation by the registrar must be in writing and may include any terms or conditions the registrar considers advisable.

(5) The registrar may require that, at the time an individual attempts to access services or functions of the registrar, the individual be authenticated in the prescribed manner.

Short-term rental offers must be registered

6 (1) Subject to the regulations, a short-term rental offer must be registered under this Part by the supplier host who is responsible for the short-term rental offer.

(2) Subject to the regulations, an application for registration or renewal of registration in respect of a short-term rental offer must

(a) include the short-term rental information,

(b) be made in the form and manner required by the registrar, and

(c) be accompanied by the prescribed fee, if any.

(3) If the principal residence requirement applies to a short-term rental offer, the application for registration or renewal of registration in respect of the short-term rental offer must include a declaration described in section 14 (2) *[principal residence requirement]*.

(4) A supplier host who applies for registration or renewal of registration of a short-term rental offer must meet all the terms, conditions and requirements imposed on the supplier host under this Act.

Platform service providers must be registered

7 (1) Subject to the regulations, a platform service provider must be registered under this Part.

(2) Subject to the regulations, an application by a platform service provider for registration or renewal of registration must

(a) include the platform service provider information,

(b) be made in the form and manner required by the registrar, and

(c) be accompanied by the prescribed fee, if any.

(3) A platform service provider that applies for registration or renewal of registration must meet all the terms, conditions and requirements imposed on the platform service provider under this Act.

(a) if a business licence requirement applies, the valid business licence number;

(b) the valid registration number;

(c) any prescribed information.

Division 2 – Principal Residence Requirement

Principal residence requirement

14 (1) Subject to the regulations, if short-term rental accommodation services are provided outside the exempt land in respect of a short-term rental offer, the short-term rental accommodation services must not be provided except in one or both of the following:

(a) in the property host's principal residence;

(b) in not more than one secondary suite or other accessory dwelling unit that is in a prescribed location in relation to the property host's principal residence.

(2) If the principal residence requirement applies, the application for registration or renewal of registration for a short-term rental offer under Part 2 *[Registration]* must include, in relation to the property host's principal residence, a declaration that

(a) is made in the form and manner required by the registrar, and

(b) includes any prescribed information or documents.

Requests for changes to exempt land

15 (1) Subject to the regulations, a local government that meets the applicable prescribed criteria may, by resolution, request that the Lieutenant Governor in Council change the exempt land to remove or add the geographic area of the local government if the local government wishes, as applicable,

(a) that the principal residence requirement apply to the geographic area and that the geographic area be removed from the exempt land, or

(b) that the principal residence requirement not apply to the geographic area and that the geographic area be added to the exempt land.

(2) The local government must convey a resolution adopted under subsection (1) to the minister, on behalf of the Lieutenant Governor in Council, on or before the prescribed date in respect of a prescribed period of time.

(3) The Lieutenant Governor in Council may, by regulation,

(a) prescribe criteria for the purposes of subsection (1),

(b) prescribe dates and periods of time for the purposes of subsection (2),

(c) establish procedures for a local government that meets any prescribed criteria to request a change to the exempt land,

(d) establish procedures for a prescribed person or entity to request a change to the exempt land,

(e) provide for the factors that the Lieutenant Governor in Council is to consider before making a regulation under paragraph (f) of this subsection, and

(f) change the exempt land.

(4) This section does not limit the authority to make regulations under section 38 *[regulations of the Lieutenant Governor in Council]*.

Relationship between principal residence requirement and certain short-term rental bylaws made under *Vancouver Charter*

16 (1) A provision of a short-term rental bylaw made under the *Vancouver Charter* has no effect if it is inconsistent with the principal residence requirement under this Act.

(2) For the purposes of subsection (1), unless otherwise provided, a short-term rental bylaw made under the *Vancouver Charter* is not inconsistent with the principal residence requirement under this Act if a person who complies with the short-term rental bylaw does not, by this, contravene the principal residence requirement.

Division 3 – Requirements Respecting Platform Service Providers and Platform Offers

Platform service provider requirements

17 (1) Subject to the regulations, a platform service provider must do the following:

(a) have a platform representative;

(b) in respect of each platform offer,

(i) enable the posting on the platform of the following:

(A) a business licence number;

(2) A bylaw under subsection (1) may do one or more of the following:

(a) provide that the bylaws of one or more of the participating municipalities in relation to the matters dealt with by the scheme apply in other participating municipalities;

(b) provide that the municipal powers, duties and functions of one or more of the participating municipalities may be exercised in relation to the scheme in another participating municipality;

(c) provide that the council of one or more of the participating municipalities may delegate under Division 6 *[Delegation]* of Part 5 *[Municipal Government and Procedures]* to council members, council committees, officers, employees and other bodies referred to in section 154 (1) *[delegation of council authority]* of another participating municipality;

(d) restrict a participating municipality from separately exercising its authority in relation to the matters dealt with by the scheme;

(e) establish the process by which a participating municipality may withdraw from the scheme.

(2.1) A regional district and one or more municipalities may, by bylaw adopted by the board of the regional district and by bylaw adopted by the council of each participating municipality, establish an intermunicipal scheme in relation to the regulation of business.

(2.2) Subject to the regulations, a bylaw under subsection (2.1) may provide for matters in respect of which regulations may be made under section 282 (2) (b.1) *[general regulation authority]*.

(3) If an intermunicipal service scheme is established under subsection (1), this section applies rather than section 13.

(4) If an intermunicipal scheme is established under subsection (2.1), this section applies rather than section 13 of this Act and section 333 *[consent required for services outside regional district]* of the *Local Government Act*.

Licensing and standards authority

15 (1) A council may, in regulating under this Act or the *Local Government Act*, provide for a system of licences, permits or approvals, including by doing one or more of the following:

(a) prohibiting any activity or thing until a licence, permit or approval has been granted;

(b) providing for the granting and refusal of licences, permits and approvals;

(c) providing for the effective periods of licences, permits and approvals;

(d) establishing

(i) terms and conditions of, or

(ii) terms and conditions that must be met for obtaining, continuing to hold or renewing

a licence, permit or approval, or providing that such terms and conditions may be imposed, the nature of the terms and conditions and who may impose them;

(e) providing for the suspension or cancellation of licences, permits and approvals for

(i) failure to comply with a term or condition of a licence, permit or approval, or

(ii) failure to comply with the bylaw;

(f) providing for reconsideration or appeals of decisions made with respect to the granting, refusal, suspension or cancellation of licences, permits and approvals.

(2) A council may, in regulating in relation to a matter under this Act or the *Local Government Act*,

(a) establish a standard, code or rule by adopting a standard, code or rule

(i) published by a provincial, national or international body or standards association, or

(ii) enacted as or under a law of this or another jurisdiction, including a foreign jurisdiction, and

(b) adopt the standard, code or rule under paragraph (a)

(i) in whole, in part or with any changes considered appropriate, and

(ii) as it stands at a specific date, as it stands at the time of adoption or as amended from time to time.

Authority to enter on or into property

16 (1) This section applies in relation to an authority under this or another Act for a municipality to enter on property.

(2) The authority may be exercised by officers or employees of the municipality or by other persons authorized by the council.

(3) Subject to this section, the authority includes authority to enter on property, and to enter into property, without the consent of the owner or occupier.

(4) Except in the case of an emergency, a person

(a) may only exercise the authority at reasonable times and in a reasonable manner, and

(b) must take reasonable steps to advise the owner or occupier before entering the property.

(5) The authority may only be used to enter into a place that is occupied as a private dwelling if any of the following applies:

(i) require such persons, after purchasing, taking in or receiving used or second hand goods, to notify the chief constable who has jurisdiction in the municipality within the time period established by the bylaw, and

(ii) prohibit such persons from altering the form of, selling, exchanging or otherwise disposing of those goods during the time period established by the bylaw;

(c) require manufacturers and processors to dispose of the waste from their plants in the manner directed by the bylaw;

(d) prohibit the operation of a public show, exhibition, carnival or performance of any kind or in any particular location;

(e) prohibit the operation of places of amusement to which the public has access, including halls and other buildings where public events are held;

(f) prohibit professional boxing, professional wrestling and other professional athletic contests.

(2) Before adopting a bylaw under subsection (1) or section 8 (6) *[business regulation]*, a council must

(a) give notice of its intention in accordance with subsection (3), and

(b) provide an opportunity for persons who consider they are affected by the bylaw to make representations to council.

(3) Notice required under subsection (2) (a) may be provided in the form and manner, at the times and as often as the council considers reasonable.

Business licence authority

60 (1) An application for a business licence may be refused in any specific case, but

(a) the application must not be unreasonably refused, and

(b) on request, the person or body making the decision must give written reasons for the refusal.

(2) In addition to the authority under section 15 (1) (e) *[licences, permits and approvals — suspension and cancellation]*, a business licence may be suspended or cancelled for reasonable cause.

(3) Before suspending or cancelling a business licence, the council must give the licence holder notice of the proposed action and an opportunity to be heard.

(4) Despite section 155 (2) (b) *[restriction on delegation of hearings]*, a council may, by bylaw under section 154 *[delegation of council authority]*, authorize a municipal officer or employee to suspend or cancel a business licence.

(5) If a municipal officer or employee exercises authority to grant, refuse, suspend or cancel a business licence, the applicant or licence holder who is subject to the decision is entitled to have the council reconsider the matter.

Restriction on authority to require examination or certification

61 A provision in a bylaw under section 8 (6) *[spheres of authority — business]* that requires an examination or certification of a person engaged in a trade or occupation does not apply to a person who has been granted a certificate or other evidence of competence for that trade or occupation under a Provincial or federal Act.

Division 10 — Other Spheres

Public place powers

62 The authority under section 8 (3) (b) *[spheres of authority — public places]* includes the authority in relation to persons, property, things and activities that are in, on or near public places.

Protection of persons and property

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:

(a) emergency exits in places to which the public is invited;

(b) smoke alarms;

(c) any matter within the scope of the *Fire Services Act*;

(d) the enclosure of swimming pools and other pools;

(e) trailer courts, manufactured home parks and camping grounds;

(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.

Nuisances, disturbances and other objectionable situations

64 The authority of a council under section 8 (3) (h) *[spheres of authority — nuisances disturbances and other objectionable situations]* may be exercised in relation to the following:

(a) nuisances;

(b) noise, vibration, odour, dust, illumination or any other matter that is liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public;

(b) an official community plan under section 711 of the *Municipal Act*, R.S.B.C. 1979, c. 290, or an official settlement plan under section 809 of that Act, before the repeal of those sections became effective,

must be consistent with the relevant plan.

Division 5 — Zoning Bylaws

Zoning bylaws

479 (1) A local government may, by bylaw, do one or more of the following:

(a) divide the whole or part of the municipality or regional district into zones, name each zone and establish the boundaries of the zones;

(b) limit the vertical extent of a zone and provide other zones above or below it;

(c) regulate the following within a zone:

(i) the use of land, buildings and other structures;

(ii) the density of the use of land, buildings and other structures;

(iii) the siting, size and dimensions of

(A) buildings and other structures, and

(B) uses that are permitted on the land;

(iv) the location of uses on the land and within buildings and other structures;

(c.1) limit the form of tenure in accordance with section 481.1;

(d) regulate the shape, dimensions and area, including the establishment of minimum and maximum sizes, of all parcels of land that may be created by subdivision.

(2) The authority under subsection (1) may be exercised by incorporating in the bylaw maps, plans, tables or other graphic material.

(3) The power to regulate under subsection (1) includes the power to prohibit any use or uses in a zone.

(4) A bylaw under this section may make different provisions for one or more of the following:

(a) different zones;

(b) different uses within a zone;

(c) different locations within a zone;

(d) different standards of works and services provided;

(e) different siting circumstances;

(f) different protected heritage properties;

(g) different matters prescribed for the purposes of section 481.01 *[restrictions on zoning authority in relation to transit-oriented areas]*.

(5) In addition to the authority under subsection (4),

(a) provisions under subsection (1) (d) may be different for different areas, and

(b) the boundaries of those areas need not be the same as the boundaries of zones created under subsection (1) (a).

(6) In developing or adopting a bylaw under this section, a local government must consider applicable guidelines, if any, under section 585.5 *[provincial policy guidelines related to transit-oriented areas]*.

Adoption of municipal zoning bylaw

480 Despite section 135 (3) *[at least one day between third reading and adoption]* of the *Community Charter*, a council may adopt a zoning bylaw at the same meeting at which the bylaw passed third reading.

Restrictions on zoning authority in relation to farming

481 (1) This section does not apply unless a regulation under section 553 *[authority and restrictions apply as declared by regulation]* declares that it applies.

(2) Despite section 479 *[zoning bylaws]* but subject to this section, a local government must not exercise the powers under that section to prohibit or restrict the use of land for a farm business in a farming area unless the local government receives the approval of the minister responsible for the administration of the *Farm Practices Protection (Right to Farm) Act*.

(3) The minister referred to in subsection (2) may make regulations

(a) defining areas for which and describing circumstances in which approval under that subsection is not required, and

(b) providing that an exception under paragraph (a) is subject to the terms and conditions specified by that minister.

(4) Regulations under subsection (3) may be different for different regional districts, different municipalities, different areas and different circumstances.

"Accessory Building" means a building that is subordinate to the principal use on a lot.

"Accessible Parking Space" means a parking space designed and installed in accordance with the specifications and dimensions in section 4.2 and Figure 4 of Schedule C – Off-Street Parking Regulations.

Amended Sept. 19, 2022 Bylaw 22-024

"Accessory Use" means a use that is normally incidental or normally associated with the principal use.

"Accessory Garden Structure" means swimming pools, fences, walls, terraces and trellises, walks, patios, tennis courts, playgrounds and surface improvements ordinarily erected, maintained or used for ornament or for the private recreation and enjoyment of persons residing in the building to which the same relates.

"Affordable" means housing that falls within the financial means of a household in either market or non-market dwellings. Total costs for rent or mortgage plus taxes (including a 10% down payment), insurance and utilities must equal 30% or less of a household's annual income.

Amended July 26, 2018 Bylaw 18-017

"Affordable Housing Development" means a housing development that is:

a) subject to a legal agreement securing affordability and rental tenure for a minimum period of 60 years, and is either:
   i) wholly owned and operated by a public housing body as prescribed in the *Residential Tenancy Act,* or
   ii) operated by a public housing body as prescribed in the Residential Tenancy Act pursuant to a legally binding arrangement with the property owner; or

Amended April 14, 2022 Bylaw 22-019

b) subject to a legal agreement securing affordability for a minimum period of 60 years and is either wholly owned and operated by a housing cooperative meeting the below requirements, or operated by a housing cooperative that meets the below requirements and operates the development pursuant to a legally binding arrangement with the property owner:
   i) the housing cooperative must:
      A) be a housing cooperative pursuant to the *Cooperative Association Act*,
      B) have purposes including the provision of affordable housing to low- or moderate-income households, and
      C) have constating documents preventing the remuneration of directors and providing for the disposition of assets on dissolution or wind-up to an organization with similar purposes and restrictions.

"All-Night Dance Club" means a dance club that operates at any time between 2:00a.m. and 6:00a.m. of the same day.

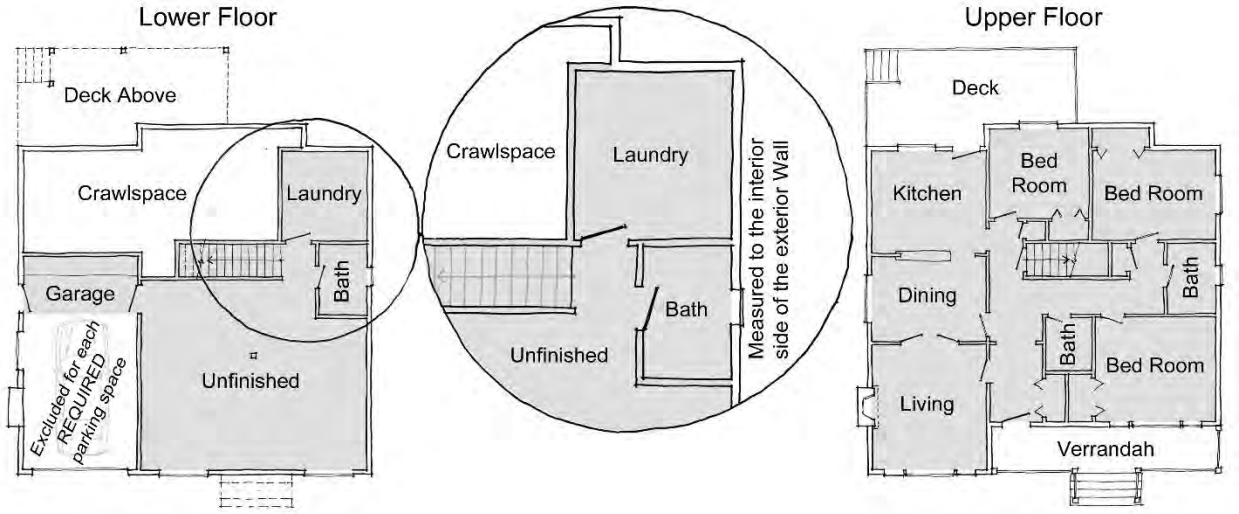
"Amusement Centre" means a building or lot in which not more than 150 amusement vending, slot machines, video machines or pinball machines are kept for use by the public, but does not include an amusement establishment as defined in the *Amusement Establishments Control Bylaw*.

"Area" of a lot means its surface area in plan, but does not include any portion of land below a natural high water mark.

"Area" when used in reference to a floor of a storey of a building means the entire area which in plan is enclosed by the interior face of the exterior walls of the storey at floor level plus the area enclosed by any cantilevered element that is within that storey and that is above floor level, but does not include of the following areas:

a) the area used or intended to be used for required parking or movement of motor vehicles, as set out in this bylaw, which is calculated starting from the lowest level of the building;
b) the area used or intended to be used for required Bicycle Parking, Long-Term, as set out in this bylaw, which is calculated starting from the lowest level of the building;
c) the area or areas of balconies, exposed decks, patios or roofs; and
d) the area of elevator shafts.

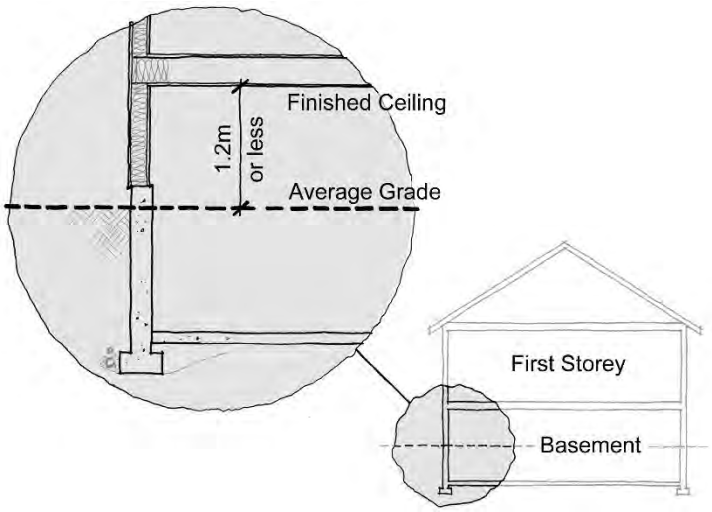
Amended July 26, 2018 Bylaw 18-017



"Attached Dwelling" means a building used or designed as three or more self-contained dwelling units, each having direct access to the outside at grade level, where no dwelling unit is wholly or partly above another dwelling unit.

"Balcony" means a platform which projects from the wall of a building above ground level and that is partially enclosed by a low parapet or railing in such a manner as to remain permanently exposed to outside weather.

"Basement" means any part of a building between two floor levels that is partially or completely below grade and has a finished ceiling that is no more than 1.2m above grade.



"Bicycle Parking, Long-Term" is intended for long-term users of a building, such as employees or residents, and will consist of a secure space dedicated for bicycle parking within a structure or building on the same lot and has the same meaning as "Class 1" bicycle parking.

Amended July 26, 2018 Bylaw 18-017

"Bicycle Parking, Short-Term" is intended for short-term use by visitors and customers and will consist of bicycle racks located in a publicly accessible space at or near a building entrance and has the same meaning as "Class 2" bicycle parking.

Amended July 26, 2018 Bylaw 18-017

"Boarder" means a person who lives in a boarding house or with a family and who pays for board and lodging.

"Boarding House" means a dwelling in which rooms are rented and meals are provided to more than four but not more than fifteen persons other than members of the family of the occupier, but does not include a dwelling in which meals are prepared within rented rooms or a community care facility within the meaning of the *Community Care and Assisted Living Act.*

"Boundary" in reference to a lot, extends throughout its length both upwards and downwards ad infinitum from the surface of the lot.

"Building" means anything constructed or placed on a lot used or intended for supporting or sheltering any use, excluding landscaping, docks, wharfs and piers.

"Building By-law" means any by-laws of the City regulating or controlling the construction of buildings, and includes any codes and regulations of the same nature made applicable to the City by Provincial Statute.

"Building Line" means a line at a prescribed distance from any boundary line of a lot.

"Bulk of building" means the cubic volume of a building above grade.

"Call Centre" means a place where orders are taken, by means of telephone or electronic communications, for goods or services produced at another location.

"Cannabis" means cannabis as defined in the Controlled Drugs and Substances Act and includes any products containing cannabis.

"Casino – Class 1" means a building that is used for the purpose of playing or operating games of chance or mixed chance and skill:

a) on which money may be wagered;
b) for which a licence has been issued by the *British Columbia Gaming Commission*, to a charitable or religious organization as a licence holder; and
c) does not include player-operated video lottery terminals, slot machines, bingo, electronic bingo, pari-mutual betting, non-player-operated video lottery terminals, or Casino – Class 2.

"Casino – Class 2" means a building that is used for the purpose of playing or operating games of chance or mixed chance and skill:

a) on which money may be wagered;
b) for which a licence has been issued, by the *British Columbia Gaming Commission*; and
c) may include player-operated, video lottery terminals or slot machines, and that does not include bingo, electronic bingo, pari-mutual betting, non-player-operated video lottery terminals.

"Car Shelter" means a structure designed for the storage of one or more motor vehicles, which may be a building or part of a building, or may be roof supported entirely by posts, or by posts and part of the building.

"Centre Line" when used in reference to a street means a line drawn between the boundaries of the street which is equidistant from the street boundary on either side.

"**Child Care Facility**" means a facility licensed under the Community Care and Assisted Living Act to provide day care to children under 13 years of age.

Amended Sept 14, 2023 Bylaw 23-065

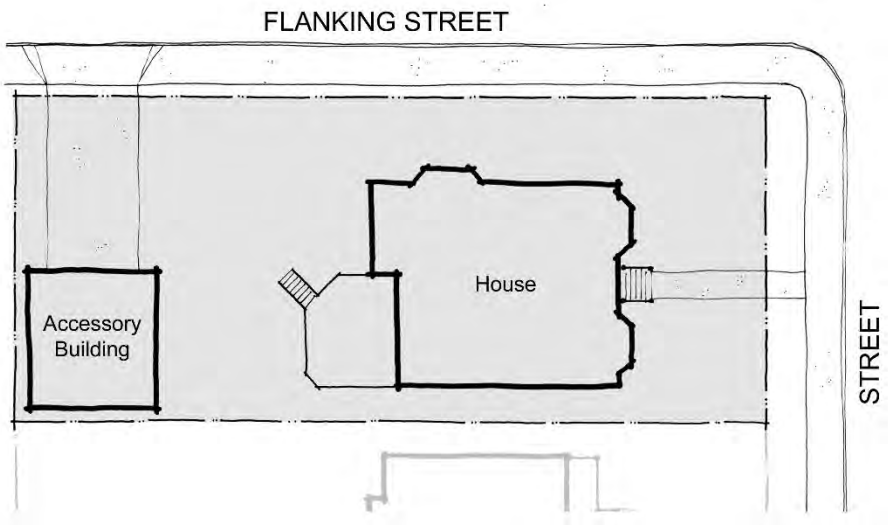
"Church" means a building set apart and used exclusively for religious worship.

"Cistern" means a rainwater storage tank that is at least 1200 litres in capacity, the top surface of which is no more than 15m^2 in area, and that forms part of a stormwater retention and water quality facility.

"Club" means the premises of a social or recreational club.

"Commercial Exhibit" means a site, including a site on which there is exhibited or displayed a building or its contents, if the site, or the building or its contents is of cultural, aesthetic or artistic significance or is a curiosity, and if an admission fee is demanded or accepted.

"Corner Lot" means a lot having a continuous street frontage on two or more streets.



"Crawlspace" means a non-habitable floor area used for storage and/or utilities and is 1.5m or less in clearance from floor to ceiling.

"Cultural facility" means the use of land, building or portion thereof for an art gallery or museum, or the use of a building or portion thereof for the performing arts or the showing of dramatic, musical or other live performances and includes cinemas.

"Dance Club" means a business, including an All-Night Dance Club and a Youth Dance Club,

a) that directly or indirectly charges or assesses an admission or entrance fee;
b) that includes the holding or permitting of public or private dances in a building, room, or other place; and
c) for which there is no licence to sell liquor under the *Liquor Control and Licensing Act.*

"Director" for the purposes of this Bylaw means the Director of the City's Planning and Development Department or a representative designated by that person.

"Dock" means a floating structure with a level surface, to which a boat, ship or other vessel may be moored or tied, but does not include any buildings or structures placed or erected on it.

"Drive Aisle" means a vehicle passageway or maneuvering space by which vehicles enter and depart parking stalls.

Amended July 26, 2018 Bylaw 18-017

"Driveway" means that portion of the lot that provides access to parking stalls, loading spaces or the drive aisle within the lot and is considered to be the extension of the lot's driveway crossing. For certainty, a ramp provided to access parking stalls is considered a driveway.

Amended July 26, 2018 Bylaw 18-017

"Duplex" means a two family dwelling.

"Dwelling Unit" means any room or suite of rooms used or intended to be used by one family exclusively for the purpose of providing a place of residence.

"Electric Vehicle Energy Management System" means a system consisting of monitors, communications equipment, controllers, timers, and other applicable devices used to control electric vehicle supply equipment loads through the process of connecting, disconnecting, increasing, or reducing electric power to the loads.

Amended Oct 1, 2020 Bylaw 20-001

"Electronic" means electrical, analog, digital, magnetic, optical, or electromagnetic, and any other similar technology.

"Enclosed Parking Space" means any space or area that is used or intended to be used for the parking or movement of motor vehicles and that is contained entirely within a structure lying below the grade of the building or contained entirely within the building.

"Energized Electric Vehicle Outlet" means a connected point in an electrical wiring installation at which current is taken and a source of voltage is connected to supply utilization equipment for the specific purpose of charging an electric vehicle.

Amended Oct 1, 2020 Bylaw 20-001

"Escort Services" means a business that is required to be licensed under the *Escort and Dating Service Bylaw*.

"Family" means one person or a group of persons who through marriage, blood relationship or other circumstances normally live together.

"Fence" means a constructed vertical barrier which marks the boundary of, prevents access to, or provides enclosure of all or part of a lot.

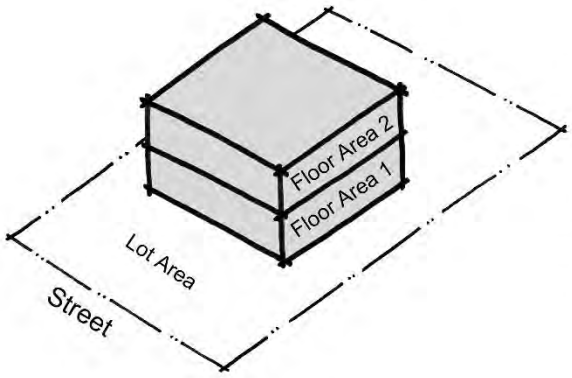
Amended July 27, 2023 Bylaw 23-025

"Financial service" means any uses related to all forms of financial services such as chartered banks, credit unions, trust companies, insurance and mortgage companies.

"Finished Grade" means the finished elevation of the ground surface of land following construction or land altering activities.

"First Storey" means the storey above the basement of a building, and in the case of a building without a basement, means the lowest storey.

"Floor Space Ratio" means the ratio of the total floor area of a building to the area of the lot on which it is situated.



Floor Space Ratio Calculation
(Example)

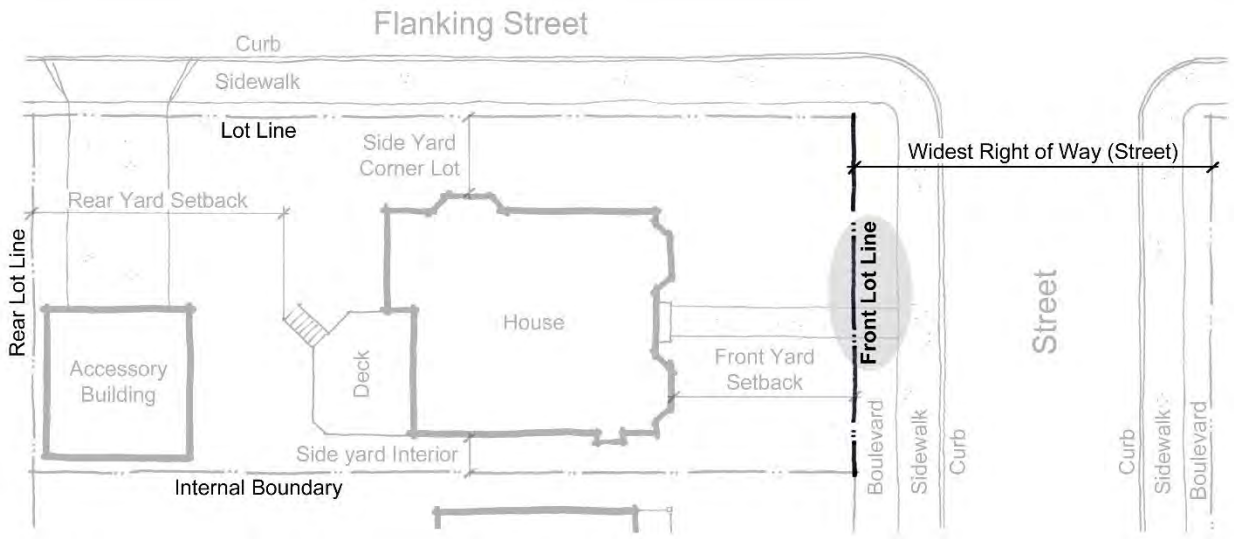
Floor Area 1:	100m²	+
Floor Area 2:	100m²	+
Total (Structure):	200m²	=
Lot Area:	480m²	
Total (Structure)	200m²	÷
Lot Area	480m²	
	0.416	=

0.42:1

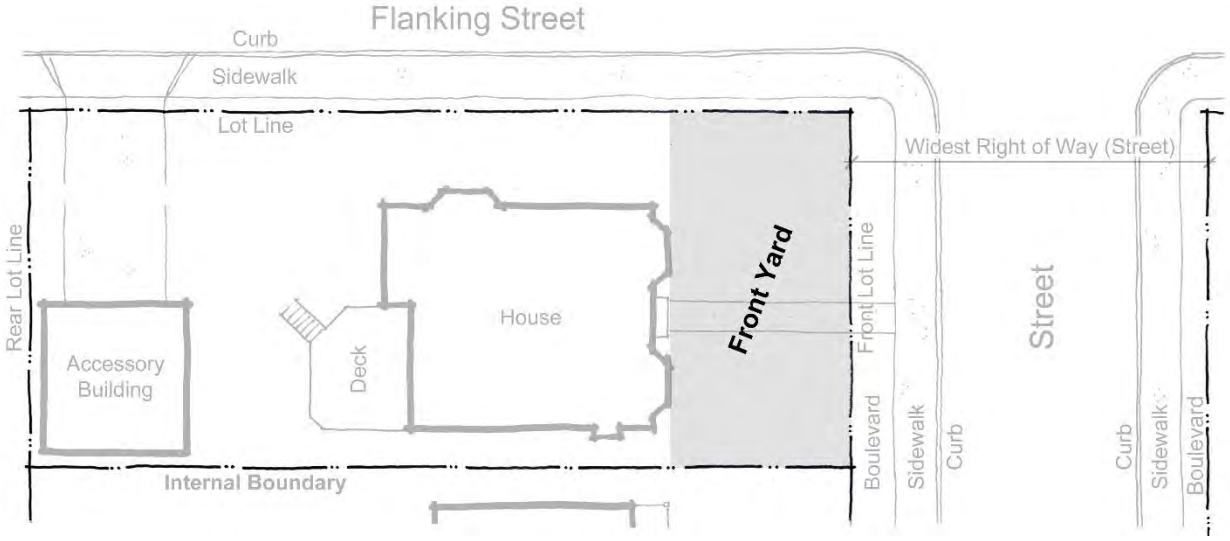
"Foodstand" means a container which holds, shelves or otherwise displays products of small-scale commercial urban food production for retail purposes outdoors.

"Free Standing Food Sales Outlet" means a building in or from which the principal business is the retail sale of food, ready for consumption, which may be consumed on or off the premises, if such a building is the only or principal building on the lot from which a retail sales business is conducted.

"Front Lot Line" means the street frontage.



"Front Yard" means a yard located between the principal building and the front lot line, extending the full width of the lot.



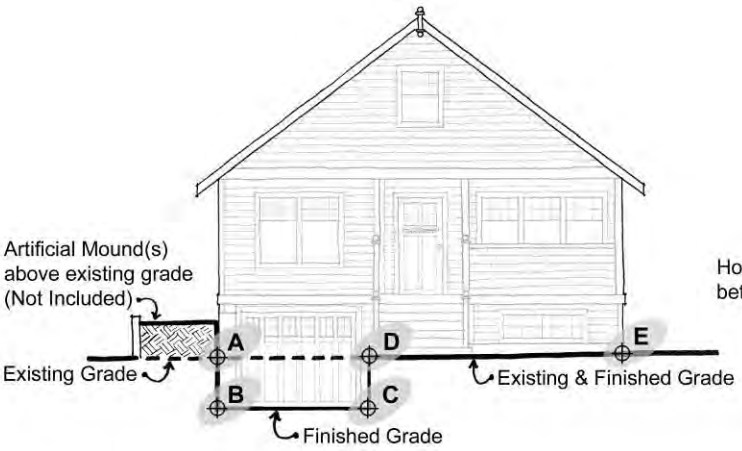
"Garage" means a building or part thereof which is used for mechanical or body repairs of motor vehicles, recreational vehicles, or trailers.

Amended Sept. 14, 2023
Bylaw 23-074

"Garage Sale" means any sale of household goods, effects, or articles by the owner or tenant of the dwelling, but does not include the sale of any article owned by any person other than the owner or tenant.

"Garden Suite" means a building attached to a foundation, used or designed as a self-contained dwelling unit located on a lot with a single family dwelling and does not include a strata lot. *(Bylaw 17-001 Adopted April 13, 2017)*

"Grade" means the elevation calculated by averaging the elevation of natural grade or finished grade, whichever is lower at any points at which any part of a building comes into contact with the surface of a lot, excluding any artificial mounds of earth or rocks placed at or near the wall of a building, and excluding the minimum window well width and depth required by the *British Columbia Building Code*."



Grade Points

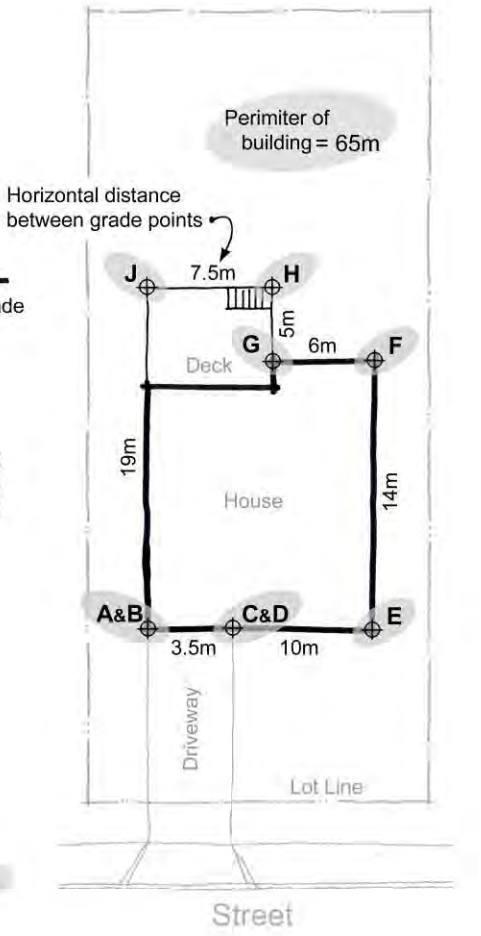
Grade Point A: 19.0	Grade Point D: 19.2	Grade Point G: 20.2
Grade Point B: 17.5	Grade Point E: 19.3	Grade Point H: 20.4
Grade Point C: 17.5	Grade Point F: 20.0	Grade Point J: 20.4

Calculation Example

Grade Points	Average of Points	Distance Between Grade Points	Totals
Points B & C:	((17.5 + 17.5) ÷ 2)	x 3.5m	= 61.25
Points D & E:	((19.2 + 19.3) ÷ 2)	x 10m	= 192.5
Points E & F:	((19.3 + 20.0) ÷ 2)	x 14m	= 275.1
Points F & G:	((20.0 + 20.2) ÷ 2)	x 6m	= 120.6
Points G & H:	((20.2 + 20.4) ÷ 2)	x 5m	= 101.5
Points H & J:	((20.4 + 20.4) ÷ 2)	x 7.5m	= 153.0
Points J & A:	((20.4 + 19.0) ÷ 2)	x 19m	= 374.3
			= 1278.25

Grade Calculation

1278.25 ÷ 65m (permiter of building) = **19.67**



"Greenhouse" means a structure, or that portion of a structure, made primarily of glass or other translucent material for the purpose of cultivation or protection of plants

"Habitable Room" means a room in a dwelling unit other than a kitchen, storage room, toilet, bathroom, sauna room, hallway, or stairway.

"Half Storey" means that part of any building wholly or partly within the framing of the roof, where the habitable floor area is not more than 70% of the first storey area of the building.

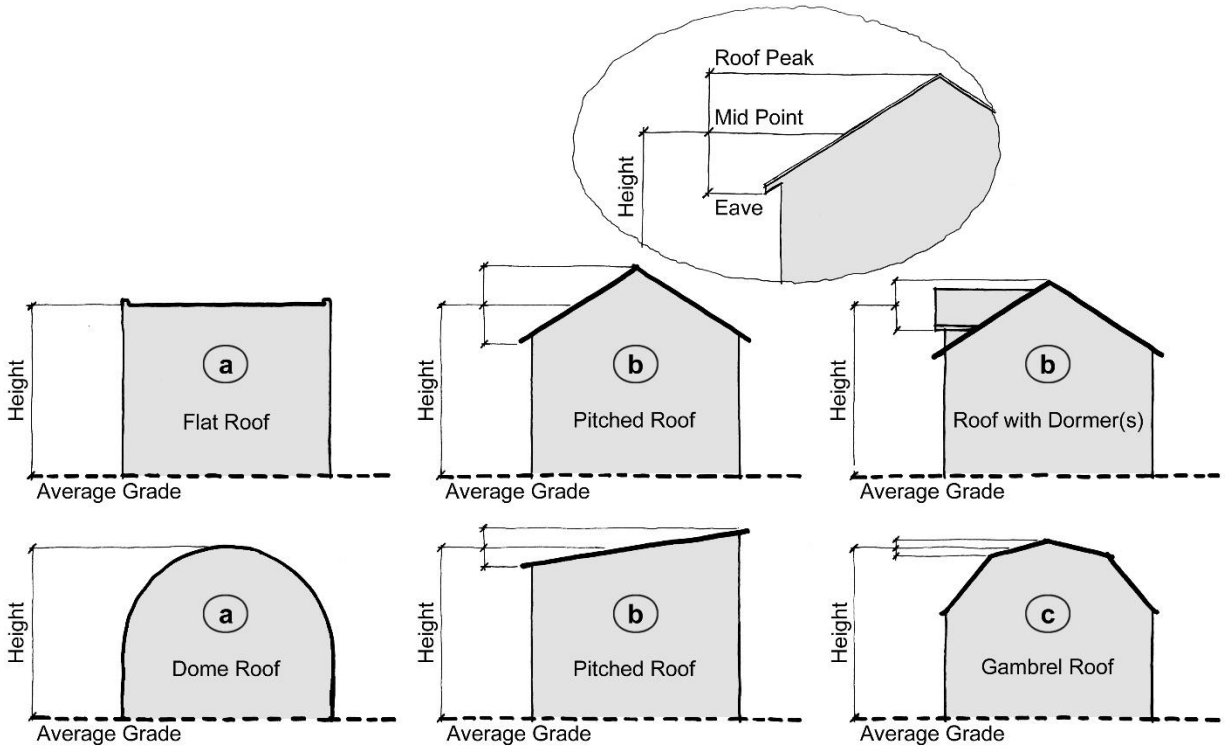
Amended March 14, 2019

"Height" when used in reference to a building, means the distance measured in a vertical straight line between the highest point of the building and any point that is at grade directly below that highest point; and is determined as follows:

a) for buildings with flat or dome roofs, the highest point is the highest part of the building;
b) for buildings with pitched roofs, the highest point is the mid-point between the highest ridge of the building and the highest eave and
c) for buildings with gambrel roofs, the highest point is deemed to be the mid-point between the ridge and the point immediately below the ridge where the pitch changes.

The highest point excludes a mast, antenna, vent, chimney, elevator shaft, solar heating panel or similar structure that projects above the roof.

The highest point also excludes a rooftop cistern and other stormwater retention and water quality facilities together with their supporting structures.



"High Density Multiple Dwelling" means a multiple dwelling that is not less than 21m in height.

"High Tech" means the design, research, manufacture, testing, and servicing of commercial products, including computer software and hardware, in the fields of electronics, telecommunications, engineering, robotics, bio-technology, health care, and related industries.

"Home Occupation" means making, servicing, or repairing goods, or providing services for hire or gain by any person, wholly within a dwelling unit occupied by that person, but does not include the following except as provided in Schedule D:

a) the sale of goods on or from the dwelling unit or its premises;
b) the provision of escort services within a multiple dwelling;
c) small-scale commercial urban food production.

"Hospital" has the meaning assigned to it in the *Hospitals Act*.

"House Conversion" means the change of use of a building constructed as a single family dwelling or duplex, to create a duplex, multiple dwelling, boarding house, rooming house, housekeeping apartment building, rest home – class "B" or a child care facility.

Amended Sept 14, 2023
Bylaw 23-065

"Housekeeping Apartment Building"means a building composed of two or more housekeeping units.

"Housekeeping Unit" means a room or rooms used or intended to be used for normal living purposes including cooking, eating and sleeping but without separate bathroom or toilet facilities.

"Integrated Parking Space" means any enclosed space that is an integral part of and contained entirely within the principal building on the lot and used or intended to be used only for the parking or movement of motor vehicles.

"Integrated Parking Unit" means a parking unit in an integrated parking space.

"Internal Boundary" means any boundary of a lot other than a street boundary.

"Irregular Lot" means a lot which is neither in the shape of a rectangle or a square.

"Kindergarten" means a building licensed as a community care facility under the *Community Care and Assisted Living Act* and in which care, supervision or any form of educational or social training not provided under the *Schools Act* is provided to children under six years of age, for any portion of the day.

"Landscape Screen" means an opaque visual barrier formed by shrubs, trees, wooden fences, masonry walls or any combination of these or like materials.

"Launderette" means an establishment where individual automatic washing machines, dry cleaning machines and clothes dryers are operated by the customer or by an attendant, but does not include a pressure steam boiler, flat work ironing equipment, garment pressing or shirt finishing equipment or dry cleaning equipment of any kind.

"Length" when used to describe a dimension of a multiple dwelling means the measurement of the longest side of the least rectangle within which the plan perimeter of the multiple dwelling or portion can fit. Where the least rectangle is a square, length means any one of the external dimensions.

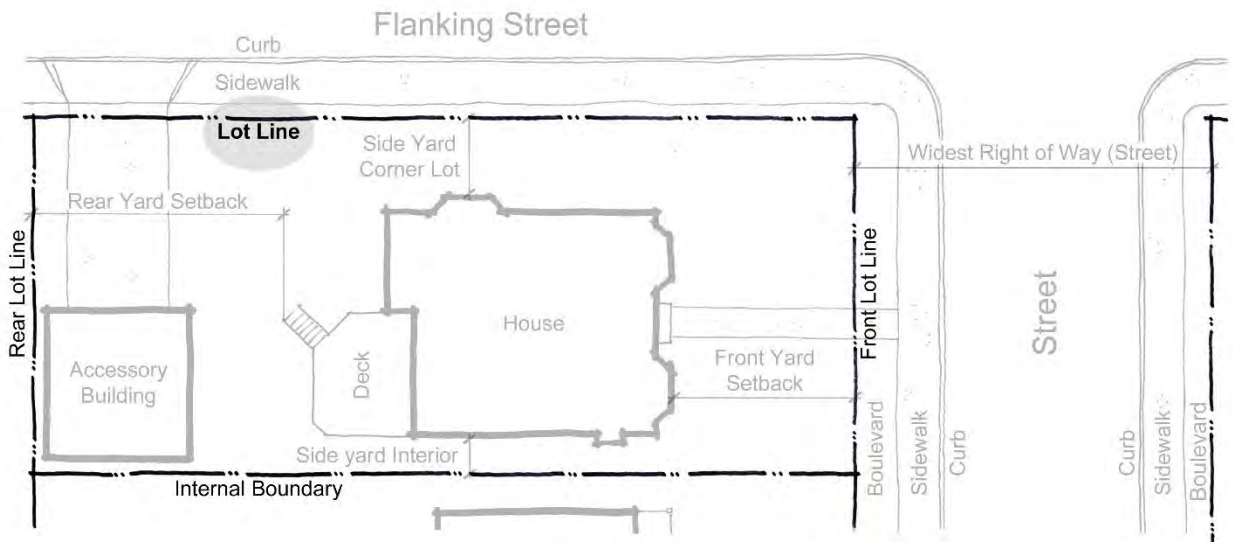
"Liquor Retail Store" means an establishment that engages in the retail sale of wine, beer, or any other liquor, as defined in the *Liquor Control and Licensing Act*, for consumption elsewhere than in that establishment.

"Lot" means a single area of land, designated and registered at the Victoria Land Title Office as not more than one parcel of land, and if a parcel of land is divided by a lane or otherwise, each division thereof constituting a single area of land shall be deemed to be a separate lot, and includes a strata lot in a bare land strata plan but does not include any other strata lot or an air space parcel.

Amended Mar 12, 2020 Bylaw 20-029

"Lot Depth" means the average distance between the rear lot line and the front lot line of a lot.

"Lot Line" means the boundary of a lot.



"Lowest Storey" means the lowest floor of a building that is both wholly enclosed and wholly above the grade of the building.

"Mezzanine" means an intermediate floor assembly within a storey, which does not exceed 28.5% of the storey's floor area. *(Bylaw 12-052 Adopted November 22, 2012)*

"Multiple Dwelling" means a building containing three or more self-contained dwelling units.

"Multiple Dwelling Accessory Use" includes the following uses and any structures which contain these uses on the same lot as the multiple dwelling:

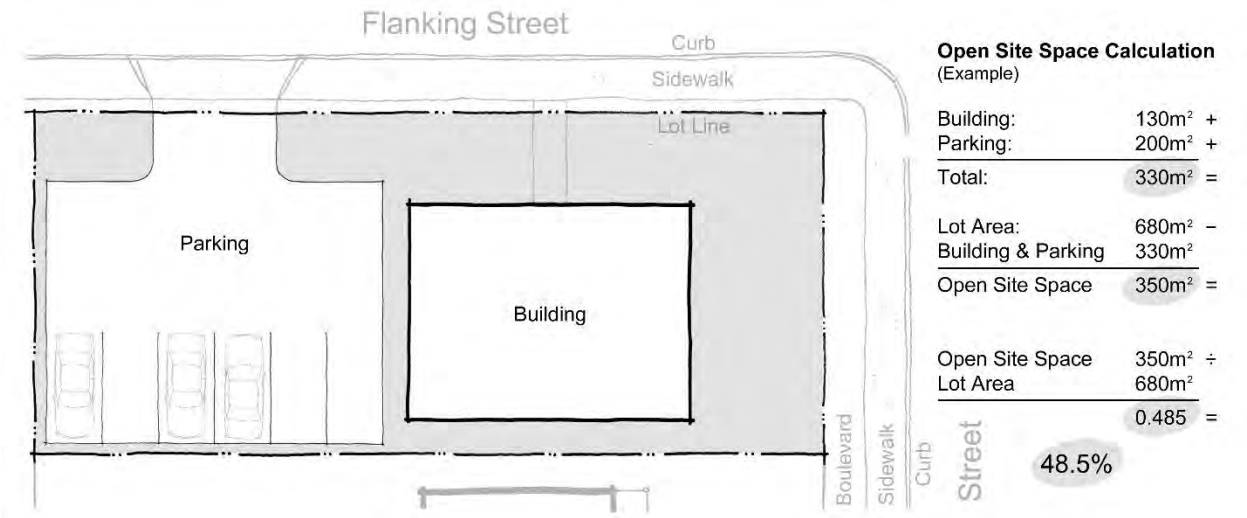
a) Parking facilities;
b) Recreational and pleasure uses ancillary to a multiple dwelling undertaken or carried on exclusively by or for the benefit of the persons or the guests of persons living in the multiple dwelling, where no fee, special charge or consideration is paid or demanded for its use and enjoyment over and above the ordinary rental for accommodation in the multiple dwelling;
c) Accessory garden structures; and

d) Uses essential to the proper, lawful and efficient use, management and maintenance of multiple dwellings.

"Natural Grade" means the elevation of the ground surface of land prior to any land alteration, including, but not limited to, disturbance, excavation, filling, or construction. Where land alteration has occurred, the natural grade is determined by historical records or interpolation based on surrounding natural grades.

"Nursing Home" means a facility where regular care or supervision is given by a health care professional as well as assistance with the performance of the personal functions and activities necessary for daily living for persons such as the aged or chronically ill who are unable to perform them efficiently for themselves.

"Open Site Space" means that portion of a lot which is landscaped and not occupied or obstructed by any building or portion of building, driveway or parking lot; excluding accessory garden structures, balconies and roof projections.

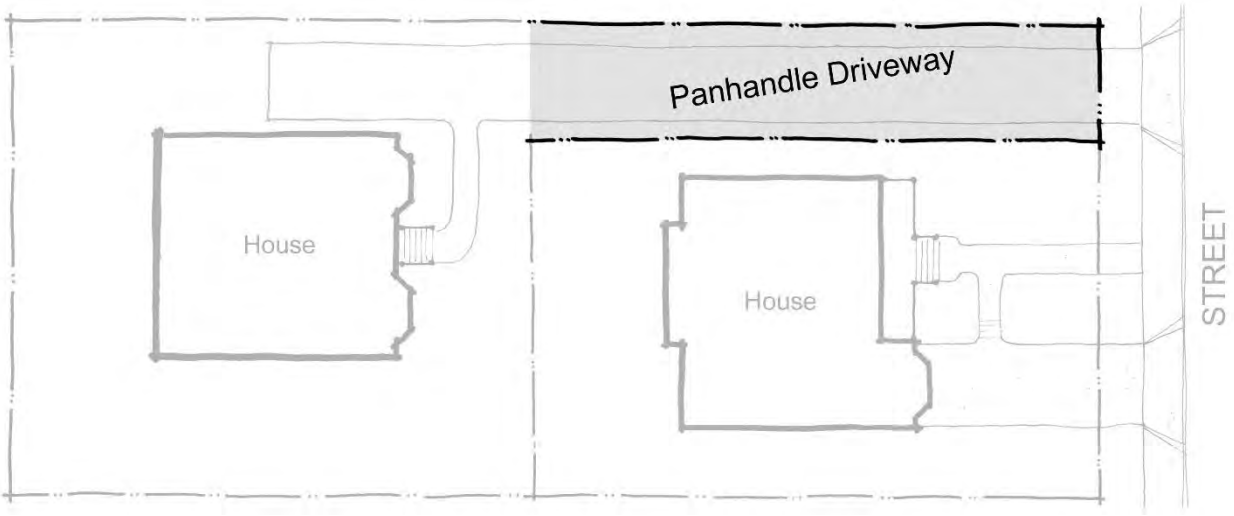


"Outdoor Feature" means any structure constructed or placed on a lot, whether attached or detached from a building, including but not limited to swimming pools, patio, decks and stairs, and excluding:

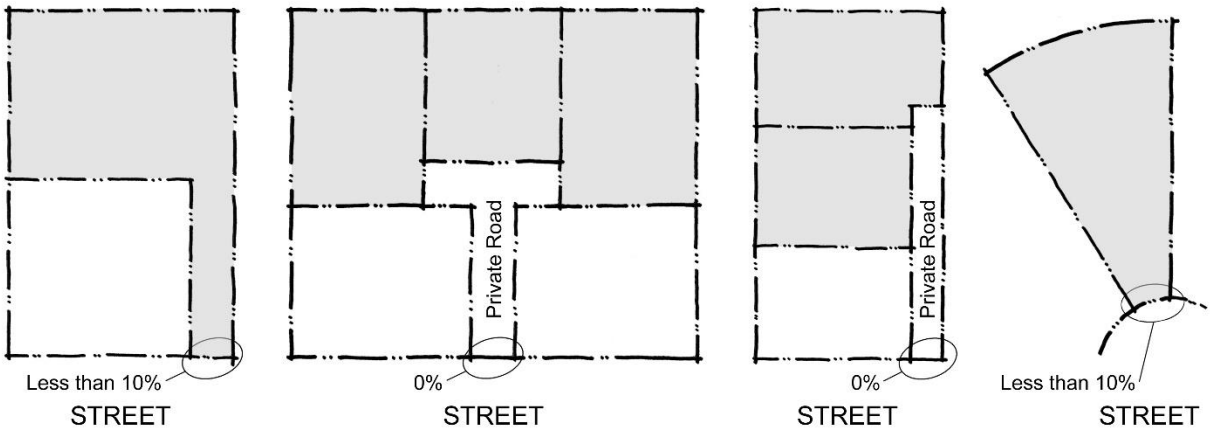
a) buildings;
b) raised gardens bed;
c) docks;
d) wharfs;
e) piers;
f) cistern;
g) stormwater retention and water quality facility;
h) retaining walls;
i) fences.

"Panhandle Driveway" means a strip of land that is used principally as a driveway, the end of which forms the boundary between the lot of which that strip of land is a part of and:

a) a street;
b) a right-of-way easement giving access to the lot if there is no street abutting that boundary; or
c) the nearest public highway if there is no street or right-of-way easement abutting that boundary.



"Panhandle Lot" means a lot that has less than 10% of its perimeter adjoining a street and/or in part consists of a panhandle driveway.



"Parcel" means a lot.

"Parking Area" means all parking spaces, driveways and drive aisles on a lot.

Amended July 26, 2018
Bylaw 18-017

"Parking Lot" means an open area of land other than a street, used for the parking of vehicles but does not include any area where vehicles for sale or repair are kept or stored.

"Parking Screen Wall" means a wall which is:

a) rigidly constructed of durable material wherein no opening has an area measured on either surface of the wall in excess of $0.01m^2$ and the total of the areas of all such openings measured as aforesaid does not exceed 25% of the entire area of either such surface;
b) is of a height throughout its length of not less than 1.2m nor more than 1.9m;
c) is not closer to the building on the lot on which the wall is situate or any part thereof than a horizontal distance of 2.5m at any point; and
d) in the case of a lot containing a multiple dwelling, is of such length and is otherwise so constructed and maintained as effectively to prevent the whole or any part of any motor vehicle parked on any surface parking space on the lot at any point within a horizontal distance of 6.0m of the multiple dwelling from being seen by any person within a dwelling unit in that storey of a multiple dwelling which is the lowest storey wholly above the grade of the multiple dwellings.

"Permeable" means hard surfacing specifically designed to allow the movement of water to flow through the surface, but does not include unconsolidated materials such as crushed rock, gravel, grass, earth or other loose materials.

Amended July 26, 2018 Bylaw 18-017

"Pier" means a structure with a level surface that is raised above the surface of the water and is supported by pilings or similar support structures, and that is used for marine or navigational purposes, or as a walkway or viewing platform, but does not include any buildings or structures placed or erected upon it.

"Porch" means an open area covered by a roof which forms part of the access/egress to a building.

"Preschool" means a licensed community care facility in which any form of educational or social training not provided under the *School Act* is provided.

"Principal Residence" means the usual place where an individual makes their home.

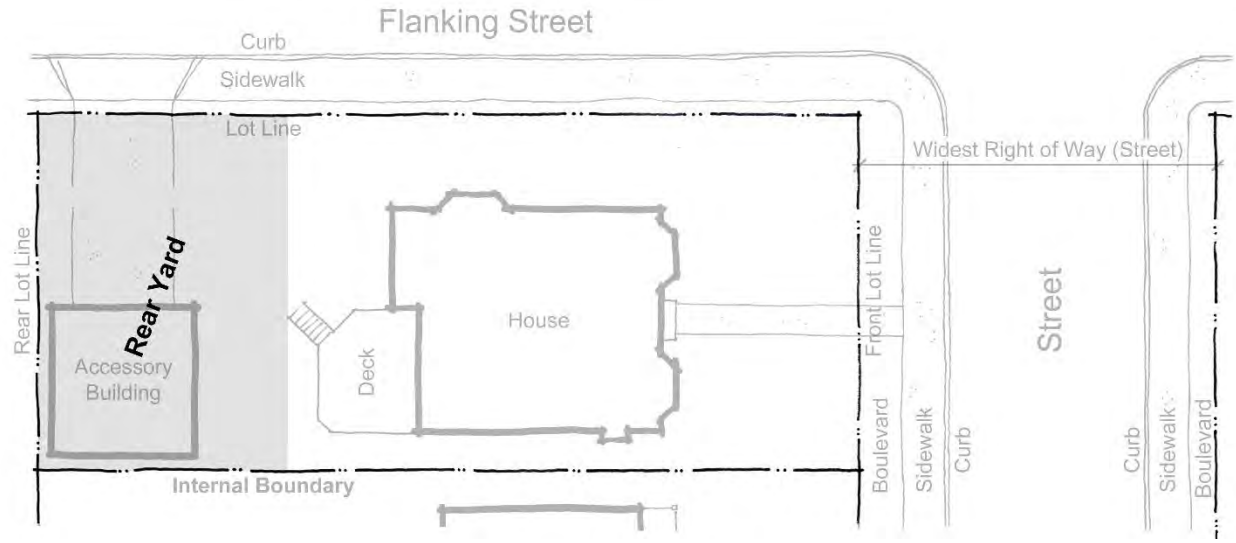
"Private Garage" means a single building used for the parking of personal motor vehicles or storage.

"Private Park" means any park or playground which is not a public park and which is used or intended to be used for the recreation and enjoyment of the public and for admission to which or for the use of any of the facilities whereof no fee or other charge is paid or demanded.

"**Public Building**" means the non-commercial use of land, building and structures for art or cultural exhibits, cemetery, church, community centre, court of law, fire station, hospital, legislative chambers, library, outdoor recreation use, police station, recreation facility, or school.

"Rear Lot Line" means the lot line opposite to and most distant from the front lot line, provided that where the rear portion of a lot is bounded by two intersecting side lot lines the rear lot line is the point of their intersection.

"Rear Yard" means a yard located between the principal building and the rear lot line extending the full width of the lot.



"Residential Floor Area" means the sum of the floor areas of a dwelling unit or units including internal walls and partitions excluding balconies, basements, common stairwells, common corridors, common recreation areas, service areas and enclosed parking.

"Residential Rental Tenure" means occupancy of a dwelling unit under a rental agreement that is subject to the *Residential Tenancy Act*.

Amended March 28, 2019

"Restaurant" means a place where food and beverages are sold for consumption on the premises, but does not include a free standing food sales outlet.

"Rest home - Class A" means a facility in which food, lodging and care are provided with or without charge to more than two persons who, on account of age, infirmity or their physical, mental or psychiatric condition, are given personal care, or who are lawfully detained as prisoners for a period not exceeding three months, pursuant to judicial process.

"Rest home - Class B" means a facility in which food, lodging and care are provided with or without charge to more than two but not more than twenty persons, other than members of the operator's family, who, on account of age, infirmity or their physical, mental or psychiatric condition, are given personal care, but does not include a facility in which persons are detained as prisoners pursuant to judicial process, or a facility in which persons are treated for alcohol or drug addiction.

"Rest home - Class C" means a facility in which food, lodging and support are provided with or without charge to more than twenty persons, other than members of the operator's family, who, on account of age, infirmity or their physical, mental or psychiatric condition, are given personal care or life skills support, but does not include a facility in which persons are detained as prisoners pursuant to judicial process.

"Roof deck" means:

a) an open deck area located above the second storey finished floor level of the principal building; and
b) an open deck area located above the first storey an accessory building.

"Roomer" means a person who resides in any portion of a building who pays for accommodation without board or the use of on-site cooking facilities.

"Rooming House" means a building in which rooms are rented to more than 4 but not more than 15 roomers, and does not include a community care facility within the meaning of the *Community Care Facilities Licensing Act*.

"Secondary Suite" has the same meaning as under *the British Columbia Building Code*, and does not include a strata lot.

"Self-contained Dwelling Unit" means a suite of rooms in a building designed for occupancy of one family which has a separate entrance, and kitchen and bathroom facilities.

"Semi-attached Dwelling" means a building used or designed for use as two self-contained dwelling units, each having direct access to the outside at grade level, and where neither unit is wholly or partly above the other.

"Self-Storage" means the use of buildings or structures for the storage of goods, materials or equipment in self-contained storage units that are rented to the public.

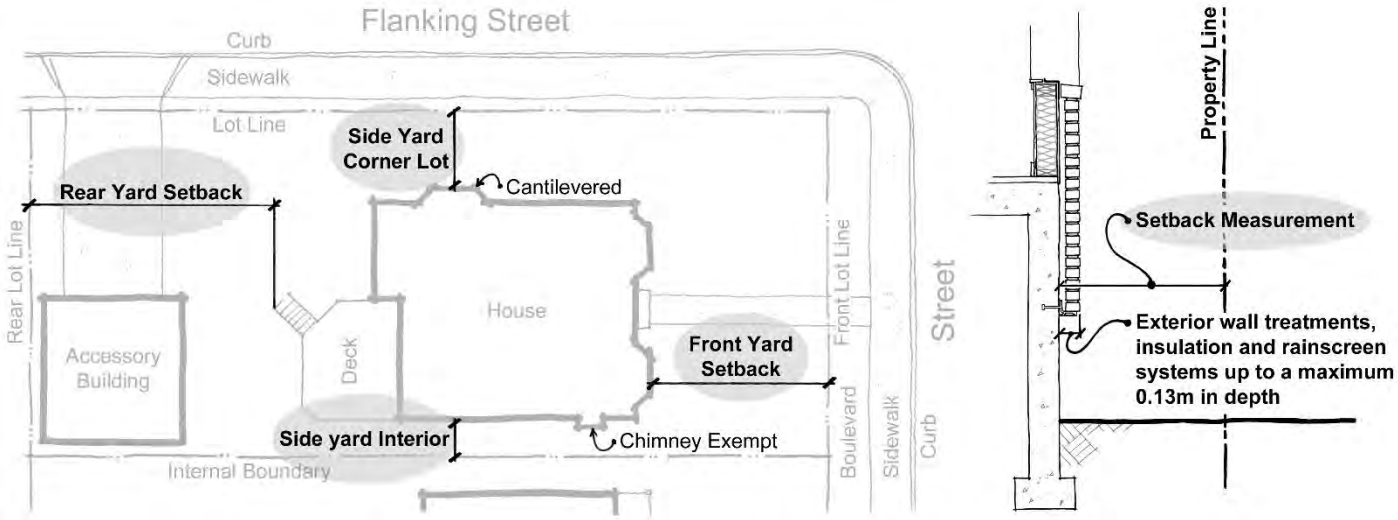
Amended Sept.14, 2023
Bylaw 23-073

"Senior Citizens' Residence" means a building containing in any combination, two or more dwelling units, housekeeping units, or sleeping units for the accommodation, on a non-profit basis of elderly persons, which is wholly owned or operated by a government agency, or by a non-profit corporation.

"Service Station" means a place where the primary business carried on is the retail sales of petroleum products and the accessory sales of automotive parts as part of the primary business; but does not include a garage or a body shop.

"Setback" or **"Line of Setback"** means the shortest horizontal distance from a boundary of a lot to the face of the building, excluding:

a) cornice or retaining wall or fence; and
b) exterior wall treatments, insulation and rainscreen systems up to a maximum of 0.13m in depth.



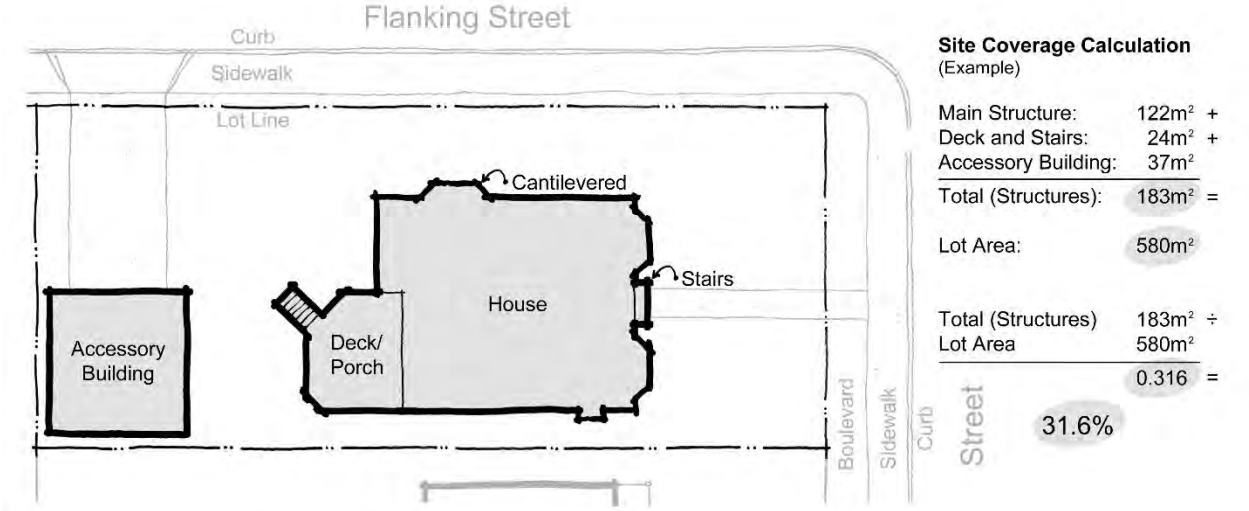
"Short-Term Rental" means the renting of a dwelling, or any portion of it, for a period of less than 30 days and includes vacation rentals.

"Side Yard" means a yard located on the side of a building and extending from the front wall to the rear wall of the building.

"Single Family Dwelling" means a detached building having independent exterior walls and containing only one self-contained dwelling unit.

"Site" means a lot having its principal frontage upon a street, occupied or to be occupied by one or more buildings.

"Site Coverage" means the percentage of the area of a lot which is occupied by any structure.



"Sleeping Unit" means one or more habitable rooms which are used or intended to be used for sleeping or sleeping and living purposes, but in which there is not a bathroom, water closet, sink, or cooking facility.

"Small-scale commercial urban food production" means:

(a) cultivating and harvesting plants or fungi;
(b) beekeeping and harvesting honey;
(c) keeping poultry to collect eggs; and
(d) sorting, cleaning and packaging the items noted above

for retail purposes, as well as selling and storing harvested products on the premises.

"Split Level Dwelling" means a dwelling unit constructed in such a manner that habitable accommodation is provided in adjacent areas on different floor levels.

"Storefront Cannabis Retailer" means premises where cannabis is sold or otherwise provided to a person who attends at the premises.

"Storey" means the space between two floors or between any floor and the roof next above, but does not include a basement or a crawlspace.

"Stormwater Retention and Water Quality Facility" has the same meaning as under the Sanitary Sewer and Stormwater Utilities Bylaw, as amended or replaced from time to time.

"Street" includes a lane, road, sidewalk, and other public highway.

Amended July 26, 2018
Bylaw 18-017

"Street Boundary" , **"Street Frontage"** or **"Street Line"** means the boundary between a lot and a street provided that:

a) where a lot is bounded either in whole or in part by more than one street, the street boundary shall be deemed to be the boundary the lot has in common with the wider or widest of the abutting streets or when both streets are the same width, the narrowest boundary of a lot abutting a street.
b) where a lot does not have a boundary with a street, lane, road or other public highway, it means the boundary between such lot and the area of any right-of-way easement giving access to the lot; and
c) where a lot which is not connected with a public highway by means of an easement, it means the boundary nearest to the nearest public highway.

"Street Wall" means the wall of a building which fronts upon the nearest street whether such a wall is at or above the level of the ground.

"Surface Parking Space" means any space or area that is used or intended to be used for the parking or movement of motor vehicles and that is not contained in or covered by a structure.

"Total Floor Area" means the sum of the areas of all floors of a building or buildings, excluding floor space under a ceiling which is less than 1.8m above grade.

"Townhouse" means an attached dwelling.

"Transient Accommodation" means:

a) the use of land or a building for the temporary accommodation of visitors, and without limitation includes hotels, motels and bed and breakfast accommodation; but
b) does not include the accommodation of visitors without receipt of payment or other consideration, where that accommodation is incidental to and normally associated with the permitted residential use of a dwelling unit.

"Two Family Dwelling" means a building consisting of two self-contained dwelling units which share a common wall or an area that forms the floor of one unit and the ceiling of the other and are not linked by a trellis, deck, breezeway or similar connection.

"Underground Parking Space" means any enclosed space used or intended to be used for the parking or movement of motor vehicles and contained entirely within a structure or part of a building the whole of which structure or part lies entirely below the grade of the structure or building, containing one or more parking units.

"Unobstructed Access" means the ability of the intended user of the parking space to access and egress to the street at the time that the parking space is required.

Amended July 26, 2018 Bylaw 18-017

"Van Accessible Parking Space" means a parking space designed and installed in accordance with the specifications and dimensions in section 4.2 and Figure 5 of Schedule C – Off-Street Parking Regulations."

Amended Sept. 19, 2022 Bylaw 22-024

"Vehicle Sales and Rental" means the use of a lot to sell, rent, or lease motor vehicles, recreational vehicles, boats or trailers, and that contains a related office.

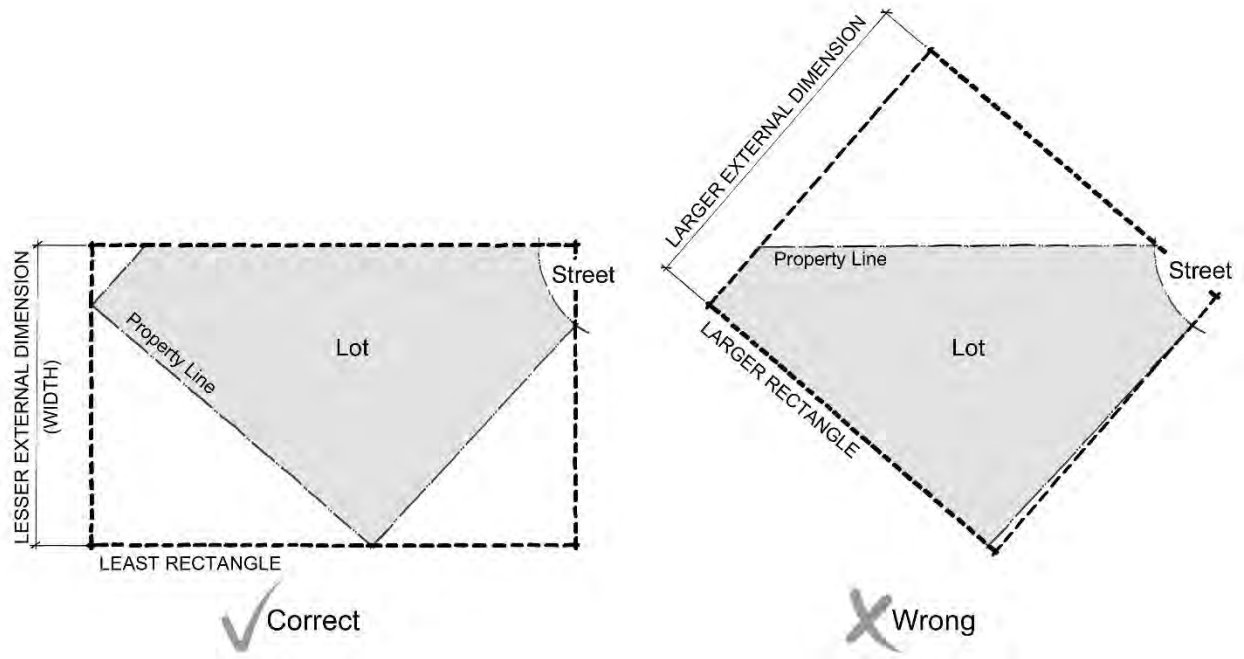
Amended Sept. 14, 2023 Bylaw 23-074

"Waterfront Lot" means a lot that abuts a tidal water body along any portion of the lot's boundary.

Amended Feb 27, 2020 Bylaw 20-002

"Wharf" means a fixed structure built alongside or projecting into a body of water, to which a boat, ship or other vessel may be moored or tied for the purpose of loading or unloading cargo or passengers, but does not include any buildings or structures placed or erected upon it.

"Width" when used in reference to a lot, means the length of the lesser external dimension of the least rectangle within which the lot may be contained in plan view.



"Yard" means a part of a site which is unoccupied and unobstructed by building from the ground upward, except for chimneys, fire escapes and the ordinary projections of sills, belt courses, cornices and eaves.

Garden Suite	Bylaw No. 10-079	Adopted: January 20, 2011
Zoning Regulation Bylaw	Bylaw No. 11-015	Adopted: March 24, 2011
Setback or Line of Setback	Bylaw No. 13-021	Adopted: April 11, 2013
Cultural facility & Financial service	Bylaw No. 14-017	Adopted: April 10, 2014
Multiple dwelling & House conversion	Bylaw No. 14-041	Adopted: July 10, 2014
Section 7.1 and 7.4 amendments	Bylaw No. 14-068	Adopted: September 25, 2014
Garden suite/accessory building amds.	Bylaw No. 14-073	Adopted: October 3, 2014
Minimum lot size	Bylaw No. 15-001	Adopted: March 26, 2015
Cistern regulations	Bylaw No. 15-018	Adopted: April 14, 2015
Finished Grade, Grade, Natural Grade, Outdoor Feature	Bylaw No. 16-004	Adopted January 28, 2016
Small-scale commercial urban food production, Foodstand, greenhouse	Bylaw No. 16-064	Adopted September 8, 2016
Add Short-Term Rental & change to Transient Accommodation	Bylaw No. 17-084	Adopted September 21, 2017
Add definition of Rest home Class C	Bylaw No. 17-092	Adopted October 12, 2017
Add definition of Principal Residence	Bylaw No. 18-035	Adopted March 8, 2018
Add definitions as identified	Bylaw No. 18-017	Adopted July 26, 2018
Revise half storey definition as identified	Bylaw No. 19-001	Adopted March 14, 2019
Add definition of Residential Rental Tenure	Bylaw No. 19-029	
Add definition of Waterfront Lot	Bylaw No. 20-002	Adopted February 27, 2020
Add definition of Energized Electric Vehicle Outlet	Bylaw No. 20-001	Adopted October 1, 2020
Add definition of Electric Vehicle Energy Management System	Bylaw No. 20-001	Adopted October 1, 2020
Add definition of Affordable Housing	Bylaw No. 22-019	Adopted April 4, 2022

Add definition of Accessible Parking Spaces, and Van Accessible Parking Space	Bylaw No. 22-024	Adopted June 23, 2022
Add definition of Fence	Bylaw No. 23-025	Adopted July 27, 2023
Add definition of Child Care Facilities and remove kindergarten from House Conversion definition and replace with Child Care Facilities	Bylaw No. 23-065	Adopted September 14, 2023
Add definition of Self-storage	Bylaw No. 23-073	Adopted September 14, 2023
Amend definition of Garage	Bylaw No. 23-074	Adopted September 14, 2023
Add definition of Vehicle sales and rental	Bylaw No. 23-074	Adopted September 14, 2023

Schedule "D"
HOME OCCUPATIONS

1 Where home occupations are permitted pursuant to the provisions of this bylaw, the following conditions shall apply to the use:

Location 2 For the purposes of a home occupation, the location of a business is the address at which the operations of the business are managed.

Exception 3 A home occupation is not required to be operated wholly within a dwelling unit where the work is undertaken entirely off the lot on which the dwelling unit is located.

Prohibition 4 The sale of goods to customers attending on the lot on which the dwelling unit is located is prohibited.

Permitted Uses 5 The following uses are permitted as home occupations:

(a) artist studio;

(b) mail order, provided that no merchandise is sold to customers attending on the lot on which the dwelling unit is located;

(c) making, processing and assembly of products on a small scale;

(d) manufacturing agent;

(e) personal and professional services, including barber, hairdresser, bookkeeper, medical therapy;

(f) teaching, provided that attendance is limited to 5 persons in a detached dwelling and to 1 person in a duplex or multiple dwelling;

(g) testing, servicing and repairing of goods.

Schedule "D"

Prohibited Uses

6 (1) All uses that are noxious or offensive to any other dwelling units or the general public by reason of emitting odour, dust, smoke, gas, noise, effluent, radiation, broadcast interference, glare, humidity, heat, vibration, or hazard or any other emission are prohibited.

(2) The following uses are prohibited:

(a) except as provided in Section 11, Bed and Breakfast;

(b) car repairs and garages;

(c) clubs;

(d) kennels;

(e) radio dispatch services;

(f) restaurants;

(g) retail stores;

(h) salvage lots;

(i) storage lots;

(j) except as provided in Section 11, transient accommodation;

(k) in any building which has been converted from single family dwelling to duplex, multiple dwelling, boarding house, rooming house, or housekeeping apartment, pursuant to the applicable provisions of this bylaw, music teaching or any business which results in the transmission of sound;

(l) cannabis-related business; and; Amended Jan 11, 2018 Bylaw 17-110

(m) except as provided in Section 12, short-term rental. Amended March 8, 2018 Bylaw 18-035

Stock in Trade

7 Except for one licensed vehicle, which shall be a car, van, or pickup truck, no business-related materials, including machinery or vehicles, shall be visible at any time on any lot on which a home occupation is carried out nor shall any machinery or vehicles be parked or stored on the lot unless completely enclosed within a building.

Limitation

8 (1) Subject to this section, not more than one person shall be engaged in a home occupation, with the exception of urban agriculture, where up to two people are permitted to be engaged in the home occupation, and the person(s) shall reside on the lot on which the home occupation is carried on.

(2) Where any lot upon which a home occupation is carried on has a boundary or portion of a boundary in common with any lot which is located in a zone which permits retail use, then no more than two persons may be engaged the home occupation where one of the persons resides on the lot on which the home occupation is carried on.

(3) This section does not apply to any employees of a home occupation who at no time attend on the lot on which the home occupation is carried on, nor park in the immediate vicinity of the lot.

(4) More than one person may operate a short-term rental in their principal residence. Amended March 8, 2018 Bylaw 18-035

9 No more than three home occupations shall be carried on in any one dwelling unit, provided that only one of the home occupations has customers that attend the dwelling unit. Amended Jan 11, 2018 Bylaw 17-110

Advertising

10 Except as expressly permitted in this bylaw, or in the Sign By-law, no sign or other advertising device or advertising matter may be exhibited or displayed on any lot on which a home occupation is being carried on.

11 Subject to the following requirements, where any building is used as a single family dwelling, up to two bedrooms may be used for transient accommodation as a home occupation.

(1) Notwithstanding Section 4, meals or food services may be provided to any customers but not after 12:00 noon.

(2) No liquor shall be provided to any customers.

(3) One parking space for each room available for transient accommodation shall be provided on the lot and a parking space may be located behind another parking space.

(4) No sign may be erected, used, or maintained for the purpose of advertising transient accommodation use within a single family dwelling.

(5) A single family dwelling may be used for transient accommodation whether or not the property contains a secondary suite or garden suite provided however that only one transient accommodation use is permitted on the property Amended March 8, 2018 Bylaw 18-035

(6) Transient accommodation is restricted to no more than two bedrooms and cannot occupy an entire self-contained dwelling unit. Amended March 8, 2018 Bylaw 18-035

12 Subject to the following requirements, a short-term rental is permitted as a home occupation in a principal residence. Amended March 8, 2018 Bylaw 18-035

(1) subject to subsection (2), no more than two bedrooms may be used for short-term rental and the short-term rental cannot occupy an entire self-contained dwelling unit;

(2) the entire principal residence may be used for a short-term rental only occasionally while the operator is temporarily away;

(3) no liquor may be provided to short-term rental guest; and

(4) No sign may be erected, used, or maintained for the purpose of advertising short-term rental.

Amending Bylaw 09-01 adopted Jan 19, 2009
Amending Bylaw 17-110 adopted Jan 11, 2018
Amending Bylaw 18-035 adopted March 8, 2018

PART1.71 - R1-A6 ZONE, ROCKLAND BED & BREAKFAST DISTRICT

Uses	1	The following uses are the only uses are the only uses permitted in this zone:	
		(a)	all of the uses permitted in the R1-A Zone, Rockland Single Family Dwelling District;
		(b)	transient accommodation that is located in a building that is used as the principal residence of the operator of the transient accommodation.
Number of Rooms	2	(1)	Not more than 3 bedrooms may be used for transient accommodation in a suite occupied by the operator of that transient accommodation.
		(2)	Not more than 4 bedrooms may be used for transient accommodation in suites not occupied by the operator of that transient accommodation.
Parking	3	A lot must contain	
		(a)	0.5 parking spaces for every transient accommodation bedroom; and
		(b)	one parking space for the operator of transient accommodation.
General		Except as provided in this Part, the regulations applicable in the R1-A Zone, Rockland Single Family Dwelling District, apply in this Zone.	

SCHEDULE
PART 2.69

RK-8 ZONE, HUMBOLDT BED & BREAKFAST DISTRICT

Uses	1	The uses permitted in this Zone are:	
		(a)	all of the uses permitted in the R-K Zone, Medium Density Attached Dwelling District; and
		(b)	transient accommodation.
Parking	2	(1)	One parking space must be provided for the
			(a) each single family dwelling unit; and
			(b) each unit of transient accommodation.
Siting of Parking		(2)	Off-street parking spaces must be located in a rear yard or a side yard.
		(3)	An off-street parking space may be located behind another off-street parking space.

Adopted May 25/96

PART 2.85 - R2-28 ZONE, SUPERIOR BED & BREAKFAST DISTRICT

Uses 1 The following uses are the only uses are the only uses permitted in this Zone:

(a) all of the uses permitted in the R-2 Zone, Two Family Dwelling District;

(b) transient accommodation that is located in a building that is used as the principal residence of the operator of the transient accommodation.

Parking 2 (1) A lot must contain

(a) 0.5 parking spaces for each transient accommodation bedroom; and

(b) one parking space for each self contained dwelling unit.

(2) All parking spaces must be independently accessible to a street..

(3) The landscaped area and screen required under section 7(h) of Schedule C does not apply to parking in this Zone.

General 3 Except as provided in this Part, the regulations applicable in the R-2 Zone, Two Family Dwelling District, apply in this Zone.

0757107 BC Ltd. v. Lake Cowichan (Town)

British Columbia Judgments

British Columbia Supreme Court

Nanaimo, British Columbia

A.F. Wilson J. (In Chambers)

Heard: July 3, 2008.

Judgment: July 21, 2008.

Docket: S52836

Registry: Nanaimo

[2008] B.C.J. No. 1444 | 2008 BCSC 961 | 170 A.C.W.S. (3d) 202

Between 0757107 BC Ltd., Petitioner, and Town of Lake Cowichan, Respondent

(38 paras.)

Case Summary

Municipal law — Bylaws and resolutions — Interpretation — Enforcement of bylaws — Injunctions — Petition by landowner for declaration its building met zoning requirements dismissed — Zoning permitted single family dwellings and bed and breakfasts — Two kitchens planned for building meant it was two-family dwelling — Town's expressed interesting increasing tourism did not assist court in interpreting bylaw — Town not entitled to declaration building not in compliance or injunction requiring landowner to bring building into compliance because second kitchen not yet installed, so bylaw not yet breached — Town of Lake Cowichan Bylaw No. 722-2001, s. 5.1.

Municipal law — Planning and development — Building regulations — Building permits — Occupancy permits — Zoning regulations — Bylaws — Interpretation — Enforcement — Injunction — Land use — Types — Residential — Petition by landowner for declaration its building met zoning requirements dismissed — Zoning permitted single family dwellings and bed and breakfasts — Two kitchens planned for building meant it was two-family dwelling — Town's expressed interesting increasing tourism did not assist court in interpreting bylaw — Town not entitled to declaration building not in compliance or injunction requiring landowner to bring building into compliance because second kitchen not yet installed, so bylaw not yet breached.

Petition by 1757107 for a declaration a building it owned qualified as a bed and breakfast under the single family residential zoning provided in the Town of Lake Cowichan's zoning bylaw. The Town sought declarations that 175 breached the zoning bylaw by constructing a two-family dwelling in a single family residential zone and that 175 breached the building bylaw by varying the building from drawings submitted to obtain a permit, and orders requiring 175 to remove an electrical outlet and prohibiting the occupation of the building until an occupancy permit was issued. The Town had expressed a desire to develop tourism. The original development plans submitted by 175 to the Town were rejected because the proposed building was to have kitchens on two floors. 175 re-submitted its plans, changing one kitchen to a mud room. It proceeded to install electrical outlets and plumbing in that room to allow a kitchen to be installed. Its subsequent occupancy application stated the mud room would be used as a kitchen and that kitchen fittings would soon be installed. The building was located in an area that was zoned for use as either single family residence or bed and breakfast. The Town took the position the building was in fact a two-family residence.

HELD: Petition by 175 dismissed.

In order to comply with the zoning bylaw, 175's building could not have more than one dwelling. With two kitchens, the building had two dwellings and therefore breached the zoning bylaw. The expressed desire of the Town to develop tourism was not helpful in interpreting the permitted uses in the bylaw. The Town's requests were premature. 175 was not yet in breach of the zoning bylaw because the second kitchen had not yet been installed.

Statutes, Regulations and Rules Cited:

British Columbia Rules of Court, Rule 10

Law and Equity Act, *RSBC 1996, CHAPTER 253, s. 10*

Local Government Act, RSBC 1996, CHAPTER 323, s. 903

Town of Lake Cowichan Bylaw No. 479-1987, "dwelling, "family, "home occupation, "residence, "two family residence

Town of Lake Cowichan Bylaw No. 722-2001, s. 5.1, s. 5.1.A

Counsel

Counsel for Petitioner: J. Millbank.

Counsel for Respondent: D. Howieson.

[Editor's note: A corrigendum was released by the Court July 22, 2008; the correction has been made to the text and the corrigendum is appended to this document.]

Reasons for Judgment

A.F. WILSON J.

I. Introduction

1 The petitioner in this matter, 0757107 BC Ltd., seeks a declaration that a building owned by it and located in the Town of Lake Cowichan ("the Town") qualifies as a "bed and breakfast" under the single family residential zoning provided in the zoning bylaw of the Town as amended.

2 In response, as well as seeking dismissal of the petition, the Town seeks a declaration that the petitioner has breached that zoning bylaw by constructing a two-family dwelling in the single family residential zone; declaring that the respondent has breached the building bylaw by varying the building from the drawings submitted in order to obtain a building permit, without the permission of the building inspector; ordering the removal of an electrical outlet in the area shown on the plans as the "mud room"; and prohibiting the occupation of the dwelling until an occupancy permit has been issued.

II. Background

3 The facts upon which the petition is based are not in dispute.

4 The petitioner is the owner of Lot 20, District Lot 13, Cowichan Lake District, Plan VIP 66922 with civic address of 430 Point Ideal Road, Lake Cowichan, British Columbia. The property is within the Town of Lake Cowichan, and subject to the Town zoning and building bylaws.

5 In accordance with the Town's expressed desire to encourage tourism in the area, the petitioner planned to build a house of approximately 3,000 square feet to be used an "executive bed and breakfast". By application dated April 24, 2006 Mr. Haberman, a director of the petitioner, submitted a building permit application and plans for the house to the Town. The house was designed to accommodate a private living area for residents on the upper floor, including a kitchen, bathroom and living room. The plans also showed a kitchen on the main floor, the area intended to be used as a bed and breakfast. At the time, the Chief Administrative Officer of the Town, Mr. Fernandez, expressed concerns that the plans showed two self-contained dwellings in the proposed house, and were thus contrary to the single family residential zoning where the property was located. However, the building permit was not formally denied at that time.

6 By letter dated May 29, 2006, the solicitor for the petitioner wrote to Mr. Fernandez, advising that the planned use of the building as a bed and breakfast operation fell within the use for single family residential zoning (Zone R-1-A). She thus requested that the building permits be sent to her, and requested that, if they were not to be issued, she be provided with written reasons for the denial. Those reasons were provided by letter dated May 31, 2006. In that letter Mr. Fernandez stated:

> The R-1-A zoning for the properties allows for single family residential use, and bed and breakfast use. In neither case does the zoning permit more than one dwelling, as defined in our Zoning Bylaw no. 479, 1987, on a property. The drawings attached to the applications do not properly reflect that requirement. If both the applications are amended to meet this requirement, the applications may be approved.

7 By letter of June 13, 2006, counsel for the petitioner responded to Mr. Fernandez, noting that the bylaw permitted bed and breakfast use, in addition to other uses, including single family residential use. She noted that the bylaw does not state that the building must be both a single dwelling and a bed and breakfast. By letter of June 26, 2006, the solicitors for the Town responded to counsel for the petitioner. They stated that, in their opinion, the structure the petitioner was proposing was a two family residence, a use not permitted in the R-1-A zone.

8 After a further exchange of correspondence between counsel, and between Mr. Haberman and Mr. Fernandez, the petitioner revised the plans and designated the second kitchen in the residence area as a "mudroom". A building permit was granted, based on the revised plans, on October 24, 2006.

9 Construction of the house began in January, 2007, and was substantially completed on October 1, 2007. During the course of construction, Mr. Croteau, the building inspector for the Town, conducted inspections. On June 22, and June 24, he issued inspection reports stating "Kitchen not to be installed in mudroom". He observed that the petitioner planned to install a second kitchen despite the fact that it was not shown on the approved plans. He found an electrical outlet installed for a stove, and also observed plumbing fixtures, kitchen cabinets and appliances ready to be installed. Those appliances have not yet been installed. The petitioner did, however, request an occupancy permit, on the basis that the second kitchen would be installed.

10 When the occupancy permit was not granted, counsel for the petitioner wrote by letter of February 7, 2008, requesting the issuance of it. She noted, "The Property is roughed in for a kitchen on the third floor and this application is made on the basis that the kitchen will be installed in the near future." In his affidavit, Mr. Fernandez states that the occupancy permit could not be issued as the building substantially varied in that regard from the building shown on the drawings approved for the building permit, and no further drawings had been submitted.

11 As a result, the house is presently unoccupied. The petitioner has brought this application to clarify whether, if it proceeds with the installation of the kitchen, the building will be in compliance with the R-1-A zoning as a "bed and breakfast".

III. The Issue

12 The issue is thus a narrow one: whether a house with separate parts, one intended for a resident, and the other for use as a bed and breakfast, each with kitchen facilities, falls within the definition of "bed and breakfast", a

permitted use in R-1-A zoning, or whether it is then a "two family residence" which is not permissible in R-1-A zoning.

IV. Bylaws

13 The current single family residential zoning was created by Bylaw No. 722-2001, amending Bylaw No. 479-1987. The title and permitted uses are as follows:

5.1.A SINGLE FAMILY RESIDENTIAL (R-1-A) ZONE

.1 PERMITTED USES

The following uses and no others are permitted in the R-1-A Zone:

(a) single family residential;

(b) home occupation;

(c) bed and breakfast;

(d) park and playground.

14 By way of comparison, the permitted uses in R-1 zoning, urban residential, are as follows:

5.1 R-1 ZONE -- URBAN RESIDENTIAL

.1 Permitted Uses

The following uses and no others are permitted in an R-1 Zone:

(a) single family residential dwelling

(b) two family residential dwellings;

(c) lodging and boarding houses;

(d) horticulture;

(e) home occupation;

(f) daycare auxiliary to a dwelling;

(g) park and playground.

15 Thus "two family residential dwellings", unless they fall within one of the permitted uses for R-1-A zoning, such as "bed and breakfast" are not permitted in areas subject to R-1-A zoning.

16 The original zoning bylaw, No. 479-1987, does provide definitions for a number of terms, including "dwelling", "family", "home occupation", "residence", and "two family residence". Those definitions are as follows:

"dwelling" means a self-contained set of habitable rooms located in a principal building containing a set of cooking facilities and which may contain sleeping, sanitary and recreation facilities;

"family" means

(a) two or more persons related by blood, marriage, adoption or foster parenthood sharing one dwelling; or

(b) not more than five unrelated persons sharing one dwelling;

"home occupation" means any occupation or profession where such occupation or profession is accessory to the use of the dwelling for residential purposes and does not include outdoor storage;

"residence" means:

(a) occupancy or use of a building or part thereof as a dwelling; and

(b) the dwelling occupied or used;

"two family residence" means consisting of two dwellings placed one above the other or side by side in a principal building or a single parcel

17 However, the bylaw does not contain definitions of either "single family residential" or "bed and breakfast".

IV. Submissions

18 The position of the Town is that, once a second kitchen is put in, there will be on an objective basis, two separate dwellings. The Town thus submits that the property falls within the class of "two family residential dwellings", which is allowed in zone R-1, but not in zone R-1-A. The Town submits that the subjective intention of the petitioner to use the property as a bed and breakfast does not convert it from a "two family residential dwelling".

19 The petitioner submits the property does not fall within the definition of "two family residence" in the bylaw. In any event, it submits that even if it does fall within that definition, it also is a "bed and breakfast", and is thus a permitted use in zone R-1-A.

V. Law

20 A municipal council, as a creation of statute, only has the powers as granted to it by that statute. As expressed by I.M. Rogers in ***The Law of Canadian Municipal Corporations***, 2nd edition, 1999 release No. 2, Carswell, page 769:

> Local authorities have no inherent power to interfere arbitrarily with the common law right of land owners in the use and improvement of property.

However, a local government does have the power to regulate the use of land, buildings and other structures within zones pursuant to s. 903 of the *Local Government Act*, *R.S.B.C. 1996, chapter 323*.

21 In interpreting a zoning bylaw, Hinkson J.A. of the British Columbia Court of Appeal in ***Re Neilson et al. and District of Langley et al.*** *(1982), 134 D.L.R. (3d) 550* at paragraph 18 stated:

> In the present case, in my opinion, it is necessary to interpret the provisions of the zoning bylaw not on a restrictive nor on a liberal approach but rather with a view to giving effect to the intention of municipal council a expressed in the by-law upon a reasonable basis that will accomplish that purpose.

22 However, where a term in a bylaw is not defined, as is the case here with respect to "bed and breakfast" a broad interpretation is to be used. In ***Neilson,*** at paragraph 19, Hinkson J.A. said:

> Approaching the matter in that way, I return to a consideration of the provisions of the bylaw. While many of the terms contained in section 9(c) of the by-law dealing with the uses permitted in the zones established by the by-law are defined in Schedule "A" to the by-law, no definition of the designation "golf course" is contained in that Schedule. The effect of defining those terms in that Schedule is to restrict the meaning that might otherwise be attributed to such terms. No such restriction has been imposed upon the meaning of "golf course". Therefore I conclude that "golf course" was intended to have a broad meaning and that anything that can be regarded as reasonably coming within the operation of a golf course is a permitted use.

23 However, a zoning bylaw must be interpreted as a whole, coherently and with its purpose in mind: ***Sechelt (District) v. Cutlan*** *(2007), 38 M.P.L.R. (4th) 83* at paragraph 47.

24 In ***North Cowichan (District) v. Ring***, *[1998] B.C.J. No. 1458*, June 11, 1998, Duncan Registry No. 0000617, (B.C.S.C.), Hutchinson J. said:

> ... the words "used or intended to be used" must be determined objectively by reference to the design of the unit and the facilities in the unit, not the intentions of the owner. If the intention of the owner was the deciding factor, the intended use of the premises could change according to the owners' whim; a result that defies sensible interpretation.

25 That statement was adopted by Drost J. in ***New Westminster (City) v. Cunny*** *(2002), 30 M.P.L. R. (3d) 306* (B.C.S.C.) at paragraph 31.

VI. Discussion

26 In determining this issue, it is necessary to look at the specific words of the bylaw, including the definitions. However, it is also necessary to look at those words in the broader context of the bylaw as amended, as a whole, to determine, in particular, what council intended in passing bylaw No. 722-2001, establishing more restrictive R-1-A zoning.

27 Dealing, first, with the definitions: as noted, there is no definition of "bed and breakfast". However, like "home occupation" and "park and playground", "bed and breakfast" is a distinct permitted use, along with "single family residential", in the single family residential zoning. It thus appears that the uses intended were broader than merely single family residential use.

28 The next question is whether the proposed bed and breakfast falls within the definition of "two family residence" the term defined in the definition section, or "two family residential dwelling", the term used in the permitted uses, for example, in the R-1 zoning.

29 The definition of "two family residence" refers to two "dwellings" in a principal building. "Dwelling" is defined as a self contained set of habitable rooms in a principal building, containing a set of cooking facilities (which makes relevant the proposed second kitchen in the house). The term focuses on the physical structure, unlike the term "residence", which refers to the use of a building as a dwelling, as well as the dwelling itself. I accept the submission on behalf of the Town that the proposed bed and breakfast, with the second set of kitchen facilities, does fall within the definition "two family residence". It would have two self contained sets of habitable rooms in the same building, each with cooking facilities, sleeping facilities and sanitary facilities. With respect to it being a "family" residence, it would fall within the extended definition of "family", which includes "not more than five unrelated persons sharing one dwelling".

30 I also do not accept the submission that the term "residence" relates only to the use of the structure as a residence on a permanent or a semi-permanent basis. That is because the definition of "residence" in the bylaw refers not only to the use of the building, but also to the dwelling occupied or used. The definition of "dwelling", in turn, refers to the physical structure of "a self contained set of habitable rooms ..."

31 The more difficult issue is whether, notwithstanding the fact that it would be a "two family residence", it is nevertheless a permitted use as a "bed and breakfast" in the R-1-A zoning. In that regard, I accept the submission of counsel for the petitioner that the four permitted uses set out in zoning bylaw No. 722-2001, s. 5.1.A.1, must be regarded as separate and distinct uses. Clearly that is the case with "park and playground", which involves a use distinct from that of "single family residential". However, I find that there can be some overlap in uses. For example, "home occupation" allows use of the property for an occupation where that occupation is accessory to the use of the dwelling for residential purposes. Use as both "single family residential" and "home occupation" is not inconsistent. Similarly, a bed and breakfast which did not contain a second set of cooking facilities would not fall within the definition "two family residence", and would not be inconsistent with use of the property as "single family residential". The difficulty arises when the building containing the bed and breakfast contains more than one "dwelling", as defined in the bylaw. It would not matter, in that regard, if there were two "dwellings", as in the building proposed here, or 20. If I accept the submission on behalf of the petitioner, both would qualify as a "bed and breakfast", and thus would be permitted uses in R-1-A zoning. I consider that to be contrary to the intention of Council as expressed in the bylaw. The bylaw created a new zone: "Single Family Residential (R-1-A) Zone", which

was intended to be more restricted in its permitted uses than the urban residential zone. It did not allow, for example, "lodging and boarding houses". I consider that a bed and breakfast, which could contain 20 units, to be inconsistent with that intention. I thus conclude that, in order to qualify as a "bed and breakfast" in R-1-A zoning, the building must not have more than one "dwelling". If the petitioner installs the additional kitchen facilities, there will be two "dwellings", as defined in the bylaw, contained within the building. I thus find such a use would be in breach of the zoning bylaw.

32 This situation is different from the situation in ***Neilson v. Langley, supra***, in that that case involved the operation of a restaurant within a golf club. There was nothing inconsistent in the operation of a restaurant within the permitted use as a golf club. In this case, with use as a bed and breakfast, if the building contained more than one dwelling, that would be inconsistent with the restricted permitted uses in the single family residential zone.

33 I do not consider the "expressed desire of the Town to develop tourism" to be helpful in interpreting the permitted uses in bylaw No. 722-2001. Apart from the fact that the revitalization strategy referred to by Mr. Haberman was issued in 2005, and this bylaw was passed in 2001, the bylaw appears intended to create a zone with more restrictive uses, rather than to expand tourist-related facilities.

VII. Relief Sought by Respondent

34 This proceeding was brought by way of petition. In its Response, the Town not only opposes the granting of the relief set out in the petition, but also seeks relief of its own. I appreciate that the reason for doing so is to avoid a multiplicity of proceedings as a result of the Town issuing its own petition. However, there is no provision either in Rule 10 or in the form of Response, Form 124, enabling a respondent to file what is, in effect, a counter-petition. There is thus an issue regarding the jurisdiction of this court to grant the orders sought. It may be, without deciding the issue, that there is jurisdiction to grant the relief sought by the respondent pursuant to s. 10 of the *Law and Equity Act*, *R.S.B.C. 1996, chapter 253*.

35 Apart from that, I consider the application for the relief sought by the Town to be premature. I accept the submission of counsel for the petitioner that it brought the petition in order to obtain clarification of the issue, so that it was not in a situation of being in breach of the bylaw. In that regard, while the evidence establishes that the petitioner has installed an electrical outlet in the "mud room", and has kitchen fittings ready to be installed, those fittings have not yet been installed. Further, an occupancy permit has not yet been issued, and the house is not occupied. I thus find that, at present, the petitioner is not in breach of the zoning bylaw. The application for a declaration that it is in breach of that bylaw is thus dismissed. Similarly, an order prohibiting occupation of the dwelling on the land until the occupancy permit has been issued is premature, as there is no evidence of the intention of the petitioner to do so. In fact, the evidence is to the contrary, that the property has remained vacant since its substantial completion in October, 2007, because the occupancy permit has not been issue.

36 With respect to the alleged breach of the building bylaw, I accept that the petitioner did submit revised plans showing a "mud room" when it, in fact, it intended to install kitchen facilities. However, in applying for the occupancy permit, by the letter from its counsel dated February 7, 2008, the petitioner was forthright that the application was made on the basis that the kitchen would be installed in the near future. Thus, while there may be a technical breach of the building bylaw, I am not convinced that the order sought should be granted at this time. If the petitioner continues with the installation of the kitchen facilities, or occupies the premises before issuance of the occupancy permit, then the Town will have liberty to apply for the appropriate orders.

VIII. Conclusion

37 As I find that a building with a bed and breakfast which contains more than one dwelling, if located within the single family residential zone, would be in breach of that zoning, the petition will be dismissed.

38 Notwithstanding that the Town did not obtain the relief sought in its Response, it was successful in the primary issue, and thus will be entitled to its costs.

A.F. WILSON J.

* * * * *

Corrigendum

Released: July 22, 2008

Revised Judgment

Please be advised that the attached Reasons for Judgment of Mr. Justice A.F. Wilson dated July 21, 2008 have been edited.

* On the front page, the title of the presiding judge should read:

The Honourable ***Mr. Justice*** A.F. Wilson

End of Document

Neilson v. Langley (Township)

British Columbia Judgments

British Columbia Court of Appeal

Vancouver, British Columbia

McFarlane, Hinkson and Craig JJ.A.

Judgment: April 8, 1982.

Vancouver Registry No. CA800956

[1982] B.C.J. No. 2313 | 134 D.L.R. (3d) 550 | 14 A.C.W.S. (2d) 24

Between Dr. James Mitchell Neilson, Margaret Wendy Neilson and Constance Ballentine, petitioners (respondents), and The Corporation of the Township of Langley, and Peter Jarvis, Chief Building Inspector, respondents (appellants)

(25 paras.)

Counsel

D.G.S. Rae and W.S. Martin, for the appellants. J.B. Baker, for the respondents.

The judgment of the Court was delivered by

HINKSON J.A.

1 This is an appeal from the decision of a judge in Chambers declaring that a certain permit issued by the building inspector of the Corporation of the Township of Langley be declared null and void as contravening the provisions of the Township's "zoning by-law, 1970" No. 1302 as amended.

2 The Fort Golf and Country Club (the "Club") operates the Fort Langley Golf Course within the Township of Langley. The golf course has approximately 600 members and is open to non members.

3 In January 1979 Tavistock Holdings Ltd. joined with the Club to purchase property adjacent to the golf course. The Club is the majority shareholder in Tavistock Holdings Ltd. Situate on the property was an 11,000 square foot house. The Club and Tavistock Holdings Ltd. intended, in acquiring the property, to convert it into a recreational club for the club members and the public including such facilities as a heated swimming pool, a sauna room, a snooker room, racquetball court, squash court, tennis courts, a lounge and a restaurant. Tavistock and the Club intended to contract out the operation of the restaurant to a private individual.

4 The Club already operates a restaurant on the present Club premises which provides restaurant services to golfers, whether they be members of the Club or members of the public.

5 The petitioners are residents of the neighbourhood adjacent to the property described in these proceedings. They do not, apparently, object to the operation of the present restaurant on the Club premises, but they object particularly to the proposed restaurant contending that it amounts to a commercial use of the property which contravenes the provisions of the zoning by-law.

6 In order to resolve the issue raised on this appeal it is necessary to consider the provisions of the zoning by-law in question. Section 7 provides:

> 7. The whole of the area within the boundaries of The Township of Langley with the exception of the areas defined by the "Fort Langley Zoning By-Law, 1948" No. 677, the "Aldergrove Zoning By-Law, 1962" No. 1065, The "Murrayville Zoning By-Law, 1950" No. 720, and the "Brookswood-Belmont Zoning By-Law, 1970" No. 1304, and all that portion of the North-East Quarter (N.E. 1/4) of Section Ten (10) of Township Eight (b) as presently zoned by By-Law No. 658, is hereby divided into zones in accordance with the "Langley Subdivision Control By-Law, 1957" No. 907 and amendments thereto, with the following zone designations and short form equivalents:

Short Form	Zoning Designations
UR - 1	Urban District 1 being the half acre lot minimum area.
UR - 2	Urban District 2 being the one acre lot to two and one-half acre lot minimum area.
RR - 1	Rural District 1 being the five acre lot minimum area.
RR - 2	Rural District 2 being the ten acre lot minimum area.
RR - 3	Rural District 3 being the twenty acre lot minimum area.
AP - 1	Airport Zone 1 being the areas marked on the plan hereto annexed marked "C".

7 Section 9 of the by-law provides:

> (a) No residential use other than the following shall be permitted in the zones indicated opposite thereto hereunder, subject to all other pertinent By-Laws, and regulations:...

Thereafter various types of residential use are permitted within the designated zones.

8 Section 9(c) of the by-law provides:

> (c) No use other than the following shall be permitted in the whole of the area within the boundaries of the Township of Langley,...in the zones indicated opposite thereto hereunder appearing:...

9 Thereafter appears a list of uses permitted within the designated zones. No commercial use is permitted in any of the zones designated by section 7 of the by-law.

10 The land in question is zoned RR-1 which is described as "Rural District 1 being the five acre lot minimum area". A golf course is a permitted use within that zoning designation.

11 Section 13 of the by-law provides:

> 13. Off street parking spaces and off-street loading spaces shall be provided by the owners/and occupiers of any building or structure within any zone affected by this By-law in accordance with

> the requirements indicated in the following table as applicable to the respective zone in which such building or structure is situate.

Included in the table that follows is a description as follows:

Restaurant and Cafes --	1 space per employee plus 1 space for each four seats plus 1 space for each 100 square feet of dining area.

12 I conclude that some of the uses appearing in that table have reference to the exceptions contained in section 7 of the by-law.

13 Schedule "A" to the by-law contains the interpretation of certain terms appearing in the by-law. The term "commercial use"is given the following meaning:

> COMMERCIAL USE --
>
> means a use providing for the selling of goods and services, for the servicing and repair of goods, or for commercial office functions: includes retail sales, wholesaling incidental to retail sales, commercial education and instruction, and medical services, indoor commercial recreation and entertainment services, household services and all associated repairs, other personal and non-personal services, and administrative, commercial and professional offices; a Service Station use, and a Tourist Accommodation Use, (excludes manufacturing, salvaging, warehousing, the selling, servicing, and repair of industrial and agricultural machinery).

14 The Chambers judge made reference to the zoning by-law and concluded:

> Clause 9(c) forbids or allows the uses of land down the left hand column: a golf course is permitted in all the residential areas; a commercial use in none of them. The restaurant would be a commercial use if it caters to the public at large, in my opinion.

15 Earlier in his reasons for judgment the Chambers judge had made reference to the definition of "commercial use". Counsel for the respondents contended that the restaurant being considered was to be used for the selling of goods and services within the foregoing definition and was therefore a commercial use. With great respect, I am not persuaded that the public restaurant in question falls within the definition of commercial use as contained in the by-law.

16 The question still remains as to whether or not a restaurant owned by a golf club and operated in conjunction with the golf course can be regarded as part of a golf course when the latter is a permitted use within the zone in which it is situate.

17 The Legislature has delegated to the Municipality the power to create zones and to control the use to which land and buildings within those zones may be put. Pursuant to the power delegated to it the appellant Municipality has passed the zoning by-law which requires interpretation in these proceedings. The Chambers judge made reference to two lines of authority concerning the interpretation of zoning by-laws: the restrictive interpretation and the liberal or remedial interpretation. In this connection reference was made to the decision of the Supreme Court of Canada in Bayshore Shopping Centre Ltd. v. Township of Nepean *(1972) 25 D.L.R. (3d) 443*. Spence J., delivering the judgment of the court, made reference to these different approaches to the interpretation of zoning by-laws and said at p.449:

> I find little assistance from decisions which purport to indicate the philosophic attitude which the Court should adopt in construing zoning by-laws.

18 In the present case, in my opinion, it is necessary to interpret the provisions of the zoning by-law not on a restrictive nor on a liberal approach but rather with a view to giving effect to the intention of the municipal council as expressed in the by-law upon a reasonable basis that will accomplish that purpose.

19 Approaching the matter in that way I return to a consideration of the provisions of the by-law. While many of the terms contained in section 9(c) of the by-law dealing with the uses permitted in the zones established by the by-law are defined in Schedule "A" to the by-law, no definition of the designation "golf course" is contained in that Schedule. The effect of defining those terms in that Schedule is to restrict the meaning that might otherwise be attributed to such terms. No such restriction has been imposed upon the meaning of "golf course". Therefore I conclude that "golf course" was intended to have a broad meaning and that anything that can be regarded as reasonably coming within the operation of a golf course is a permitted use. Thus no objection was taken by the petitioners to the recreational facilities to be provided on the property which is the subject of these proceedings.

20 In my opinion, a golf club which operates a golf course open to members of the club and to the general public and which in conjunction with the operation of the golf club provides a restaurant may reasonably and naturally be said to operate the restaurant in question as a part of the operation of the golf course. Therefore I am unable to accept the conclusion of the Chambers judge that "...this case is one of a commercial incursion into a residential area, and can only be justified by a finding that a restaurant frequented by the public in addition to club members is 'accessory' to a golf course".

21 The reason for the reference to the term "accessory" is because certain permitted uses of land and buildings under the zoning by-law include "accessory" uses of those designated uses. Such accessory uses are defined in Schedule "A". Reference was also made to an amendment to the by-law which permitted an "ancillary" use. I can find no justification for applying the reference in the by-law to the terms "accessory" and "ancillary" so as to restrict the natural meaning of the unqualified designation "golf course".

22 On or about June 23, 1980 the Municipal Building Inspector issued a building permit to Tavistock Holdings Ltd. to proceed with the necessary alterations to complete the proposed restaurant facility. In order to obtain that building permit Tavistock Holdings Ltd. agreed to grant a restrictive covenant with the Corporation of the Township of Langley whereby Tavistock covenanted that the building in which the restaurant was to be located would not be used for any purpose other than single family residential until such time as Tavistock had consolidated the land with the golf course. The restrictive covenant which was dated the 24th day of June 1980 contained the following recital:

> AND WHEREAS it wishes to build and operate a recreational facility including a restaurant on the land;
>
> AND WHEREAS the zoning of the land does not permit such uses;
>
> AND WHEREAS the adjoining lands are operated as a golf course which is permitted use;
>
> AND WHEREAS the Municipality has agreed to grant a building permit to allow construction to proceed on the building on the term that the Grantor consolidate its land with the golf course:...

In my opinion the Municipality was in error in accepting the recital in the restrictive covenant that the zoning of the land did not permit the operation of a restaurant on the land. In any event no issue was raised in the present proceedings that in some way the Municipality was estopped by virtue of that declaration. Nor could the present petitioners raise such an objection.

23 In the result I conclude that the proposed use was a permitted use under the zoning by-law. Thus the building permit was properly granted and ought not to have been quashed by the Chambers judge.

24 A second argument was addressed to the court on the issue as to whether or not the Chambers judge had jurisdiction to quash the building permit in the event he concluded that the proposed use offended the terms of the zoning by-law. The Chambers judge concluded that he had power to do so. While it is not necessary to deal with this submission in detail because of the conclusion I have reached on the first ground I would add that on the second ground I am of the view that the Chambers judge reached the correct conclusion.

25 In the result I would allow the appeal.

HINKSON J.A.

End of Document

Business Licence (Bed & Breakfast) Appeal for 867 Humboldt St.

Submission of the Licence Inspector

I. Introduction

1. This is an appeal from the decision of the Licence Inspector to refuse to issue a 2024 business licence to Matthew Linnitt and Ashley Ceraldi (the "Appellants"), for the operation of a bed and breakfast at 867 Humboldt Street.

2. The business licence was denied pursuant to Section 8(1) of the *Business Licence Bylaw*, which states:

> ***8(1)*** *Before issuing any licence, the Licence Inspector may require evidence to his reasonable satisfaction that the applicant has complied with any and all applicable bylaws, regulations, and statutes…*

3. The appeal is brought pursuant to Section 60(5) of the Community Charter, which requires that an applicant for a business licence has the right to have the staff decision to refuse such licence reconsidered by Council.

4. On a reconsideration such as this, Council can apply its own judgement and may either uphold the decision to refuse the licence or grant the licence.

II. Facts

5. The Appellants own and reside at the property at 867 Humboldt Street.

6. The property contains a single principal structure and according to an Occupancy Permit issued under BP054355 on March 23, 2022, the approved use and occupancy of this structure is single family dwelling (SFD) with 6 room bed and breakfast (see Schedule A).

7. The property is zoned RK-8, Humboldt Bed & Breakfast District. This site-specific zone permits transient accommodation, including bed and breakfast (see Schedule B).

8. In 1985, in an effort to expand and diversify the tourism economy in a manner which was complementary to low density housing, City Council amended its zoning to permit small bed and breakfast operations throughout Victoria's neighbourhoods. To qualify, the operator had to live in a detached single-family dwelling and rent no more than 2 bedrooms (see Schedules C and F).

9. Some properties were rezoned to permit the use of more than 2 bedrooms for bed and breakfast under specific conditions (see Schedule C).

10. When 867 Humboldt Street was rezoned in 1996 to create a new site-specific zone RK-8, Humboldt Bed & Breakfast District, the Council resolution included "to rezone the land known as 867 Humboldt Street to a new zone to enable the use of up to 4 bedrooms for the purposes of a bed and breakfast business" (see Schedule D).

11. Some of the materials that informed the rezoning of 867 Humboldt Street (see Schedule E) included:

a) A site plan dated November 17, 1995, showing 4 bed and breakfast bedrooms with water closets within the structure;
b) A notice that was sent to neighbours and others regarding the public hearing of the proposed rezoning bylaw, which indicated that the purpose of the rezoning was to allow use of up to 4 bedrooms for the purpose of a bed and breakfast business;
c) A report from staff outlining relevant considerations, such as the proposed increase to the zoning entitlement from two bedrooms to four bedrooms for bed and breakfast use, and the application of Council's 1981 rezoning evaluation guidelines for bed and breakfast use;
d) A report to Council, dated April 23, 1981, detailing guidelines for the evaluation of individual homes to provide bed and breakfast facilities;
e) A report to Council, dated May 2, 1985, titled "Zoning Amendments to Permit Limited Bed and Breakfast use in single family dwellings", which described limited bed and breakfast use as providing one or two bedrooms and morning meals to tourists within a single-family dwelling, and recommended a general zoning amendment to permit limited bed and breakfast throughout Victoria's single-family areas.

12. The general zoning amendment to permit limited bed and breakfast throughout Victoria's single-family areas, as it was in force from 1996-2003, is attached (see Schedule F).

13. In 1999-2000 Council embarked on a zoning compliance program for bed and breakfasts.

14. In 1999, the then owners of 867 Humboldt Street wrote to the City explaining that they were in the process of obtaining the necessary change of use building permit to allow them to rent more than 4 bedrooms for bed and breakfast use (see Schedule G).

15. On August 16, 2000, an Occupancy Permit was issued under BP028377 (see Schedule H) that permitted the single-family dwelling at 867 Humboldt Street to include 6 bed and breakfast units. As described below, the approved building plans depict 6 bed and breakfast bedrooms – 4 with water closets. The approved building plans do not depict 6 self-contained dwelling units.

16. The approved building plans associated with BP028377 and stamped March 15, 2000 (see Schedule I), depict a single-family dwelling with:

a) A living room, dining room, kitchen, 2 bathrooms, 1 owner/operator bedroom, 1 bed and breakfast bedroom (#6) on the lower floor;

b) A library, supply room, and 2 bed and breakfast bedrooms (#1 and #2) both with water closets on the upper floor;

c) 3 bed and breakfast bedrooms (#3, #4, and #5) two of which contain water closets on the upper floor.

17. There is an additional set of plans stamped March 15, 2000, depicting a renovation to the lower floor kitchen under BP028377 (see Schedule J).

18. Following the change of use to SFD with 6 room bed and breakfast in 2000, a business licence was approved and issued for "Humboldt House Bed & Breakfast" under the category Transient Accommodation – Bed & Breakfast. Business licenses under that category were set on auto-renewal and the operator was mailed an invoice annually for business licence renewal.

19. Traditionally in Victoria, most types of business licence applications have been processed and approved using the honour system. The expectation is that the applicant provides information that is correct. That information is then compared to what information is on City record and if both are consistent, the application is approved. In cases where there is an inconsistency, further research is done, and an investigation and/or inspection may be conducted. Many business licence types have been set to auto-renewal, a process by which licences have been automatically renewed upon payment of the invoice for the annual licencing fee, without thorough review or inspection to determine eligibility and compliance with regulations.

20. Licensing records indicate that the property at 867 Humboldt Street was licensed continually as a bed and breakfast from 1996 to 2022 under 3 different owners. Upon change of ownership, a new business license application was submitted. The Appellants purchased the property on June 15, 2022, but did not submit a business license application at that time.

21. On March 23, 2022, after sprinkler and fire alarm work was completed under BP054355, an Occupancy Permit was issued for a SFD with 6 room bed and breakfast (see Schedule A).

22. In February 2023, the City's Short-term Rental Coordinator identified that the owners of 867 Humboldt were advertising online and accepting bookings without a business licence. Specifically, staff identified an Airbnb listing offering "an entire rental unit" hosted by the Appellant. The listing description stated, "The suite has a full kitchen with everything you need to make meals at home, you will have access to a shared laundry room should you need it" (see Schedule K). Similar advertisements were listed on Airbnb in June 2023. The Short-term Rental Coordinator advised the Appellants to obtain a business license.

23. The appellants applied for and received a business licence to operate a bed and breakfast later in the spring of 2023. While, the Short-term Rental Coordinator and the Business Licence Inspector were aware that one or more self-contained suites may exist on the property, the property was not inspected to confirm compliance with City bylaws prior to the 2023 license being granted.

24. The licence was granted on the basis of the application and Mr. Linnitt's representation that the house had 6 rooms (see Schedule L), which was consistent with the approved use and occupancy on record for the property, SFD with 6 room bed and breakfast (see Schedule A).

25. In 2023, City Staff identified that many of the licensed transient accommodations were currently operating a business under the incorrect licence type. As a result, bed and breakfast licences were removed from auto-renewal. Businesses were required to make an application for 2024, so that the City could review and ensure each property and business plan was eligible and compliant with City regulations.

26. Bed and breakfast licence holders were advised by letter that auto-renewal would not be available, and that an application for a 2024 licence would be required, and that all applications would include a property inspection (see Schedule M).

27. The Appellants applied for a 2024 bed and breakfast licence dated December 18, 2023, stating that 3 rooms were being used for transient accommodation (see Schedule N).

28. The inspection conducted on January 8, 2024, revealed that the principal structure at 867 Humboldt Street contained 6 separate self-contained dwelling units/suites with kitchens and bathrooms; 2 suites on the lower level/basement occupied by the Appellants and their family; 2 suites on the main floor – 1 suite which at the time was rented to a long-term tenant, and 1 guest suite available for rent short-term; and 2 guest suites available to rent short-term on the upper floor. The inspection also revealed that the Appellants did not serve breakfast to guests in a shared space, instead, cereal, granola bars, fruit, yogurt, and various beverages and a treat were provided in the pre-stocked kitchen within the guest suite.

29. Inspection photos and a floor plan depicting the layout observed upon inspection are attached (see Schedule O and P). The lower floor contains 2 separate dwelling units, each with a private bathroom and a defined kitchen area, and the Appellants are currently occupying both units on the lower floor with their children. It was observed that there was a space for a stove, but no stove was present at the time of the inspection in the suite being occupied by the Appellants children, however, the kitchen counter, cabinets, fridge, and kitchen sink remain. The main and upper floors each contain 2 separate self-contained dwelling units with private bathrooms and fully equipped kitchens for guest use. These are private units with locking doors accessed via interior hallways. Other than the hallways within the structure and pre-arranged access to the laundry room, there are no shared spaces.

30. There is no City record of any permits for any of the building, plumbing, and/or electrical work required to convert the structure from the approved use and occupancy, SFD with 6 room bed and breakfast, to 6 self-contained dwelling units/suites.

31. Work that is completed without permit is potentially unsafe and could pose a hazard to the occupants and the structure.

32. On January 18, 2024, the Licence Inspector advised the Appellants in writing that their application for a business licence to operate a bed and breakfast had been rejected because they were not operating a traditional bed and breakfast and the use/occupancy, and the configuration of the structure had changed significantly from what was approved.

III. Relevant Regulations

33. In relation to the property the relevant regulation is the *Zoning Regulation Bylaw*, which states in part:

> ***16(1)*** *A person must not use or occupy or allow or permit another person to use or occupy, land or a building in contravention of this Bylaw.*
>
> ***17(4)*** *Without limiting the generality of subsection (1), short-term rentals, whether as a principal or accessory use, are prohibited in all zones except*
>
> *(a) where they are expressly permitted subject to regulation applicable in those zones;*
> *(b) rental of no more than two bedrooms in a self-contained dwelling unit is occupied by the operator of the short-term rental; and*
> *(i) the self-contained dwelling unit is occupied by the operator of the short-term rental; and*
> *(ii) short-term rental complies with all regulations in Schedule D as if it were transient accommodation.*

34. A principal residence is defined in the *Zoning Regulation Bylaw* as "the usual place where an individual makes their home".

35. A self-contained dwelling unit is defined in the *Zoning Regulation Bylaw* as "a suite of rooms in a building designed for occupancy of one family which has a separate entrance, and kitchen and bathroom facilities". A kitchen is not defined in the bylaw, however, the Oxford English dictionary defines "kitchen" as "a room where food is prepared or cooked".

36. A single-family dwelling is defined in the *Zoning Regulation Bylaw* as "a detached building having independent exterior walls and containing only one self-contained dwelling unit".

37. Transient accommodation is defined in the *Zoning Regulation Bylaw* as "a) the use of land or a building for the temporary accommodation of visitors, and without limitation includes hotels, motels and bed and breakfast accommodation".

38. With regard to the unpermitted changes to the structure the relevant regulation is the *Building and Plumbing Regulation Bylaw*, which states in part:

6(1) *No person shall commence or continue any construction, alteration, reconstruction, demolition, removal, relocation or change the occupancy of any building, structure or plumbing system, including excavation or other work related to construction unless a building official has issued a valid and subsisting permit for the work.*

6(2) *No person shall occupy or use any building or structure:*

(a) Unless a valid and subsisting occupancy permit has been issued by a building official for the building or structure; or
(b) Contrary to the terms of any permit issued or any notice given by a building official.

IV. Argument

39. The Appellants purchased this property on June 15, 2022, without having confirmed the approved use/occupancy or layout of the structure on record with the City of Victoria, and do not dispute that the structure contains 6 suites, the result of extensive unpermitted work being done by the previous owner (see Appellants submission – page 2).

40. Because the use and occupancy of the structure was changed without permit or permission, there is no authorization for non-conforming short-term rental use that could make the property compliant with the Short-term Rental Regulation Bylaw.

41. The Appellants make much of what they allege various City staff have said, done, or not said or done since the City discovered the Appellants were operating without a business license in February 2023. Previous communications between the Appellants and City staff are not relevant to Council's determination of whether 867 Humboldt Street is compliant with City bylaws.

42. Consistent with the treatment of other bed and breakfast applications in 2023, the property at 867 Humboldt Street was not inspected nor was the application fully screened prior to a licencing decision being made in 2023. More careful reviews and inspections have been conducted as part of the 2024 application process for bed and breakfast accommodations, including 867 Humboldt Street. Therefore, the fact that the Appellants were issued a bed and breakfast licence in 2023 is not an indication that a 2024 licence should also be issued.

43. 867 Humboldt Street is not a bed and breakfast in form nor function and is not compliant with the City's bylaws.

Form

44. Unlike when the property was rezoned and then renovated under building permit to allow additional bedrooms to be rented for bed and breakfast use, there is no longer a common kitchen for service of breakfast, common bathroom, library, nor other shared space other than a foyer, corridors, and a laundry room.

45. The structure has been altered so that it is no longer a single-family dwelling with 6 bedrooms available to rent for bed and breakfast. Rather, it hosts 6 self-contained dwelling units.

46. Each of the 6 units is clearly a self-contained dwelling unit. Each has a separate entrance, and its own kitchen and bathroom. Each suite meets all the requirements of the definition of "self-contained dwelling unit" in the *Zoning Regulation Bylaw*.

47. Rooms are not being rented out of a principal residence. Rooms are not being rented out of a single-family dwelling.

48. The self-contained nature of the suites is not altered by the fact that they do not all have an exterior door as the separate entrance: that is the situation in many multiple dwelling buildings.

Function

49. The Appellants have advertised and rented several self-contained suites short-term since at least February 2023. The Appellants do not dispute that they have rented out self-contained suites on a short-term basis, and if licenced plan to continue to do so.

50. The rental of self-contained suites is not consistent with the rental of bedrooms within a single-family dwelling, which by definition contains only one self-contained dwelling unit; nor is it consistent with the rental of rooms out of a principal residence.

51. The provision of breakfast is not included in the advertising of the units reviewed by City staff, and Mr. Linnitt has advised the City that the Appellants do not serve breakfast. The provision of full kitchen facilities with "everything you need to make meals at home" is inconsistent with bed and breakfast use described in the policies in place when the RK-8 zone was approved – rental of bedrooms within a single-family dwelling, and provision of a morning meal with no food service after noon.

52. The suites are capable of uses other than bed and breakfast, and 3 were being occupied on a long-term basis on January 8, 2024.

Non-compliance with City Bylaws

53. The Licence Inspector says that evidence has not been submitted to satisfactorily demonstrate, in accordance with section 8(1) of the *Business Licence Bylaw*, that the Appellants have complied any and all applicable bylaws, regulations, and statutes.

54. The Appellants claim that the current zoning is vague and that their business operation fits within the broader scope of the word "transient", as a hotel. That argument is flawed. It is clear from the name of the zone – "RK-8 Zone, Humboldt Bed & Breakfast District", the Council

resolutions that enabled the rezoning, and the other material associated with the rezoning application, that the zone only allows – as per Council's clear intent when the property was rezoned in 1996 – bedrooms to be used for the purpose of bed and breakfast within a single-family dwelling (SFD).

55. The short-term rental of self-contained dwelling units is not permissible under and is in contravention of the RK-8 Zone and section 17(4) of the *Zoning Regulation Bylaw*.

56. Due to the unpermitted work completed by the previous owner, the structure is no longer an SFD, and what were originally bedrooms, some with water closets, are now self-contained dwelling units with kitchens and bathrooms. Therefore, it does not comply with the use allowed under the RK-8 Bed and Breakfast Zone.

57. Moreover, the property is not in compliance with sections 6(1) and 6(2) of the *Building and Plumbing Regulation Bylaw*. Work has been completed without permit, and the occupancy and use of the structure are significantly different than what is allowed under the Occupancy Permit.

58. As work has been completed without permit, there is no satisfactory evidence as to whether provincial codes such as the BC Building Code, Plumbing Code, or Fire Code have been complied with.

59. Work that has been completed without permit is potentially unsafe and could pose a hazard to the occupants and the structure. Areas where work has been completed without permit should not be occupied.

60. Therefore, the Licence Inspector submits that this appeal should be dismissed and the decision to refuse a business licence for a bed and breakfast at 867 Humboldt Street be upheld.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: April 25, 2024

Mark Fay, Manager (Administration) of Bylaw Services

CITY OF VICTORIA
1 Centennial Square
Victoria, BC V8W 1P6
victoria.ca

SCHEDULE A

OCCUPANCY COMPLETION PERMIT

The occupancy approved under this certificate refers to the construction authorized by the building permit(s) listed hereunder and such approval occupancy is applicable as of the date shown. The building or part thereof constructed under the authority of Building Permit(s) No.(s) **BP054355** may now be occupied in accordance with the approved occupancy herein described:

Building Address	**867 HUMBOLDT ST**
Legal Description	LT 1 PL 2632 VICTORIA
Approved Occupancy	**SINGLE FAMILY DWELLING WITH SIX ROOM BED AND BREAKFAST**
Permit Description	INTERIOR ALTERATION Part 9 Bldg Group C 3 storey 120.0 sq m sprinkler / fire alarm heritage (alternate compliance methods applied to exiting)
Dated this day:	**Mar 23, 2022**

CHIEF BUILDING OFFICIAL

This permit is issued pursuant to the authority contained in the City of Victoria Building Bylaw. In addition, the issuing of this Permit shall not relieve the owner or occupier from the responsibility of complying with the Zoning and Development Bylaw or any other pertinent Bylaw, Acts or Regulations. This Permit is not a representation or warranty that the Bylaws of the City of Victoria or other enactments have been complied with, since resource at the City only permit random review and inspections. The City of Victoria will accept no responsibility or legal liability should any person suffer loss, injury, or damage as a result of the building not complying with Bylaws. Accordingly, persons should make such independent investigations or inquiries as they see fit to determine whether the building complies with all relevant Bylaws or enactments.

SCHEDULE
PART 2.69

RK-8 ZONE, HUMBOLDT BED & BREAKFAST DISTRICT

Uses	1	The uses permitted in this Zone are:	
		(a)	all of the uses permitted in the R-K Zone, Medium Density Attached Dwelling District; and
		(b)	transient accommodation.
Parking	2	(1)	One parking space must be provided for the
			(a) each single family dwelling unit; and
			(b) each unit of transient accommodation.
Siting of Parking		(2)	Off-street parking spaces must be located in a rear yard or a side yard.
		(3)	An off-street parking space may be located behind another off-street parking space.

Adopted May 25/96

Guidelines

Bed and Breakfast Guidelines

BED AND BREAKFAST ESTABLISHMENTS

This is an updated edition of a 1985 report, which forms the basis of Victoria's Bed and Breakfast policy.

This is provided for information purposes only.

BED & BREAKFAST

To expand and diversify the City's tourism economy in a manner which is complementary to low density housing, City Council amended its zoning in 1985 to permit small bed and breakfast operations throughout Victoria's neighbourhoods. To qualify, the operator must live in a detached (single family) dwelling and rent no more than two bedrooms. The business is restricted in the City's Zoning Bylaw Schedule "D"

i.e.:

- No food services after 12 noon
- No liquor service
- Parking on site for each bedroom rented (may be stacked on driveway)
- No signs to be displayed

Local regulations vary across the Capital Region. As of March 1999, Esquimalt and Oak Bay prohibited bed and breakfast home occupations. Sidney permitted two persons only per home. Saanich and Langford allowed the use on a scale similar to Victoria, but restricted floor area rather than number of bedrooms. Sooke permitted up to three bedrooms on urban-sized lots and also imposed a limit on number of persons.

OTHER BED & BREAKFAST OPERATIONS IN NEIGHBOURHOODS REQUIRE REZONING

Proposals that differ from the criteria listed above (e.g. detached dwellings with more than two bedrooms for rent or businesses of any size based in a duplex, townhouse or apartment), require re-zoning.

In 1981 Council established the following criteria to evaluate rezoning applications:

- Proximity to major thoroughfares and bus routes, or on the perimeter of an established neighbourhood;
- Adequate site area to provide increased off-street parking;
- The building has heritage or special interest and its continued retention would be an asset to the community,

The following clause was added by City Council Nov. 9, 2000:

- Greater flexibility may be warranted in the application of the above criteria based on the characteristics of the surrounding land uses and location in the city.

Consideration will be given to:

- the impact on local parking
- the impact on the stock of affordable housing
- the numbers of similar business in the neighbourhood.

Note:
Between 1981 and 1999 about a dozen successful rezoning applications were approved. Approximately 20 more were approved during the 1999-2000-compliance program.

During 1999 City Council embarked on a zoning compliance program for Bed and Breakfasts that concluded in September 2000.
Where a compliance order applies, the following process was endorsed by Council on 8 February, 2001.

- Applicant decides to comply with City bylaw and codes.
- Applicant will provide a written undertaking that illegal uses are terminated until a business license (and all City permits) are obtained.
- Applicant submits a building permit application for the work involved in legalizing the actual use in compliance with codes. The plans will be circulated in standard building permit process:

The zoning administrator confirms any outstanding zoning issues. (If zoning administrator concludes rezoning is necessary, the applicant must give a written undertaking to comply with city bylaws and codes regardless of any rezoning outcome).

The permits and inspection staff confirm any code issues / conditions, other divisions / departments establish conditions e.g. driveway crossing, etc.

First stages of rezoning evaluation process may go concurrent with building permit application circulation. However, a standard rezoning condition will be that the public hearing will be held only after all issues:

- concerning the building permit have been cleared up and the building permit is ready for issue.

- The final public hearing occurs.
- The owner is required to obtain an occupancy permit within 180 days.
- A business license may be issued.

SCHEDULE D

Administration Department

MARK H. JOHNSTON, B.A., M.P.A.
Director of Administration / City Clerk

City Hall, #1 Centennial Square
Victoria, Vancouver Island
British Columbia V8W 1P6
Telephone: (604) 385-5711
FAX: (604) 361-0348

(Effective October 1 New Area Code: 250)

City of VICTORIA *British Columbia*

June 3, 1996

Ms. Mila Werbik
Humboldt House
867 Humboldt Street
Victoria BC V8V 2Z6

Dear Ms. Werbik:

SUBJECT: APC APPLICATION No. 96-07 - 867 HUMBOLDT STREET

At its meeting held on May 23, 1996, City Council adopted:

1. "Zoning Regulation Bylaw, Amendment Bylaw (No. 485)" - No. 96-38: to amend the Zoning Regulation Bylaw to create a new Zone which will permit transient accommodation and the uses in the R-K, Medium Density Attached Dwelling District, with parking requirements.

2. "Rezoning Bylaw (No. 895)" - No. 96-39: to rezone land known as 867 Humboldt Street to the new Zone to enable the use of up to four bedrooms for the purposes of a bed and breakfast business.

Please contact the Planning Department should you require any additional information on this matter.

Yours truly,

Robert G. Woodland
Administrative Manager
/lj
c: Director of Planning
Permit Clerk
Assistant Manager, Transportation

APPLICATION FOR REZONING OF PROPERTY LOCATED AT 867 HUMBOLDT STREET

(1) **Advisory Planning Commission Application No. 96-07:**

"ZONING REGULATION BYLAW, AMENDMENT BYLAW (NO. 485) - NO.96-38: to amend the Zoning Regulation Bylaw to create a new Zone which will permit transient accommodation and the uses in the R-K, Medium Density Attached Dwelling District, with parking requirements.

"REZONING BYLAW (NO. 895) - NO. 96-39: to rezone land known as 867 Humboldt Street to the new Zone to enable the use of up to four bedrooms for the purposes of a bed and breakfast business.

Ms. Vlasta Booth, 867 Humboldt Street

Ms. Booth spoke on behalf of the applicant, Mila Werbik. She circulated a diagram of the site, describing the adjacent properties. She also provided photographs of the outside of the house at 867 Humboldt Street, as well as some interior views. Ms. Booth advised that the house was built in 1893, and totally renovated in 1985. It is heritage architecture that visitors to the City view as they travel along Humboldt Street from the downtown core. She advised that the applicants have canvassed the neighbourhood, and received no negative comments. They are able to provide three stacked parking places, and experience has shown that approximately 50% of their guests arrive without a vehicle.

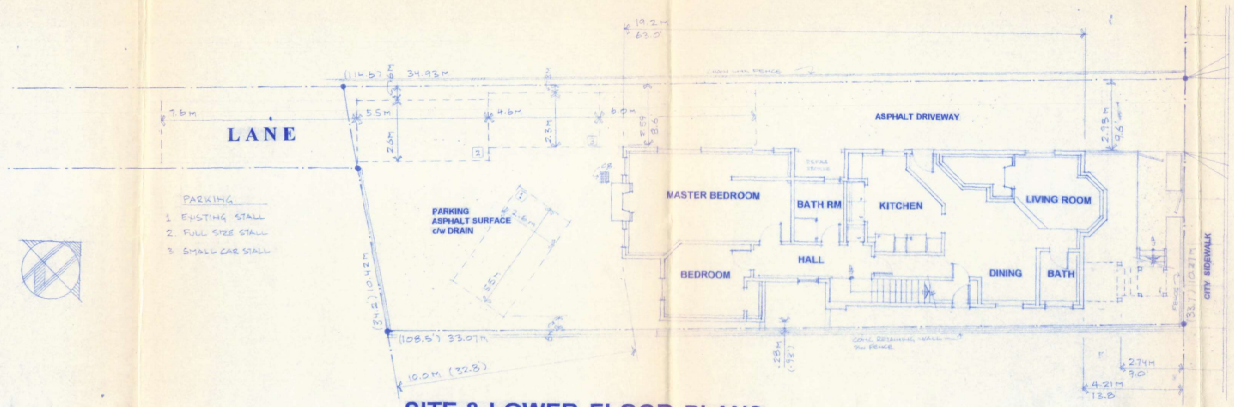
(2) **BYLAW MOTIONS - CONSIDERATION OF THIRD READING AND ADOPTION (From Public Hearings)**

It was moved by Councillor Lowe, seconded by Councillor Lunt, that the following bylaws **be given third reading and adopted:**

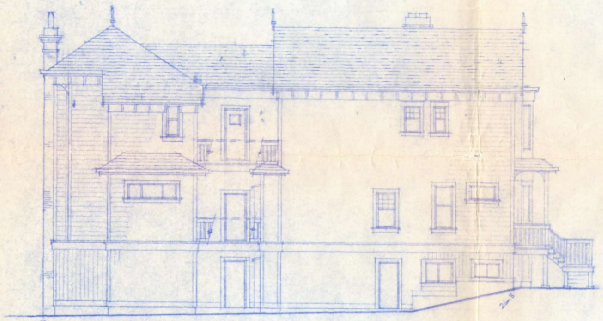
"ZONING REGULATION BYLAW, AMENDMENT BYLAW (NO. 485)"	96-38
"REZONING BYLAW (NO. 895)"	96-39

Carried

SCHEDULE E
11(a)

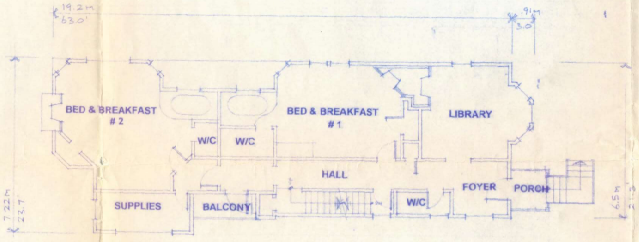


SITE & LOWER FLOOR PLANS



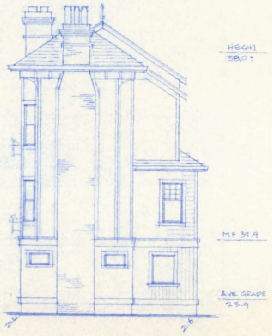
LEFT SIDE ELEVATION

FRONT ELEVATION

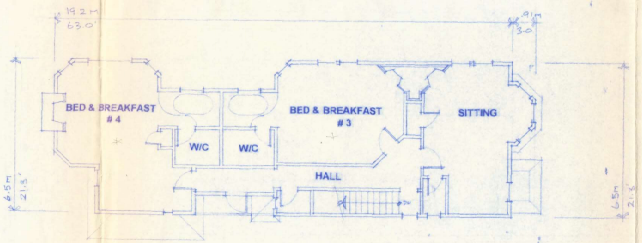


MAIN FLOOR PLAN

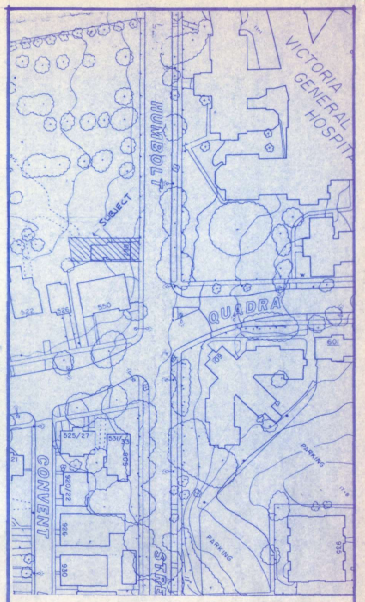
RIGHT SIDE ELEVATION



REAR ELEVATION



UPPER FLOOR PLAN



SITE DATA

LEGAL DESCRIPTION
LOT - 1
DISTRICT LOT - 1698
VICTORIA CITY
PLAN - 2632

OWNERS
JARMILA WERBIK

ZONING EXISTING
R-K MEDIUM DENSITY ATTACHED DWELLING DICTRICT

PROPOSED ZONING
NEW ZONE - B & B HUMBOLT
(4 ROOM BED & BREAKFAST)

ITEMS	EXISTING	PROPOSED
ZONING	R-K	NEW ZONE
SITE AREA	349.24 sq.m.*	349.24 sq.m.
LOT WIDTH	10.27 m.*	10.27m.
LOT DEPTH	34.0 m.	34.0 m.
FRONT SETBACK	2.7 m.*	2.7 m.
REAR SETBACK	10.0 m.	1.31 m.
EAST SIDEYARD SETBACK	.28 m.*	.28 m.
WEST SIDEYARD SETBACK	2.62 m.*	2.62 m.
SITE COVERAGE	36 %	36 %
HEIGHT	10.36 m.*	10.36 m.
FLOOR SPACE RATIO	1.01 TO 1.0	1.01 TO 1.0
FLOOR SPACE		
-GROUND FLOOR	120.90 sq.m.	120.90 sq.m.
-MAIN FLOOR	119.75 sq.m.	119.75 sq.m.
-UPPER FLOOR FLOOR	113.32 sq. m.	113.32 sq.m.
TOTAL FLOOR AREA	353.97 sq.m.	353.97 sq.m.
FLOOR SPACE RATIO	1.01 TO 1.0	1.01 TO 1.0
PARKING	1 SPACE	3 SPACES

VICTORIA DESIGN LTD.
646 FISGARD ST. VICTORIA, B.C. V8W 1R8 PH: 382-3334

DRG. No. PROPOSAL
SHT. No. 1 OF 1
SCALE 1/8"=1'-0"
DATE NOV 17 93
DRAWN J.V.W.
APPROVED

PROPOSED REZONING
867 HUMBOLT STREET
VICTORIA.....B.C.

PLANNING DEPT.

address 867 Humboldt St

APC # 96-07

~~ADDRESS:~~

RECEIVED
FEB 12 1996
PLANNING DEPARTMENT

SCHEDULE E

File

96-07 11(b)

RECEIVED

MAY 13 1996

PLANNING DEPARTMENT

May 10, 1996

To the Owners/Occupiers
to the Lands Adjacent to **867 Humboldt Street**,
Victoria, B.C.

SUBJECT: REQUEST FOR REZONING OF PROPERTY LOCATED AT: 867 HUMBOLDT STREET

1. **APPLICATION FOR REZONING OF PROPERTY LOCATED AT 867 HUMBOLDT STREET**:

   ZONING REGULATION BYLAW, AMENDMENT BYLAW (NO. 485) - NO. 96-38

   To amend the Zoning Regulation Bylaw to create a new Zone which will permit transient accommodation and the uses in the R-K Zone, Medium Density Attached Dwelling District, with parking requirements.

   REZONING BYLAW (NO. 895) - No. 96-39

   To rezone land known as 867 Humboldt Street to the new Zone to enable the use of up to four bedrooms for the purposes of a bed and breakfast business.

   New Zone: RK-8 Zone, Humboldt Bed & Breakfast District

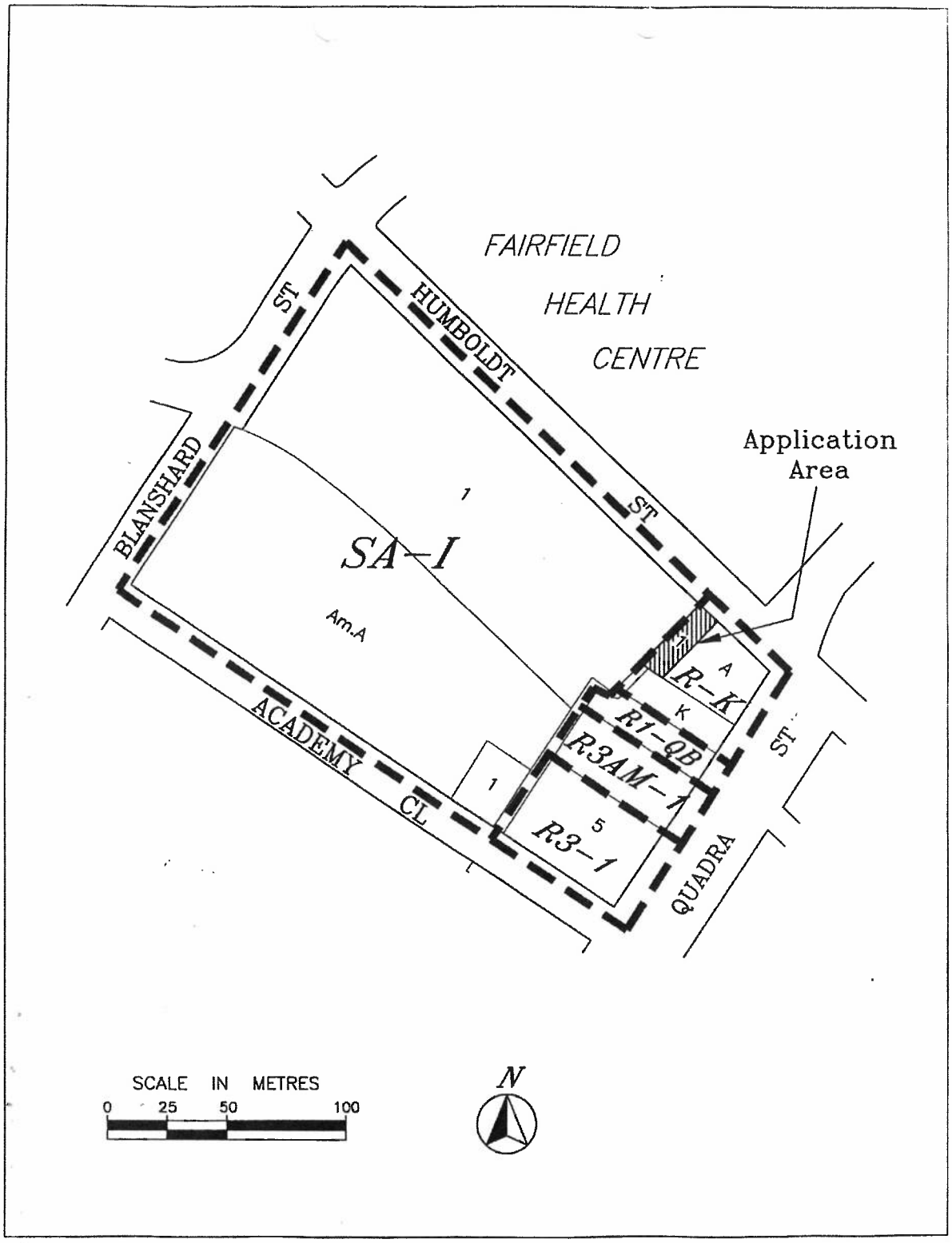
   Legal description of 867 Humboldt Street:
   Lot 1, District Lot 1698, Victoria City, Plan 2632

   Existing Zone of 867 Humboldt Street:
   R-K Zone, Medium Density Attached Dwelling District

The provisions of "Public Hearing Notification Bylaw" (No. 86-25) require that notice of the hearing on this matter must be mailed or otherwise delivered to the owners and occupiers of all real property within the area that is subject of the rezoning and within a distance of 22 metres from the subject area. All those who believe that their interest in property is affected by the above matters will be given an opportunity to be heard by City Council at a Public Hearing to be held in the Council Chamber, City Hall, on **THURSDAY, MAY 23, 1996** at 7:30 p.m.

The proposed bylaws may be inspected prior to the hearing at City Hall, #1 Centennial Square, Victoria, British Columbia, between the hours of 8:00 a.m. and 4:30 p.m. from **Monday, May 13, 1996 until Thursday, May 23, 1996**, except Saturdays and Sundays. Further enquiries may be directed to the Planning Department, Telephone 361-0382.

(SEE REVERSE FOR MAP)


FAIRFIELD
HEALTH
CENTRE
HUMBOLDT ST
BLANSHARD ST
ACADEMY CL
QUADRA ST
Application Area
SA-1
Am.A
R-K
R1-QB
R3AM-1
R3-1
SCALE IN METRES
0 25 50 100
N

March 20, 1996

TO: His Worship Mayor Bob Cross and Members of Council Assembled

FROM: Secretary, Advisory Planning Commission

RE: **APC 96-07**
867 HUMBOLDT STREET
Application of Mila Werbik to rezone Lot 1, District Lot 1698, Victoria City, Plan 2632 from R-K (medium density attached dwelling) to a new zone for Bed and Breakfast

1.0 SUMMARY

The application is to increase a current zoning entitlement of two bedrooms to four bedrooms for bed and breakfast use as outlined in the applicant's appended summary page entitled Rezoning Submission February 14, 1996. The application is consistent with the City's Official Community Plan, 1995 and with its general policies for larger bed and breakfast businesses.

At its meeting of March 19, 1996, the Advisory Planning Commission considered this application and voted unanimously to endorse Staff's recommendation.

Majority Report
- Proposal is an asset to the City.
- Provides service close to downtown for tourists.
- Applicants have done a great job with renovations of the character building.
- Great complement to the efforts of the Province to renovate St. Ann's Academy.

2.0 RECOMMENDATION

2.1 Advisory Planning Commission Recommendation

That the application be forwarded for consideration at a public hearing and that the Solicitor be instructed to prepare the necessary zoning bylaw changes as outlined in Appendix A.

3.0 BACKGROUND

3.1 The Proposal

The proposal is to allow an existing old house to be used as a dwelling unit with four bedrooms rented for bed and breakfast use. The current zone allows up to two bedrooms to be used for bed and breakfast.

Details are as follows:

Item	Proposal	Current Zone Standard
Site Area m^2	349	460 min.
Site Coverage (%)	36	40 max.
Total Floor Area m^2		
1st & 2nd storey	232	280 max.
Total building	353	420 max.
Height (m)	10.3*	7.6 max.
Setbacks (m)		
Front	2.7*	7.5 min.
Rear	10.0	8.26 min.
South Side	.93*	1.5 min.
North Side	2.59*	3.0
Parking	5**	5

* Note: existing non-conforming condition
** Parking is stacked one behind another in the rear and side yard.

3.2 Existing Site Development and Development Potential

The existing old house has been extensively renovated. The site is substandard in terms of area and width. Under the current R-K zoning the site could be developed as a new detached dwelling or a form of public building, e.g. church. The size of the house and the availability of parking appears to allow the house to be converted to a duplex subject to the City's R1-B conversion standards.

3.3 Land Use Context

The site adjoins a 16 unit apartment building (east), its rear yard abuts the rear yard of a detached dwelling. To the west is the north yard of the St. Ann's Academy office building under renovation. Opposite across Humboldt Street is the Victoria General Hospital, Fairfield. A short distance to the south fronting Quadra Street in the same block is a bed and breakfast use of similar size.

3.4 Current Development Policy

3.4.1 Official Community Plan - 1995

The site lies on the edge of an apartment residential established district in which some ancillary commercial uses and home based businesses are permitted. The Plan also states as an objective on page 4.6 "to recognize the increasing importance of visitors to Victoria's economy and encourage the expansion and diversification of services to visitors."

3.4.2 Suburban Neighbourhoods Report Fairfield Chapter 1984

The site is designated as "conservation townhouses and general residential." The policy for this area includes "adapt existing housing stock to meet the varied social and economic needs of residents (duplex, apartment, boarding, rooming, housekeeping apartments, rest homes and child care)."

3.4.3 Policy for Bed and Breakfast

In 1981 Council established a zone category and rezoning evaluation guidelines for this category of use (copy of APC April 23, 1981 report appended). The guidelines support locations that have a beneficial impact on the community, e.g. restoration of a heritage building and grounds with ample parking and privacy. Some examples of rezonings that have occurred since 1981 are:

Beaconsfield	998 Humboldt St.
Abigails	906 McClure
Dashwood	1 Cook Street
Holland House	595 Michigan
Haterly	243 Kingston
Henderson	522 Quadra St.

The Municipal Act was amended in 1985 to allow any detached dwelling to rent out up to two bedrooms for tourists.

3.4 Conclusions

The applicant has submitted letters of support from several neighbours as well as the Executive Officer of Tourism Victoria, the General Manager of the Downtown Victoria Association and the Planning and Zoning Committee Chair of the Fairfield Community Association. The applicant has also submitted registration data confirming that many of their guests arrive without cars.

4.0 STAFF RECOMMENDATION

That the application be forwarded for consideration at a public hearing and that the Solicitor be instructed to prepare the necessary zoning bylaw changes as outlined in Appendix A.

2

APPENDIX A

The following uses are permitted:

1. a) All the uses permitted in the R-K zone

   b) transient accommodation

2. One parking space shall be provided for the principle residence, and one parking space shall be provided for each transient accommodation unit.

3. All required parking shall be sited in the rear yard or the side yard and a parking space may be located behind another parking space.

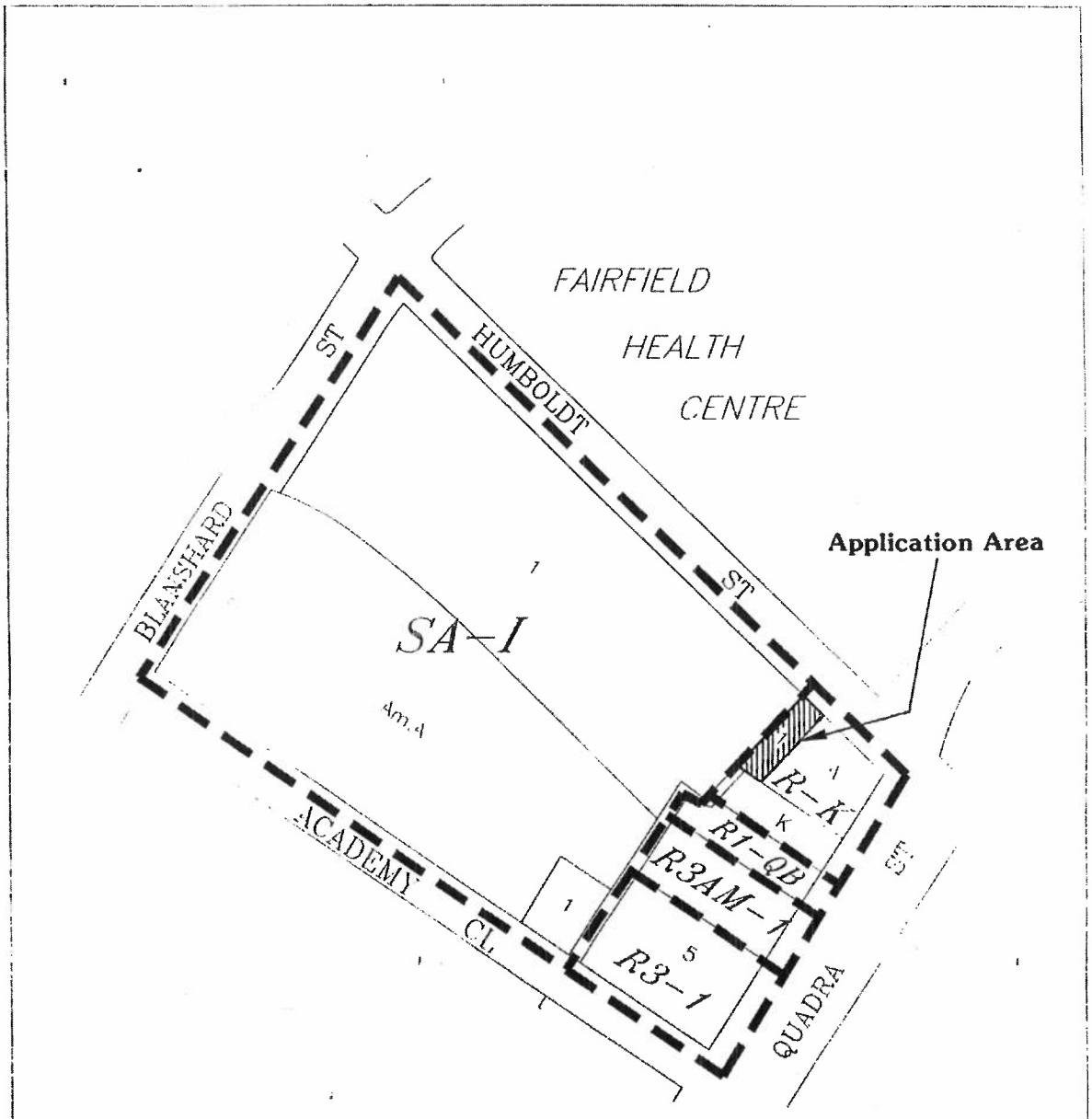
(a) At least one parking space per rental room and one space for the residential occupancy shall be provided on the same lot as that occupied by the building. Parking spaces on any lot may be immediately behind other parking spaces;

(b) No exterior alterations save those approved by the Board of Variance or required to meet the standards of other statutes shall be made to the building;

(c) Advertising shall be limited to one sign not exceeding 2 sq. ft. (0.186 m^2) in area stating the address and the words 'BED & BREAKFAST' only.

Respectfully submitted,

Secretary,
Advisory Planning Commission


FAIRFIELD
HEALTH
CENTRE
HUMBOLDT ST
BLANSHARD ST
Application Area
SA–1
Am.4
R–K
RT–QB
R3AM–1
R3–1
ACADEMY CL.
QUADRA ST.
SCALE IN METRES
0 25 50 100
N
VICTORIA
PLANNING DEPARTMENT
DIGITAL MAP
ADDRESS 867 HUMBOLDT STREET
APC 96-07

2

867 HUMBOLDT STREET
REZONING SUBMISSION - FEBRUARY 14, 1996

We submit this application for rezoning for 867 Humboldt St. in order to obtain a site specific Bed & Breakfast zoning in place of our present RK townhouse zoning. We believe there is a precedent of exactly the same type of zoning we are requesting that took place in 1990 for 522 Quadra St.

867 Humboldt St. was built in 1893 and was totally renovated (raised, rewired, replumbed, insulated, refinished) in 1985. The property is contiguous to the St. Ann's Academy lands and is the first real example of heritage architecture that tourists glimpse as they proceed along Humboldt St. from the downtown core. The proximity to downtown, the lack of a cohesive residential neighbourhood, and the number of commercial properties beside 867 Humboldt St. indicates that the neighbourhood will not be adversely affected by this rezoning. The original St. Joseph's hospital lands are directly across the street, the Red Cross building is diagonally across the street, and the St. Ann's Academy is beside the property. We assure the city there will be no parking problems in the area and all our neighbours indicate approval of this type of rezoning.

Letters of approval for this rezoning accompany this proposal from the Downtown Victoria Association and the Fairfield Community Association whose jurisdiction overlap in this neighbourhood.

We supply 3 stacked parking spaces on the property for this rezoning. (Actually more are possible.) The present 1986 Bed & Breakfasting bylaw allows for 2 stacked parking spaces. In actual practice we have space at the rear of the property for 3 cars to enter, park, turn around, and exit, but city parking requirement require a larger legal turn around so our application is for stacked parking. Our experience has been that approximately 50% of our guests arrive without cars so that we are sure in the short and long term we will not create any parking problems for our neighbourhood.

Visitors to our city are looking for the type of tourist accommodation that Humboldt House supplies. We feel that we are a credit to Victoria's international tourist reputation and ask that the city allow us to extend our own personal style of hospitality in the ensuing years to a larger number of tourists.

1 2

April 23, 1981

His Worship Mayor W.D. Tindall
and Members of Council Assembled,
City of Victoria.

Subject: Study Case # 221
R-BB Residential - Bed & Breakfast District

At its meeting of April 15, 1981 the Advisory Planning Commission considered a draft for a new zoning district 'Bed & Breakfast Accommodation'. Various individuals in the City have indicated an interest in operating a year round 'Bed & Breakfast' business.

If such a new zone is to be incorporated within the zoning bylaw - certain general criteria should be established as guidelines to the suitability, or otherwise, of individual homes to provide bed and breakfast facilities without detrimentally affecting neighbouring properties.

Suggested criteria are:

(a) Proximity to major thoroughfares and bus routes, or on the perimeter of an established neighbourhood;

(b) Adequate site area to provide increased off-street parking;

(c) Adequate floorspace within the existing building to meet the proposed occupancy;

(d) The building has heritage or special interest and its continued retention would be an asset to the community.

RECOMMENDATION:

That Council consider incorporating the following Part 1.5, R-BB Zone within the Zoning Bylaw.

Part 1.5

R-BB Zone, Single Family Dwelling - Bed & Breakfast District

Permitted Uses

1. Single Family Dwellings and customary accessory uses subject to the "R-1B Single Family Dwelling District" siting, site and parking regulations.

2. In addition buildings may be used for providing bed and breakfast transient accommodation in association with residential occupancy provided that:

... / 2

May 2, 1985

TO: Chairman and Members
Committee of the Whole Council

FROM: Study Committee
Advisory Planning Commission

RE: Study Case #214-221
Zoning Amendments to Permit Limited Bed & Breakfast Use in Single Family Dwellings

---

BACKGROUND

"Limited bed and breakfast" use is the business of providing one or two bedrooms and morning meals to tourists within a single family dwelling. (residential accessory use).

The Minister of Municipal Affairs' May 11, 1984 letter on this matter (appended), indicated preference for easing restrictions in contrast to the City's current zoning policy.

In Victoria, "bed and breakfast" use is generally prohibited except in rare cases where site specific zoning has been obtained. In 1981, Council established the "R-BB Bed & Breakfast Zone" (copy appended), along with the following criteria for its use.

(a) Proximity to major thoroughfares and bus routes, or on the perimeter of an established neighbourhood;

(b) Adequate site area to provide increased off-street parking;

(c) Adequate floorspace within the existing building to meet the proposed occupancy;

(d) The building has heritage or special interest and its continued retention would be an asset to the community.

The City's policy and zoning has failed to generate any significant community response.

Local regulations vary across the region. Oak Bay, like Victoria, prohibits bed and breakfast use, while Saanich* and the Electoral Areas* permit up to four visitors in any detached dwelling; Sidney* permits two visitors in any detached dwelling. On June 4, 1984, Esquimalt amended its zoning to permit three rooms to be rented in a self-contained dwelling unit.

The APC Study Committee concluded that to expand and diversify the City's tourism economy in a manner complimentary to residential use, it would be appropriate to permit "limited bed and breakfast" throughout Victoria's single family areas by way of a general zoning amendment.

RECOMMENDATION:

1. That the following policies be adopted by City Council:

(a) Bed and breakfast use permitted in any detached single family dwelling in any zone where residential is a permitted use, subject to:

i. limit of two bedrooms;
ii. no food services after 12 noon;
iii. no liquor service;
iv. parking on site for each bedroom rented (may be stacked on driveway);
v. no signs to be displayed.

*Unlike Victoria, Saanich, CRD and Sidney consider bed and breakfast clients to be equivalent to "roomers" or "boarders".

(b) All bed and breakfast businesses should be encouraged to be members of a reputable registry service to ensure high standards for the community and travelers.

2. It is further recommended that if Council proceeds with these amendments, community organizations should be advised in advance of setting the public hearing.

Notes:

The "limited bed and breakfast" use should be implemented by way of a general zoning amendment, to be drafted by the City Solicitor, e.g. amendment to Home Occupation, Schedule "D".

Proposals that do not meet the criteria listed in recommendation (a) must be subject to individual re-zoning applications. (as provided for in Council's 1981 policy).

SCHEDULE D

HOME OCCUPATIONS

1. Where home occupations are permitted pursuant to the provisions of this bylaw, the following conditions shall apply to the use:

Location 2. For the purposes of a home occupation, the location of a business is the address at which the operations of the business are managed.

Exception 3 A home occupation is not required to be operated wholly within a dwelling unit where the work is undertaken entirely off the lot on which the dwelling unit is located.

Prohibition 4 The sale of goods to customers attending on the lot on which the dwelling unit is located is prohibited.

Permitted Uses 5 The following uses are permitted as home occupations:

(a) artist studio;

(b) mail order, provided that no merchandise is sold to customers attending on the lot on which the dwelling unit is located;

(c) making, processing and assembly of products on a small scale;

(d) manufacturing agent;

(e) personal and professional services, including barber, hairdresser, bookkeeper, medical therapy;

(f) teaching, provided that attendance is limited to 5 persons in a detached dwelling and to 1 person in a duplex or multiple dwelling;

(g) testing, servicing and repairing of goods.

Prohibited Uses 6 (1) All uses that are noxious or offensive to any other dwelling units or the general public by reason of emitting odour, dust, smoke, gas, noise, effluent, radiation, broadcast interference, glare, humidity, heat, vibration, or hazard or any other emission are prohibited.

Prohibited Uses (continued)

(2) The following uses are prohibited:

(a) except as provided in Section 11, bed and breakfast;

(b) car repairs and garages;

(c) clubs;

(d) kennels;

(e) radio dispatch services;

(f) restaurants;

(g) retail stores;

(h) salvage lots;

(i) storage lots;

(j) except as provided in Section 11, transient accommodation;

(k) in any building which has been converted from single family dwelling to duplex, multiple dwelling, boarding house, rooming house, or housekeeping apartment, pursuant to the applicable provisions of this bylaw, music teaching or any business which results in the transmission of sound.

Stock in Trade

7 Except for one licenced vehicle, which shall be a car, van, or pickup truck, no business-related materials, including machinery or vehicles, shall be visible at any time on any lot on which a home occupation is carried out nor shall any machinery or vehicles be parked or stored on the lot unless completely enclosed within a building.

Limitations

8. (1) Subject to this section, not more than one person shall be engaged in any home occupation and the person shall reside on the lot on which the home occupation is carried on.

(2) Where any lot upon which a home occupation is carried on has a boundary or portion of a boundary in common with any lot which is located in a zone which permits retail use, then no more than two persons may be engaged the home occupation where one of the persons resides on the lot on which the home occupation is carried on.

(3) This section does not apply to any employees of a home occupation who at no time attend on the lot on which the home occupation is carried on, nor park in the immediate vicinity of the lot.

9. No more than one home occupation shall be carried on in any dwelling unit.

Advertising

10. Except as expressly permitted in this bylaw, or in the Sign Bylaw, no sign or other advertising device or advertising matter may be exhibited or displayed on any lot on which a home occupation is being carried on.

11. Subject to the following requirements, where any building is used as a single family dwelling, up to two bedrooms may be used for transient accommodation as a home occupation.

(1) Notwithstanding Section 4, meals or food services may be provided to any customers but not after 12:00 noon.

(2) No liquor shall be provided to any customers.

(3) One parking space for each room available for transient accommodation shall be provided on the lot and a parking space may be located behind another parking space

(4) No sign may be erected, used, or maintained for the purpose of advertising transient accommodation use within a single family dwelling.

FAXED TO: City . Victoria, ATTN.: Dan Scoone

FAX #: 250-361-0388

TOTAL # OF PAGES: 1

SCHEDULE G

827 Humboldt

Humboldt House

Bed & Breakfast

867 Humboldt Street Victoria, B.C. V8V 2Z6
Fax: (250) 383-6402 E-mail: rooms@humboldthouse.com
Tel: (250) 383-0152

96-07

November 21, 1999

City Of Victoria, Bylaw Enforcement Division
#1 Centennial Square
Victoria, BC, V8W 1P6
Attention: Dan Scoones

Dear Mr. Scoones:

Re: Bed & Breakfast Compliance Program

We have been identified on your list of "Illegal Bed & Breakfast Cases," as having extra unapproved rooms.

As you know, we underwent successful rezoning in 1996, and are approved to rent out four rooms for transient accommodation. We also have a business license and pay all of the necessary GST, PST, and 2% Municipal taxes. As you also know, we have an additional room and are just finishing the specifications to obtain the necessary Change Of Use building permit to make this room legal. Mr. Roy Thomassen (City Of Victoria Building Inspector) has informed us that we need only finish the fire escape and fire alarm system (which are both underway) to receive this permit.

We have removed the fifth, not-yet approved room from our advertising, and will not be renting it out until the change of use permit is issued. We would kindly ask you to remove our name from the list of Illegal Bed & Breakfast Cases and also inform Tourism Victoria of our status as a legal, four-room Bed & Breakfast. Perhaps we could have a letter from you for our records as well.

Thank you for your time and efficiency on this matter. We look forward to working with you in the future.

Yours sincerely,

David Booth / Jarmila [Mila] Werbik
Owners, Humboldt House B&B Inc.

SCHEDULE H

FILE APC 96-07 PLANS

THE CITY OF VICTORIA

Permits and Inspections Division
Planning & Development Department
City Hall, #1 Centennial Square
Victoria, British Columbia V8W 1P6
Tel (250) 361 0342 Fax (250) 385 1128
http://www.city.victoria.bc.ca

OCCUPANCY/ COMPLETION PERMIT

The occupancy approved under this certificate refers to the construction authorized by the building permit(s) listed hereunder and such approval occupancy is applicable as of the date shown. The building or part thereof constructed under the authority of Building Permit(s) No.(s) **28377**

may now be occupied in accordance with the approved occupancy herein described:

Building Address	**867 HUMBOLDT STREET**
Legal Description	LOT 1 PLAN 2632
Approved Occupancy BREAKFAST UNITS	**SINGLE FAMILY DWELLING TO INCLUDE SIX BED &**
Permit Description	ALTER & CONVERT
Dated this day:	**Wednesday, August 16, 2000**

CHIEF BUILDING INSPECTOR

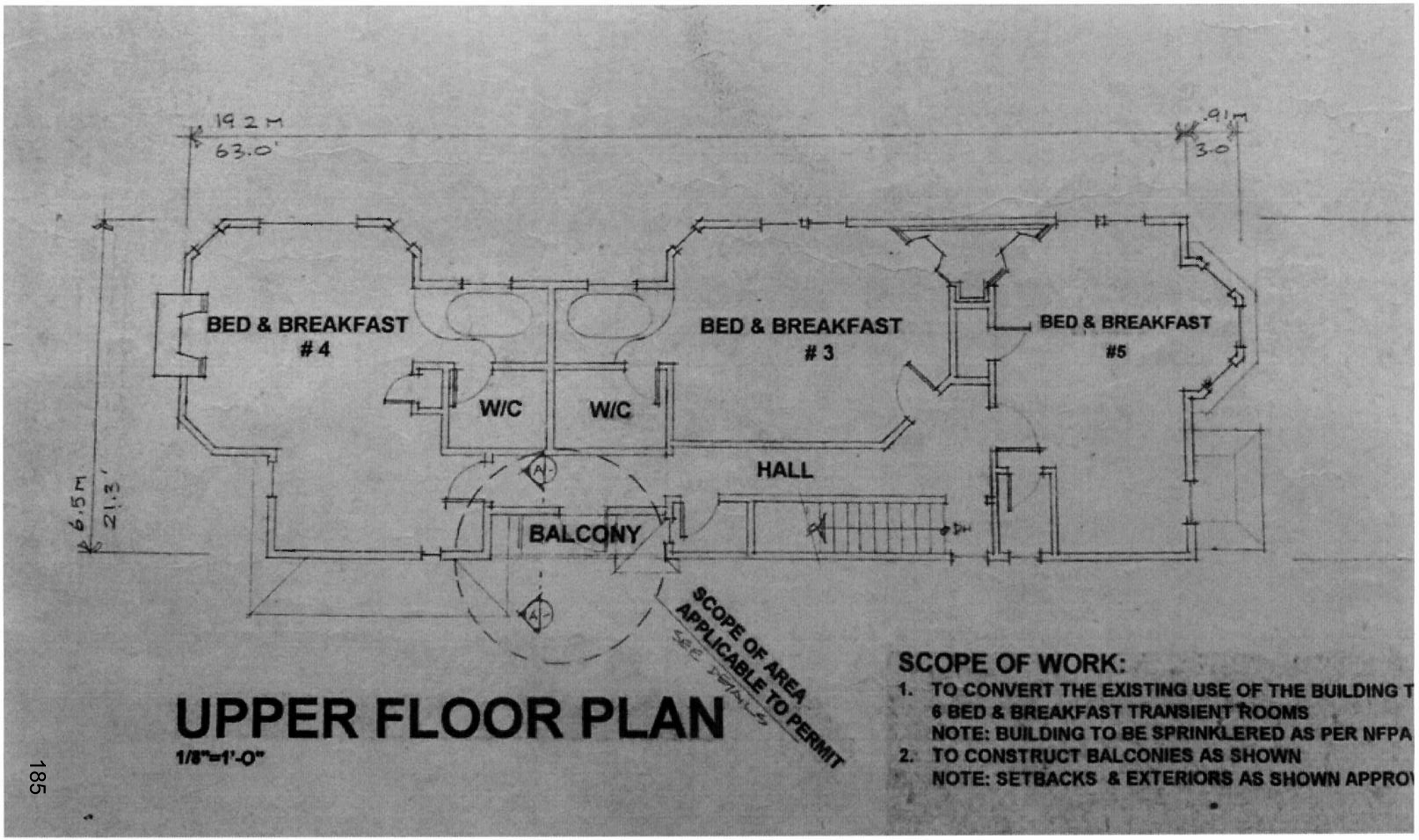
This permit is issued pursuant to the authority contained in the City of Victoria Building Bylaw. In addition, the issuing of this Permit shall not relieve the owner or occupier from the responsibility of complying with the Zoning and Development Bylaw or any other pertinent Bylaw, Acts or Regulations. This Permit is not a representation or warranty that the Bylaws of the City of Victoria or other enactments have been complied with, since resource at the City only permit random review and inspections. The City of Victoria will accept no responsibility or legal liability should any person suffer loss,

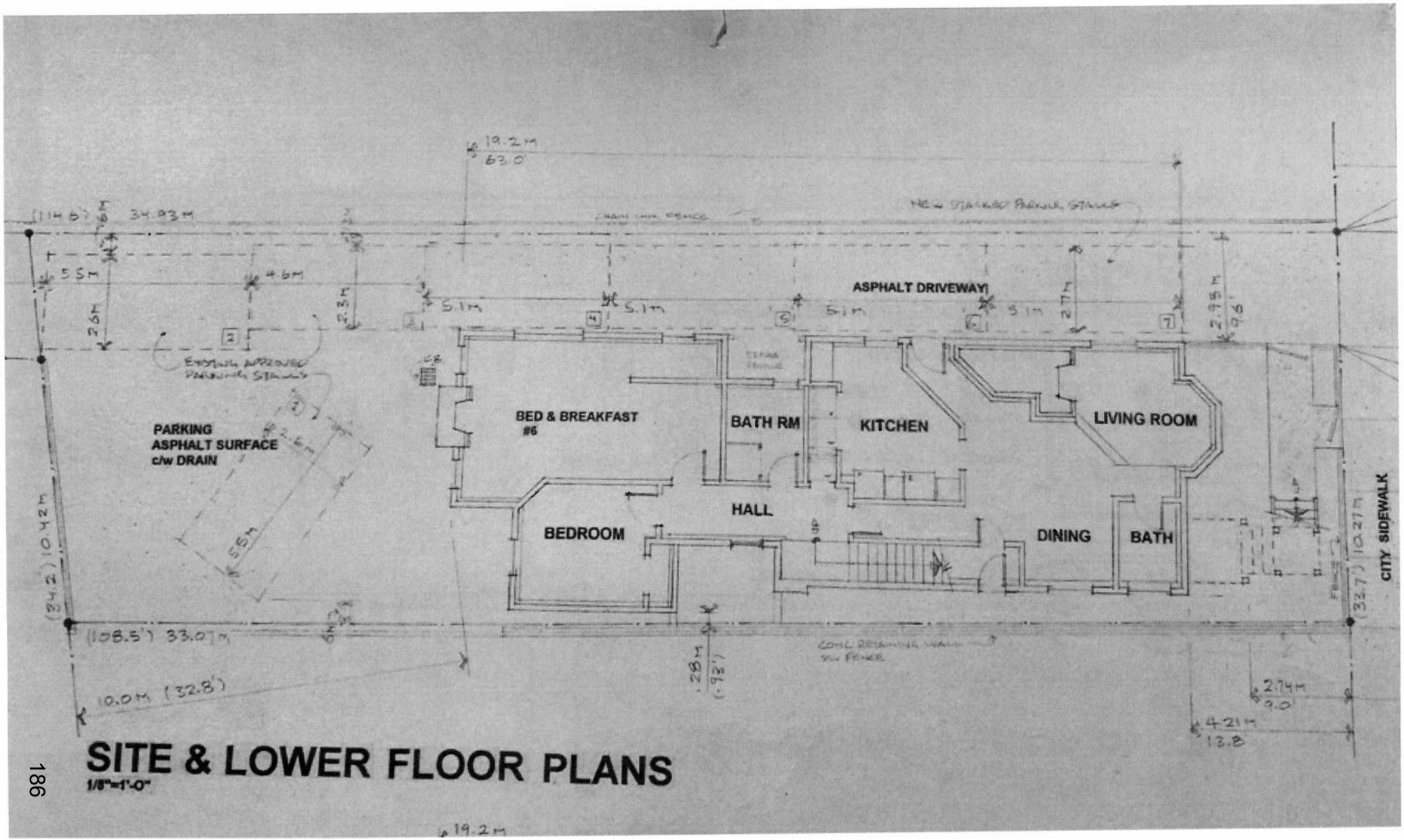
BUILD#03 - Occupancy/Completion Permit

Revised 04/07/98

SCHEDULE I

21.3'
6.5M
PORCH
FOYER
LIBRARY
W/C
BED & BREAKFAST #1
HALL
SCOPE OF AREA APPLICABLE TO PERMIT
SEE DETAILS
W/C
W/C
BALCONY
SUPPLIES
BED & BREAKFAST #2
19.2M
63.0'
7.22M
23.7'
MAIN FLOOR PLAN
1/8"=1'-0"

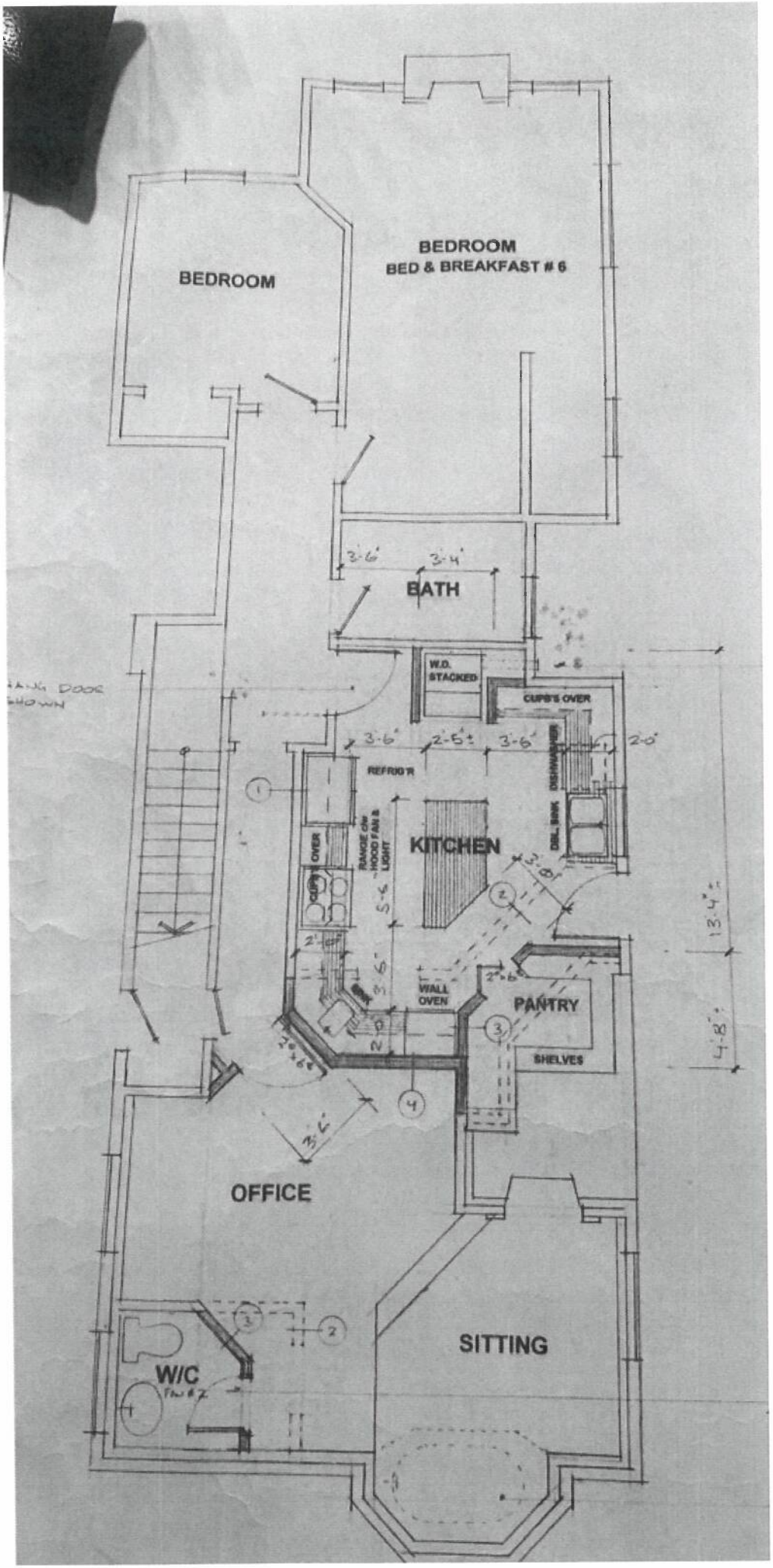

19.2 M
63.0'
.91 M
3.0
BED & BREAKFAST
4
BED & BREAKFAST
3
BED & BREAKFAST
#5
W/C
W/C
HALL
BALCONY
6.5 M
21.3'
SCOPE OF AREA
APPLICABLE TO PERMIT
SCOPE OF WORK:
1. TO CONVERT THE EXISTING USE OF THE BUILDING T
6 BED & BREAKFAST TRANSIENT ROOMS
NOTE: BUILDING TO BE SPRINKLERED AS PER NFPA
2. TO CONSTRUCT BALCONIES AS SHOWN
NOTE: SETBACKS & EXTERIORS AS SHOWN APPRO
UPPER FLOOR PLAN
1/8"=1'-0"



SITE & LOWER FLOOR PLANS

1/8"=1'-0"

SCHEDULE J


BEDROOM
BEDROOM
BED & BREAKFAST # 6
BATH
3'-6"
3'-4"
W.D. STACKED
CUPB'S OVER
3'-6"
2'-5"±
3'-6"
2'-0"
REFRIG'R
DISHWASHER
DBL. SINK
KITCHEN
RANGE c/w HOOD FAN & LIGHT
CUPB'S OVER
5'-6"
3'-0"
13'-4"±
2'-6"
3'-6"
WALL OVEN
PANTRY
SHELVES
4'-8"±
OFFICE
SITTING
W/C

SCHEDULE K

Mikado suite at Humboldt House

★ New · Victoria, British Columbia, Canada

Share Save

Entire rental unit hosted by Matthew

4 guests · 1 bedroom · 1 bed · 1 bath

Park for free

This is one of the few places in the area with free parking.

aircover

Every booking includes free protection from Host cancellations, listing inaccuracies, and other issues like trouble checking in.

Learn more

Nestled in the heart of downtown Victoria, steps away from Beacon Hill Park, the legislature and waterfront this historic house is one of the finest in Victoria.

The suite has a full kitchen with everything you need to make meals at home, you will have access to a shared laundry room should you need it.

It has a single queen bed, additional bedding options can be made available upon request.

What this place offers

- Kitchen
- Wifi
- Free parking on premises
- TV
- Washer
- Free dryer – In building
- Air conditioning

~~$147 USD~~ $117 USD
night

CHECK-IN	CHECKOUT
02-12-2023	02-13-2023

GUESTS
1 guest

Reserve

You won't be charged yet

$147 USD x 1 night	$147 USD
Special offer	-$29 USD
Service fee	$17 USD
Taxes	$21 USD
Total	**$156 USD**

Report this listing

SCHEDULE L

1038938

TRANSIENT – BUSINESS LICENCE APPLICATION

FINANCE DEPARTMENT
Business Licensing
1 Centennial Square
Victoria, B.C. V8W 1P6

For information, or assistance completing this form, please contact the Business Licence Office at 250.361.0572 or by email at businesslicence@victoria.ca. Or fax 250.361.0560. You can mail your completed application to the above address.

IMPORTANT: The information required by this application is necessary to fully evaluate your request for a Business Licence. Incomplete forms will **not** be processed. Completion of this application does **not** guarantee approval of a Business Licence. Approved licences will be issued **only** upon receipt of payment of Business Licence fee.

Conducting business without a Business Licence is an **offence** for which penalties are prescribed. The minimum penalty in this case is a fine of $250 per day, for each day that the offence continues, pursuant to Section 4 of the Business Bylaw. Please be advised this document is subject to the Freedom of Information and Protection of Privacy Act and access can be requested.

PART A: BUSINESS LICENSE APPLICATION

TYPE OF ACCOMODATION (check one)

- ☐ HOTEL
- ☐ MOTEL
- ☐ CONDOMINIUM # OF BEDROOMS
- ☐ HOSTEL
- ☑ OTHER: Bed and Breakfast

Business Location / Address: 867 Humboldt St

Business Name / Operating Name: Humboldt House

Partnership / Sole Proprietor(s): Partnership

Limited / Incorporated Company Name: _____

Please attach documents of Incorporation and Notice of Articles. (Photo copies accepted)

Mailing Address (if different from above): _____

Phone: 6045373541 Fax: _____ Cellular: _____

Emergency Contact Name / Phone: Ashley Arden 778-316-7233

Email Address: Matthew.Linnitt@gmail.com

Web Address: _____

Proposed Business Start Date: May 1st, 2023

Detailed Business Description:

The Humboldt House Bed and Breakfast has operated for years in Victoria. The previous owners purchased the business with the intent of renovating the rooms and re-opening the business. The Covid epidemic prevented them from re-opening. After the restrictions were lifted they chose to sell the property rather than re-open. We purchased the property about 7 months ago and are now seeking a license to operate.

6 Rooms

IMPORTANT: Home Occupation means making, servicing, or repairing goods, or providing services for hire or gain by any person, wholly within a dwelling unit **occupied** by the applicant. In addition, **Schedule D – Zoning Regulation Bylaw** states, in part '...where any building is used as a single family dwelling, up to two (2) bedrooms may be used for transient accommodation as a home- occupation.' http://www.victoria.ca/EN/main/business/permits-licences/business-licences.html

PART B: APPLICANT'S INFORMATION

Applicant's Name (Individual completing form): Matthew Linnitt

Applicant's Signature: _____ Date signed: April 4th, 20 23

IMPORTANT: Applicant has read and agrees to comply with the requirements of the Zoning Regulation Bylaw and the 'Business License Bylaw of the City of Victoria. This information is being collected for the purpose of determining the applicant's eligibility for a Business License in the City of Victoria pursuant to Bylaw(s). In providing this information you are consenting to its use for the above-mentioned purpose and declare that all information provided herein is correct. This information may be shared with applicable departments and related agencies during the approval process.

PART C: APPROVAL PROCESS (FOR OFFICE USE ONLY)

DEPARTMENT	DATE	APPROVAL	DATE	COMMENTS
☐ Planning				
☐ Building				
☐ Health				
☐ Fire				
☐ Police				
☐ Engineering				
☐ Bylaw				

FINAL APPROVAL by Business Licence Inspector _____

DATE APPROVED _____, 20 _____ BUSINESS LICENCE NUMBER _____

COMMENTS

DOCUMENT REC'D
MAY 0 2 2023
PUBLIC SERVICE CENTRE
CITY OF VICTORIA

TBL-3 (2003)

Andrew Dolan

From: Matthew Linnitt <matthew.linnitt@gmail.com>
Sent: May 3, 2023 1:20 PM
To: Business License Inspector
Cc: Nancy White
Subject: Re: Humboldt House Bed and Breakfast

Hello John,
I appreciate the heads up.

Unfortunately I never recieved that email.

Hello Nancy,

I hope I haven't provided incorrect information on the application.

My email address is matthew.linnitt@gmail.com

If it's just that single question that needs to be answered the house has six rooms.

Regards,
Matthew Linnitt

On Wed, May 3, 2023, 13:15 Business License Inspector <BusinessLicenseInsp@victoria.ca> wrote:

Hi Matthew

Nancy White sent you an email last week, requesting to know how many rooms, to which you have not responded to her. I have CCed her in this email for your convenience. Until you respond to Nancy White, your application will not proceed.

If you have any questions, feel free to contact me.

Regards

John Kitson

Business Licence Inspector

SCHEDULE M

CITY OF VICTORIA

1 CENTENNIAL SQUARE, VICTORIA, BC V8W 1P6 | victoria.ca

Bylaw & Licensing Services | Legislative & Regulatory Department

1 Centennial Square, Victoria, BC V8W 1P6
E str@victoria.ca T 250.361.0726

«Licencee_Names»
«Licencee_Mailing_Address»

RE: «Civic_Address»

INSERT DATE

Re: **Applying for your 2024 Bed & Breakfast Business Licence**

This is a friendly reminder that your 2023 Bed & Breakfast Business Licence will expire on January 15, 2024. This letter is to inform you that the auto-renew feature for this licence type is not available this year. If you would like to continue operating a bed and breakfast, you will need to apply for your 2024 licence.

Through a preliminary online review, it has come to the City's attention that many licensed bed & breakfasts are operating as short-term rentals. We look forward to working with you to help determine which licence type is most applicable to your business. All applications will include a property inspection to confirm the eligibility of the proposed accommodation.

Regulatory Updates
In October 2023, the Province of BC introduced the *Short-Term Rental Accommodation Act*. Please review the new rules: www2.gov.bc.ca/gov/content/housing-tenancy/short-term-rentals. These new regulations include additional requirements for advertising on platforms such as Airbnb and VRBO. The City of Victoria is in the process of reviewing its Short-Term Rental Regulation Bylaw, which may impact bed and breakfast operators in the future.

To apply for your 2024 Bed & Breakfast Business Licence, please use the application form that has been included here or you can use the fillable PDF version on our website:
victoria.ca/businesslicensing

To continue advertising or operating a bed & breakfast, including honouring any 2024 bookings you have already accepted, you must apply for, receive approval and pay for your 2024 licence fee before January 15, 2024.

Please submit your application by email to businesslicence@victoria.ca, or submit it by mail or in person to:

Business Licensing
1 Centennial Square
Victoria, BC V8W 1P6

For more information on applying for a Bed & Breakfast Business Licence, you can visit victoria.ca/businesslicensing. If you have already re-applied, we thank you for your promptness.

If you have any questions, please contact the City of Victoria Bylaw & Licensing team at 250-361-0726 or email str@victoria.ca.

Sincerely,

Bylaw and Licensing Services Division
Legislative and Regulatory Services Department
City of Victoria

SCHEDULE N

1038938

CITY OF VICTORIA

1 Centennial Square
Victoria, BC V8W 1P6

250.361.0572
businesslicence@victoria.ca
victoria.ca

Transient Accommodation Business Licence Application

For information, or assistance completing this form, please contact Business Licensing at 250.361.0572 or by email at businesslicence@victoria.ca. You can mail your completed application to the above address, fax it to 250.361.0214 or email it to the email address noted above.

IMPORTANT: Applications must be completed in full and accompanied by appropriate documentation. Incomplete forms will not be processed. Completion of this application does not guarantee approval of the application. Approved licences will be issued only upon receipt of payment of the business licence fee. Conducting business without a valid licence is an offence for which penalties are prescribed. The minimum penalty is a fine of $250 per day for each day that the offence continues, pursuant to Sec. 4(a) of the Business Licence Bylaw.

Part A: Property Information

Property Address: 867 Humboldt St Victoria, BC Postal Code: V8V 2Z6

Type of Accomodation (CHECK ONE)

- ☐ Hotel ☐ Hostel
- ☐ Motel ☑ Bed & Breakfast

Number of Rooms Being Used For Transient Accomodation: 3

Coin Operated Machines

# of washers and dryers	0	units X $11.00 per unit =	
# of other machines	0	units X $15.00 per unit =	
Total number of machines	0	**Total fees: $**	

Part B: Applicant(s) Information

Registered Owner of the Property: ☑ Yes ☐ No

☐ **Sole Proprietor's name:** (If you plan to operate the business on your own, either under your own name or a business name):

☑ **Partnership name(s):** (If you plan to operate the business with one or more partners):
Matthew Linnitt Ashley Ceraldi

☐ **Limited/Incorporated company name:** (If you plan to operate the business as a separate legal entity, separate from yourself and your personal assets):

Mailing address: 867 Humboldt st Victoria BC, V8V 2Z6
(APARTMENT / UNIT # / STREET ADDRESS)

Phone number: 604 537-3541 Email: Matthew.Linnitt@Gmail.com

CITY OF VICTORIA

1 Centennial Square
Victoria, BC V8W 1P6

250.361.0572

Transient Accommodation Business Licence Application

Incorporation Information: (If applicable)

Incorporation number: _____

If applying as a Limited/Incorporated Company, have you included documents of incorporation and Notice of Articles?

☐ Yes

☐ I authorize the City of Victoria to obtain the documents of Incorporation and Notice of Articles and acknowledge that a $30 fee plus applicable taxes will be charged by the City of Victoria for this service *[Administrative Fees Bylaw No. 04-40]*.

Applicant / Representative Signature: _____ Date Signed: 18 Dec 2023
(DAY / MONTH / YEAR)

IMPORTANT: In providing this information, you have consented to its use for the above-mentioned purpose and declare that all the information provided herein is correct. Applicant has read and agrees to comply with the stated regulations and requirements of the Business Licence Bylaw and all other applicable City Bylaws. Licences are valid from January 16 to January 15 of the following year.

Part C: Approval Process (For Office Use Only)

Processed By: NW Date Signed: _____
(DAY / MONTH / YEAR)

DOCUMENT RECEIVED
PUBLIC SERVICE CENTRE
CITY OF VICTORIA

Photo_867 Humboldt St_Matthew LINNITT_STR Inspection_Main Floor_Foyer_DUARTE_20240108

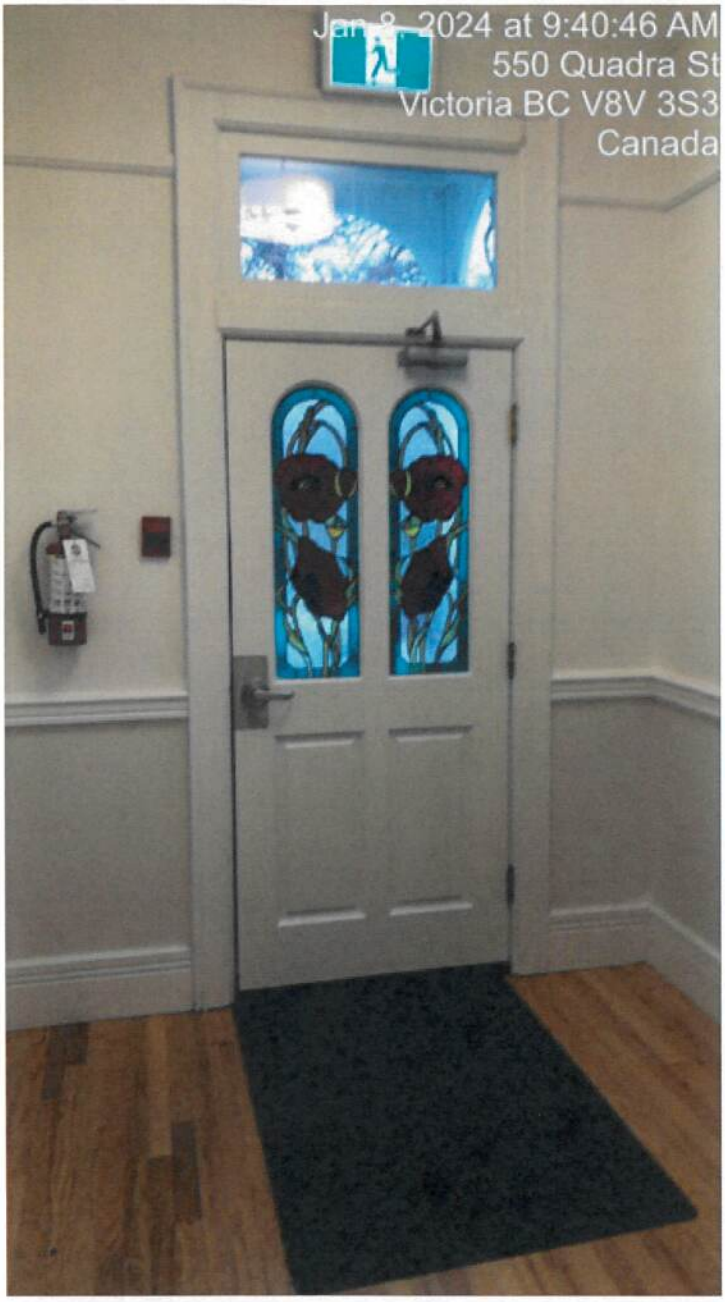


Photo_867 Humboldt St_Matthew LINNIT_STR Inspection_Hall way_DUARTE_20240109

HALLWAY VIEW FROM CELLEBRATION ROOM, STAIRS TO UPPER FLOOR TO THE RIGHT

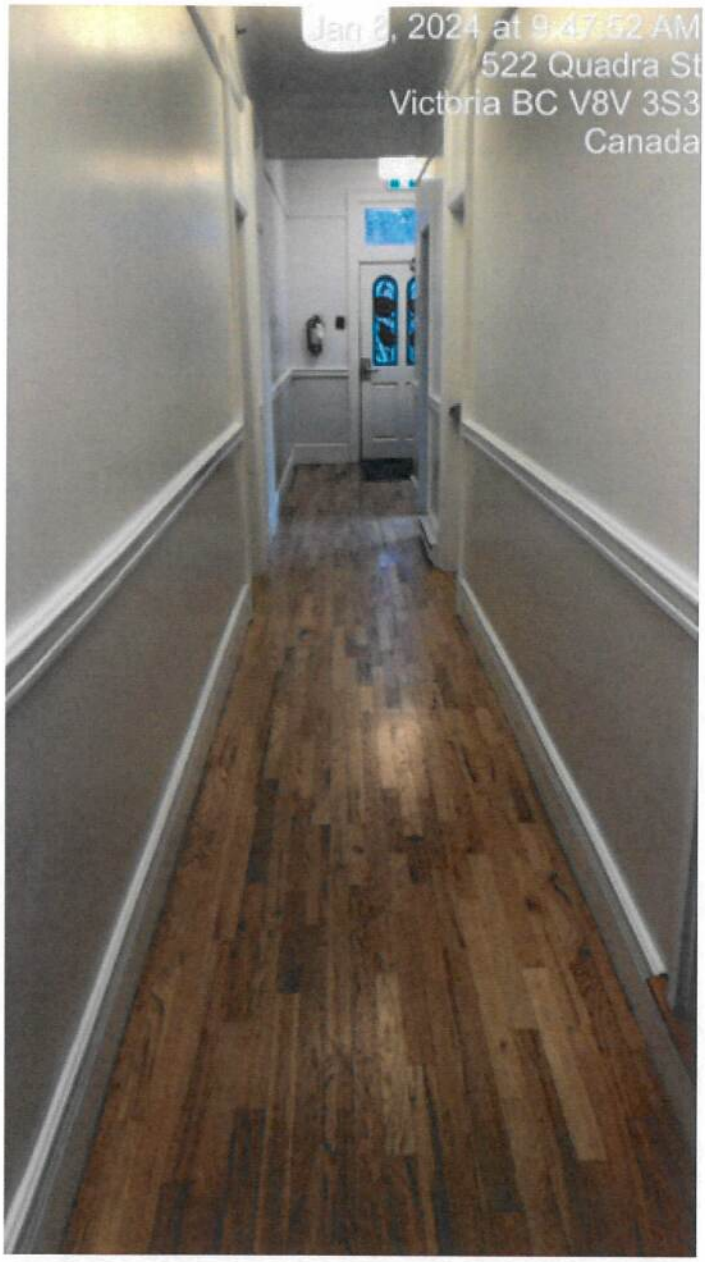


Photo_867 Humboldt St_Matthew LINNITT_STR Inspection_Main Floor Hallway_DUARTE_20240108

THE HOMEOWNERS WANT TO EVENTUALLY HAVE A STALKED FRIDGE HERE WITH BREAKFAST ITEMS

Photo_867 Humboldt St_Matthew LINNIT_STR Inspection_BTM Stairs to Upper Floor_DUARTE_20240109

OUTSIDE THE CELLEBRATION ROOM, STAIRS TO THE UPPER FLOOR

Photo_867 Humboldt St_Matthew LINNIT_STR Inspection_Stairs to Upper Floor_DUARTE_20240109

VIEW FROM THE TOP OF THE STAIRS LOOKING DOWN

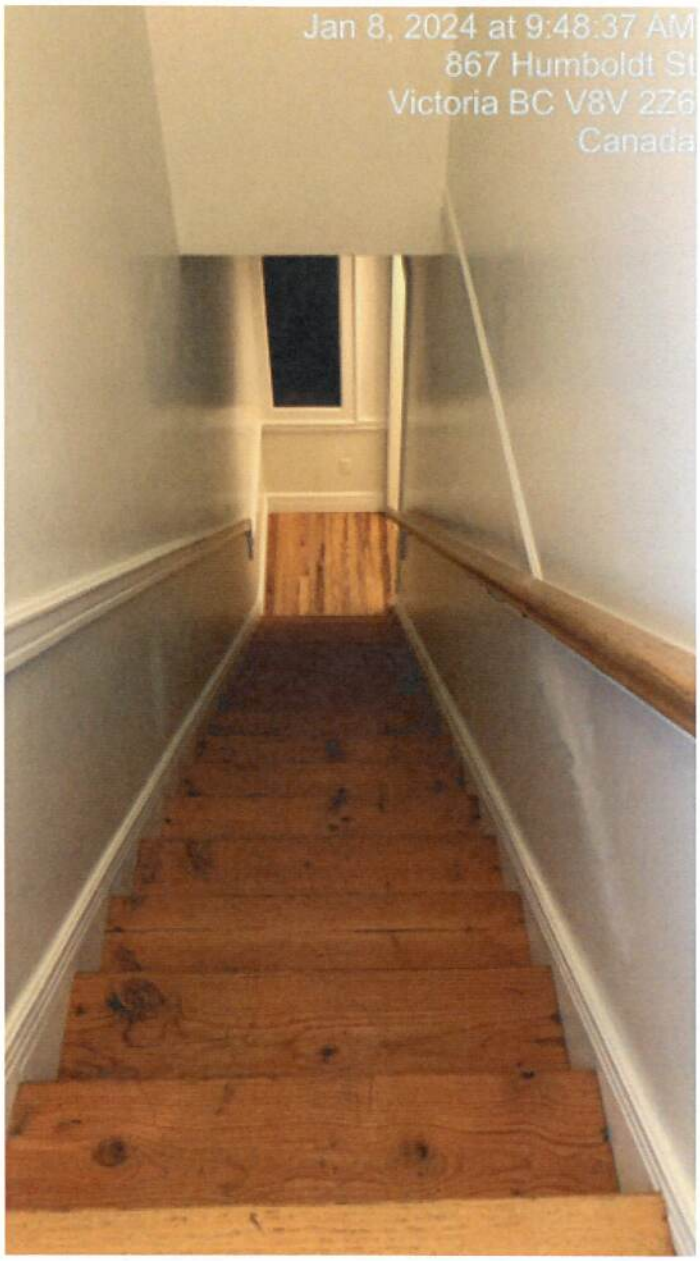


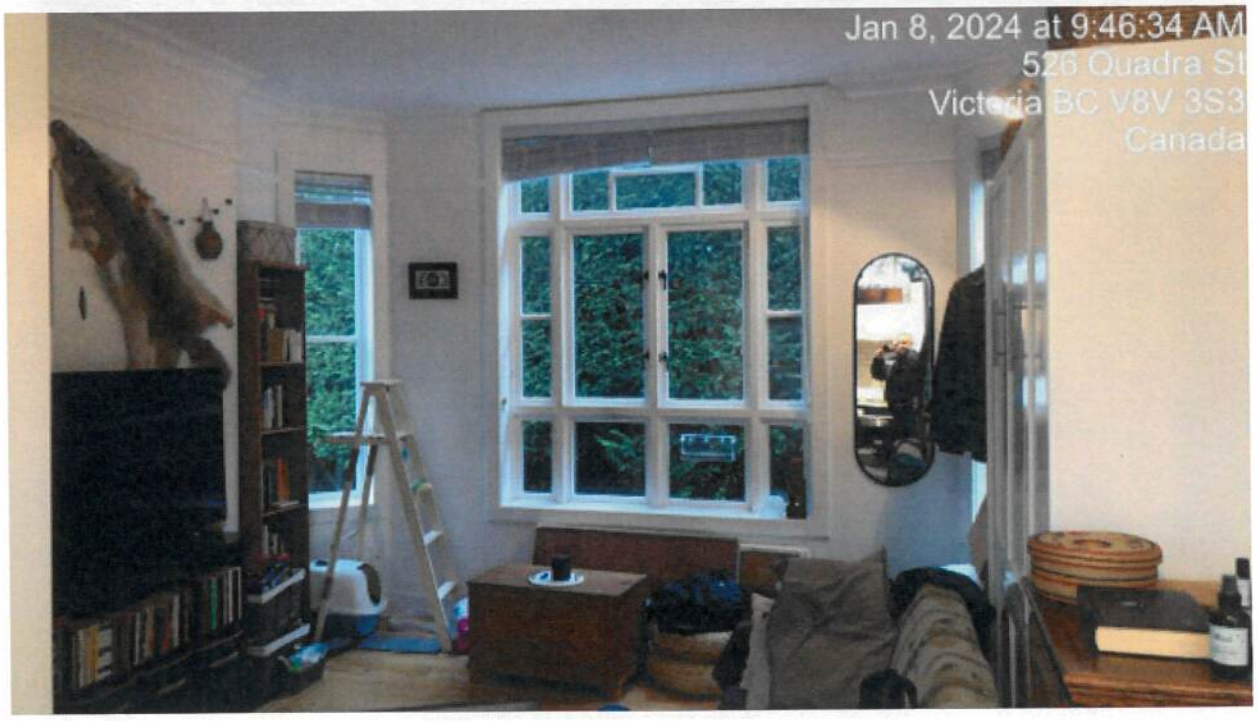
Photo_867 Humboldt St_Matthew LINNIT_STR Inspection__Lower, BSMT_Primary Living Spaces_Parents_DUARTE_20240109

THIS IS THE SECOND HALF OF THE PRIMARY LIVING SPACE, IN THE BASEMENT, ACROSS FROM THE CHILDRENS ROOM/SUITE. LAUNDRY IS IN A SEPARATE ROOM IN BETWEEN SUITES.

MIKADO SUITE

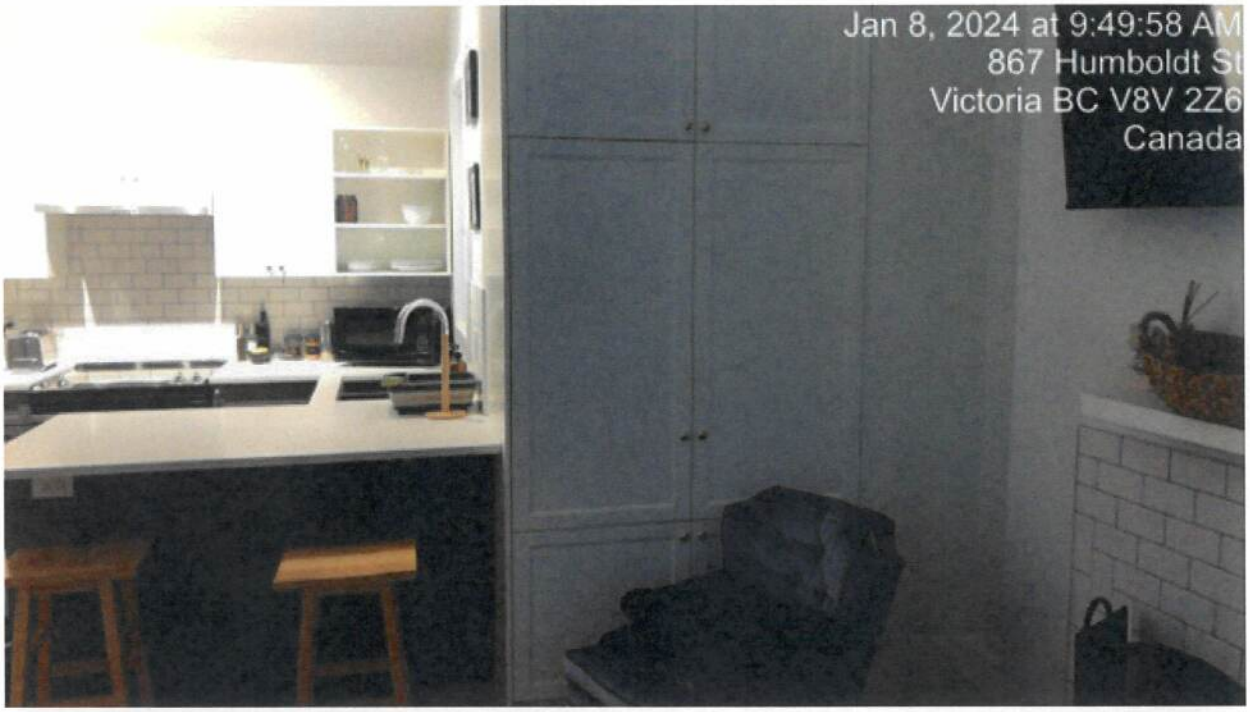

Jan 8, 2024 at 9:43:23 AM
867 Humboldt St
Victoria BC V8V 2Z6
Canada


Jan 8, 2024 at 9:43:27 AM
867 Humboldt St
Victoria BC V8V 2Z6
Canada

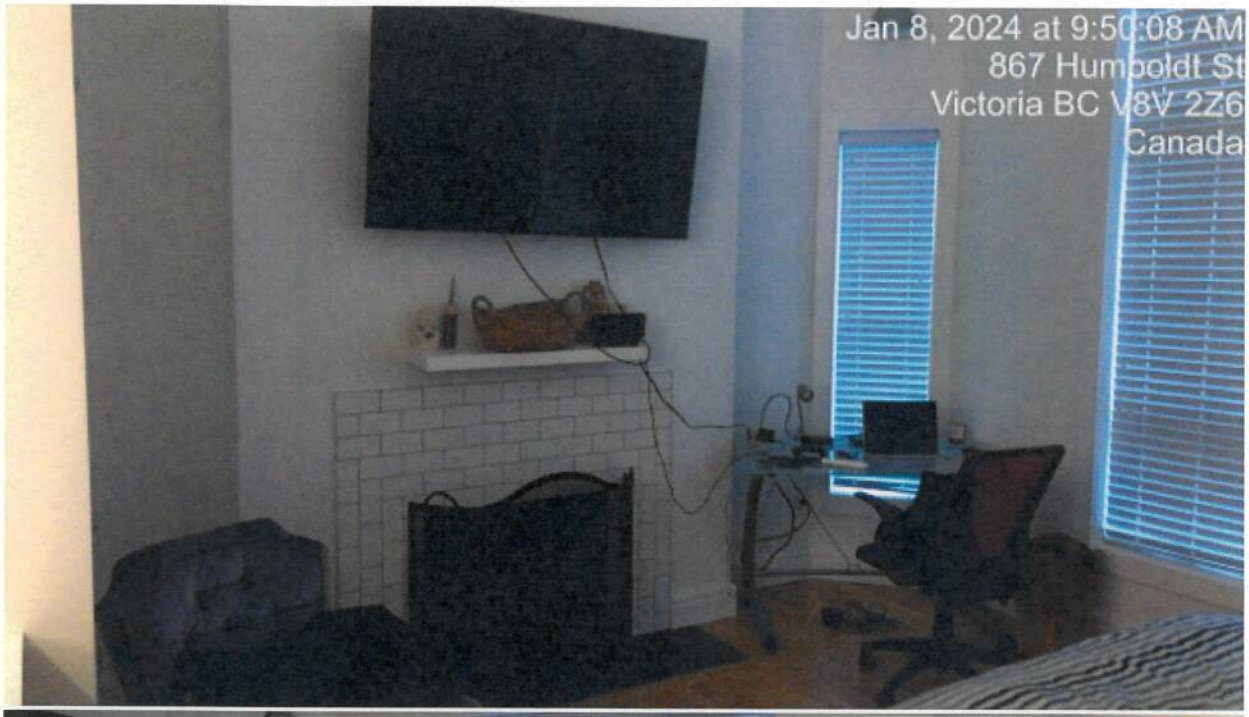


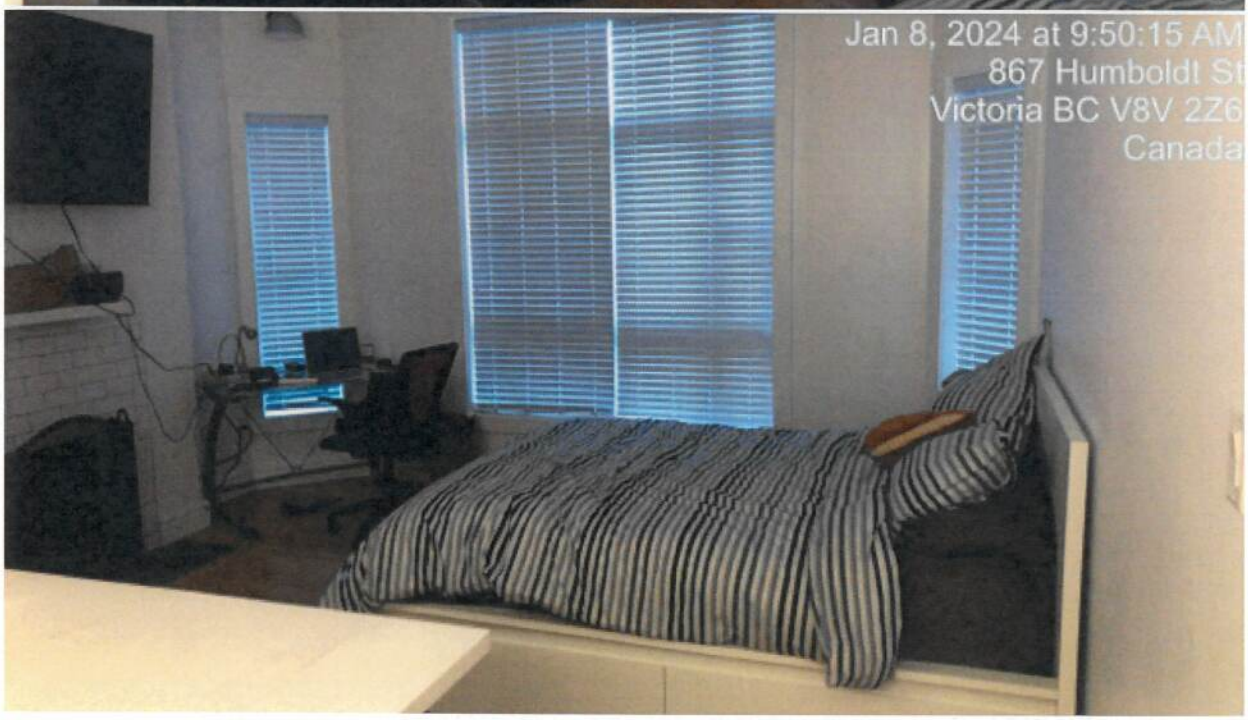
CELEBRATION SUITE

Photo_867 Humboldt St_Matthew LINNITT_STR Inspection_The Celebration Room_Full-Time Tenant_Full Bathroom_DUARTE_20240108



EDWARDS SUITE

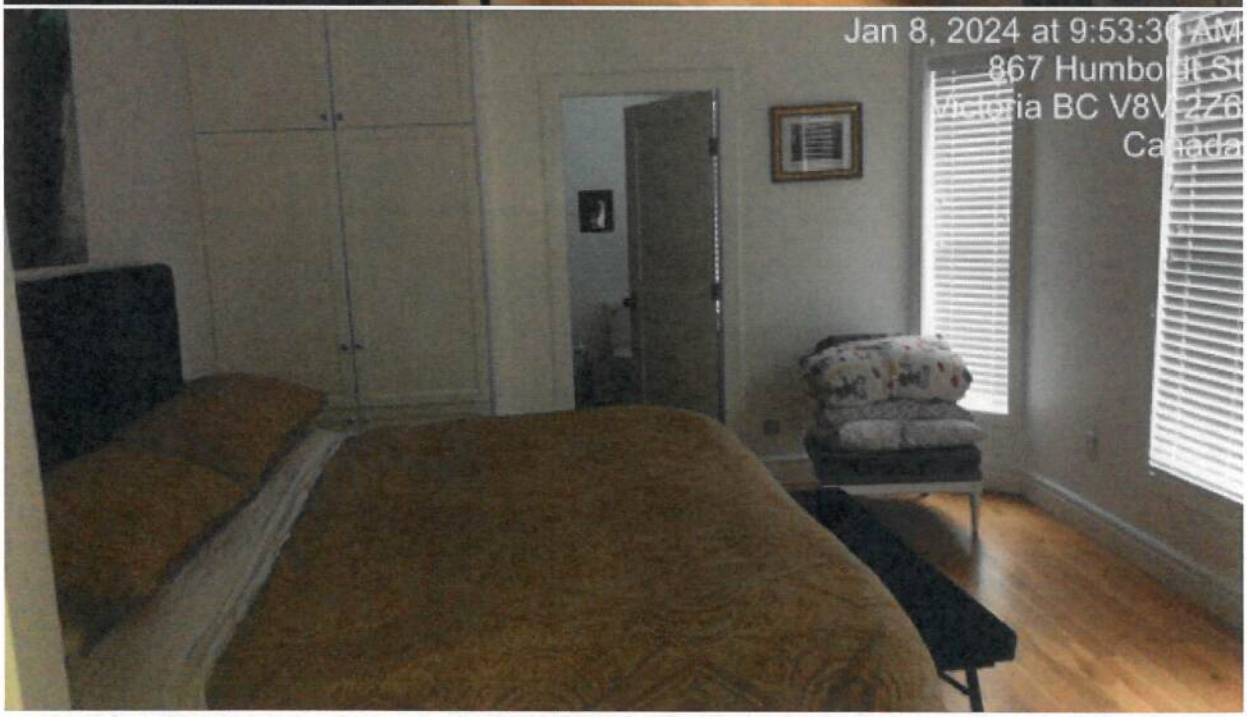

Jan 8, 2024 at 9:50:08 AM
867 Humboldt St
Victoria BC V8V 2Z6
Canada


Jan 8, 2024 at 9:50:15 AM
867 Humboldt St
Victoria BC V8V 2Z6
Canada

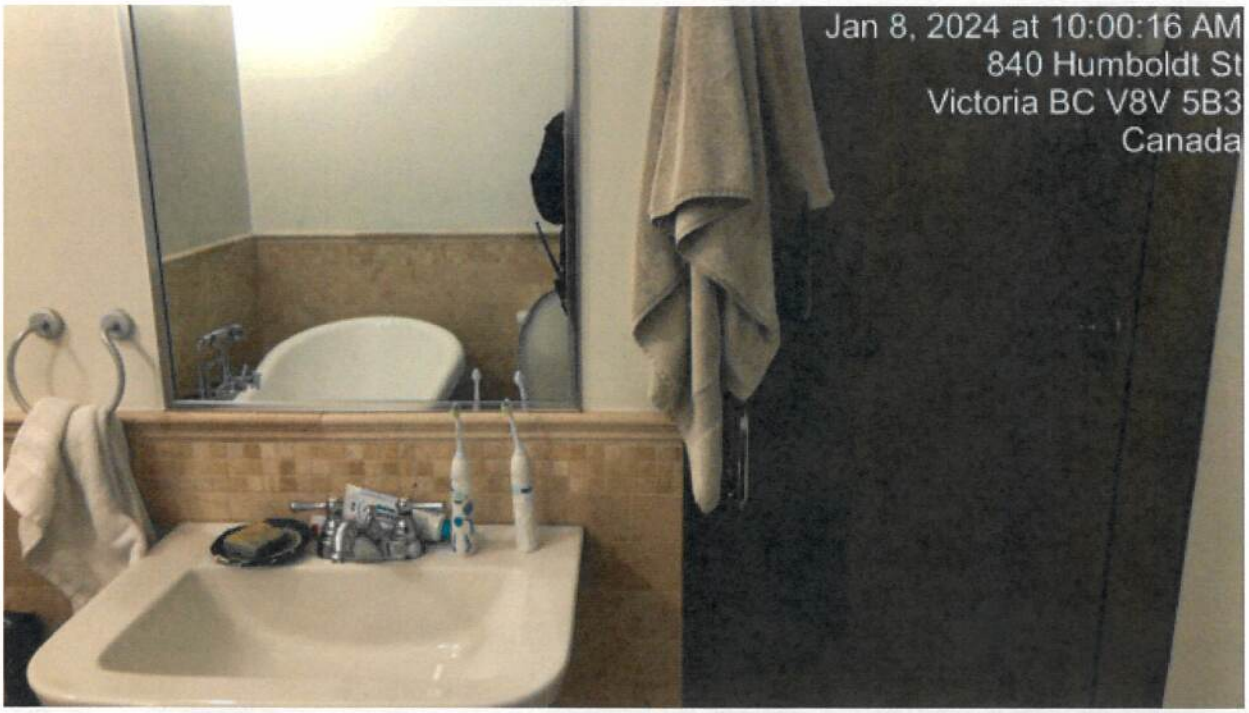

Jan 8, 2024 at 9:49:41 AM
867 Humboldt St
Victoria BC V8V 2Z8
Canada

GAZEBO SUITE


Jan 8, 2024 at 9:53:33 AM
867 Humboldt St
Victoria BC V8V 2Z6
Canada


Jan 8, 2024 at 9:53:36 AM
867 Humboldt St
Victoria BC V8V 2Z6
Canada

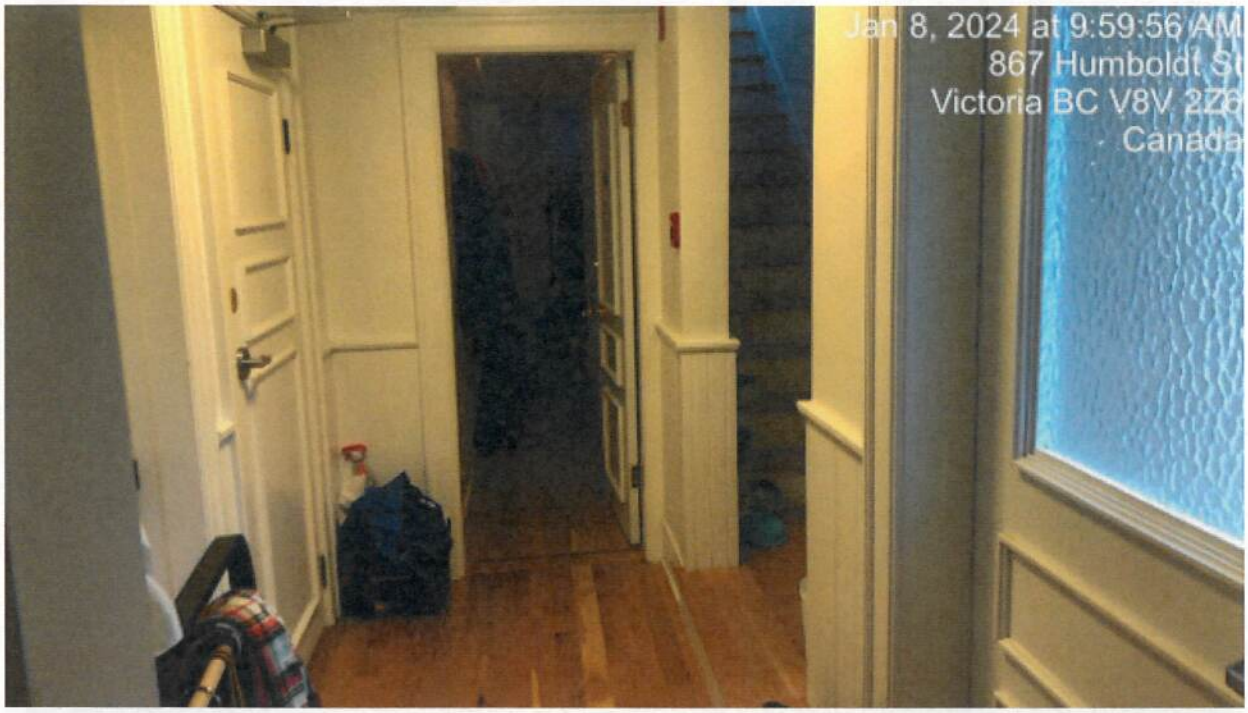

Jan 8, 2024 at 9:53:56 AM
867 Humboldt St
Victoria BC V8V 2Z6
Canada



OWNERS SUITE


Jan 8, 2024 at 10:00:27 AM
840 Humboldt St
Victoria BC V8V 5B3
Canada


Jan 8, 2024 at 10:00:33 AM
840 Humboldt St
Victoria BC V8V 5B3
Canada


Jan 8, 2024 at 9:59:56 AM
867 Humboldt St
Victoria BC V8V 2Z6
Canada

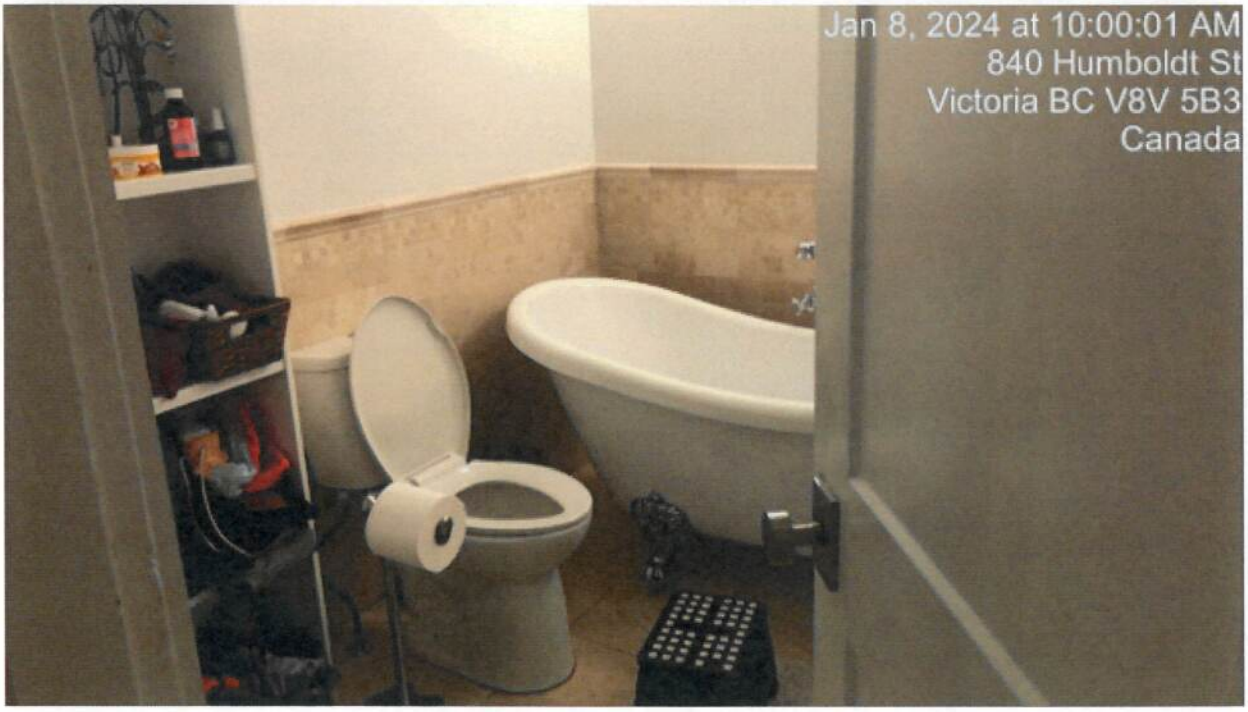
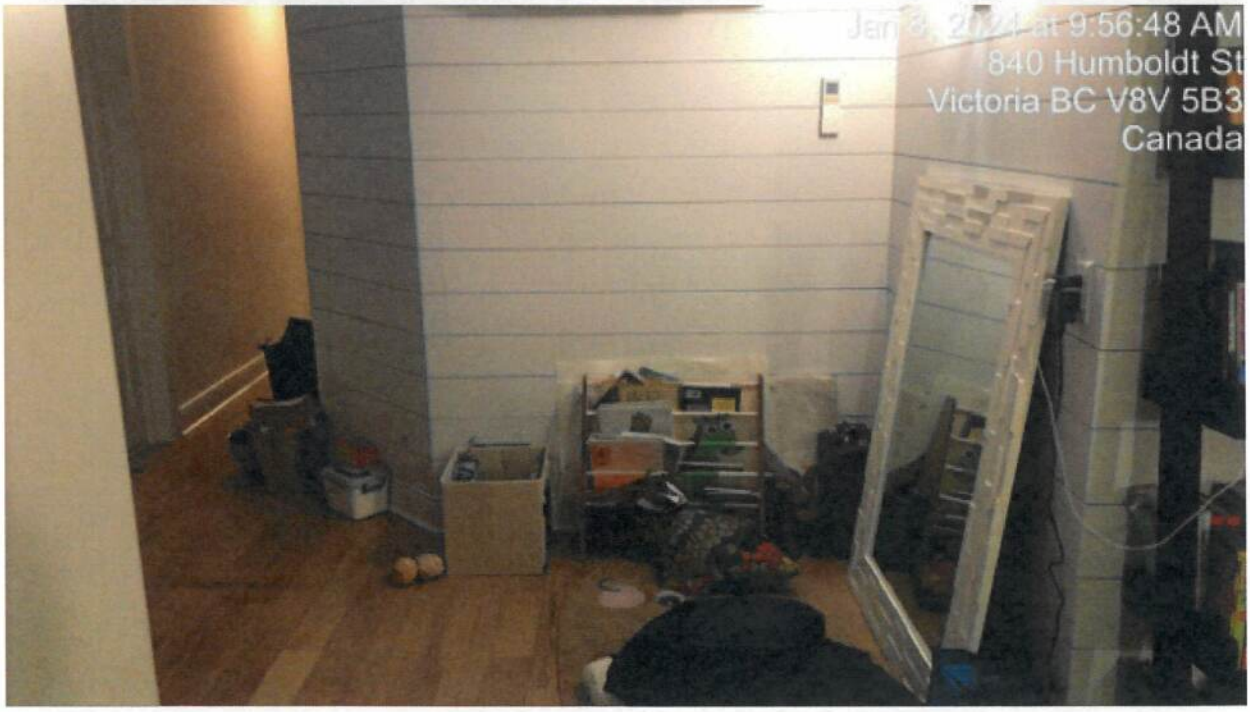

Jan 8, 2024 at 10:00:01 AM
840 Humboldt St
Victoria BC V8V 5B3
Canada

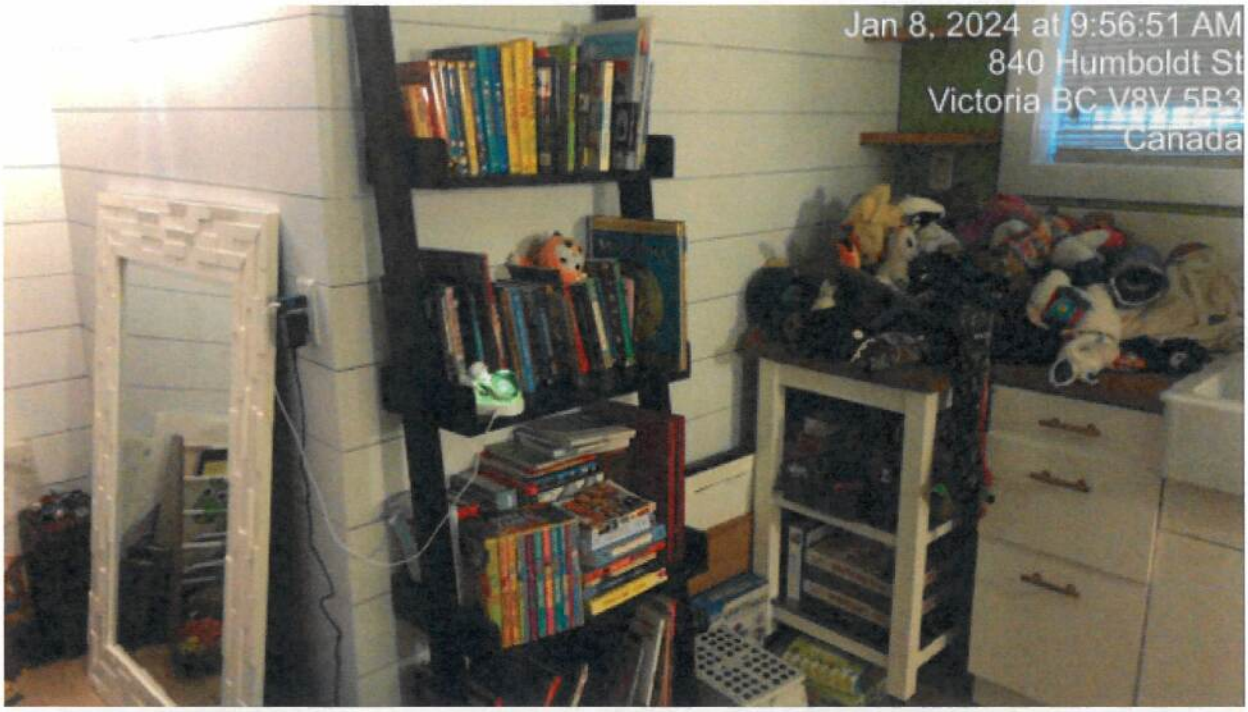
Photo_867 Humboldt St_Matthew LINNIT_STR Inspection_Windsor Suite_Lower, BSMT_Primary Living Spaces_Childrens_DUARTE_20240109

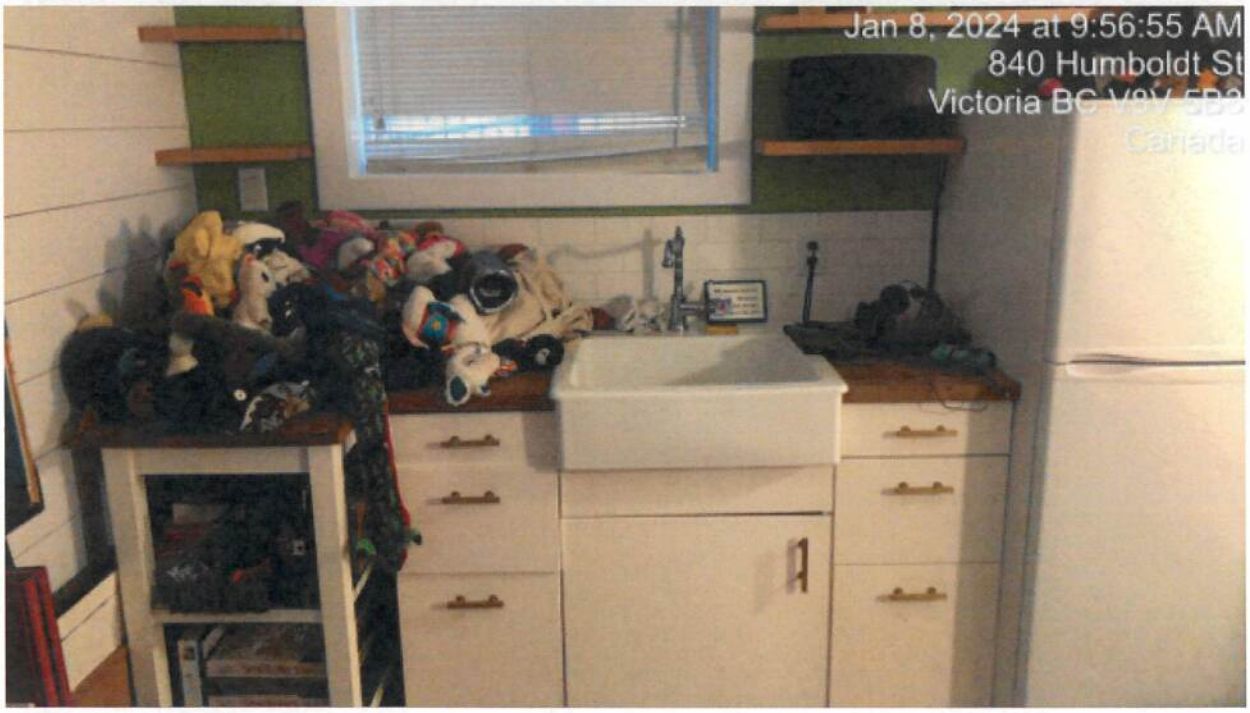
CHILDRENS ROOM IS A SEPARATE SUITE ACROSS FROM PARENTS SUITE, ALL IN THE BSMT LEVEL

CHILDRENS SUITE

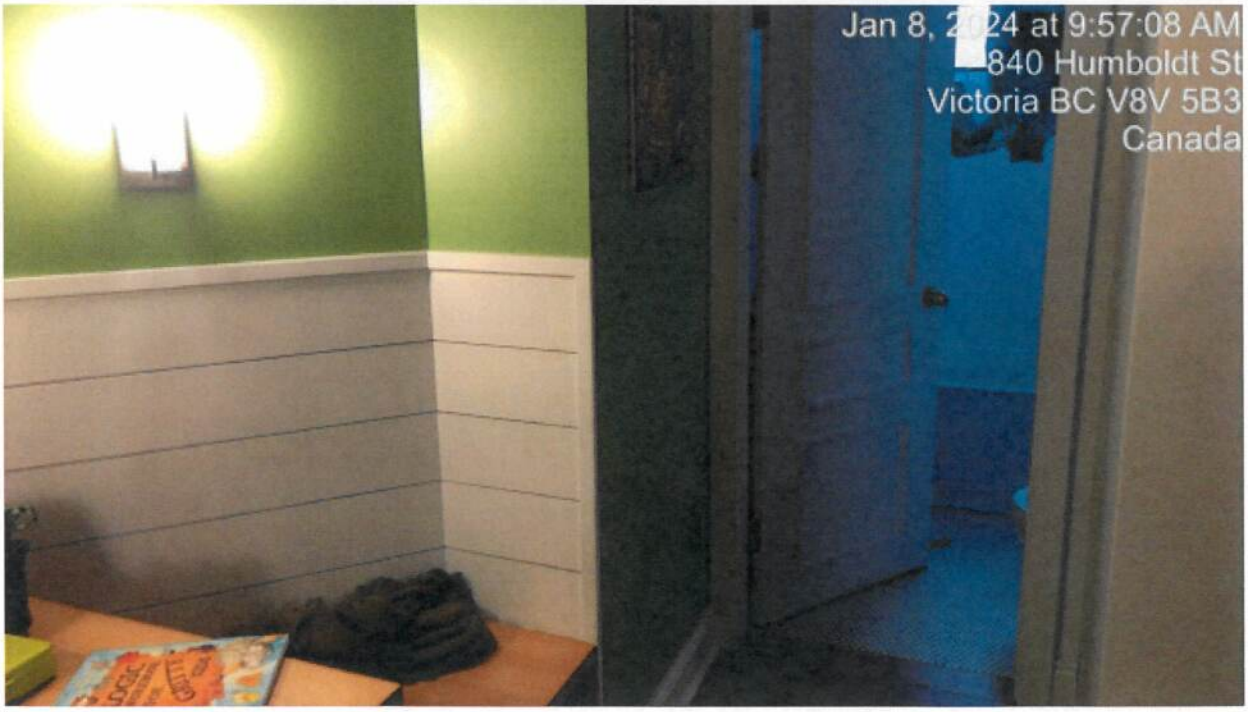

Jan 8, 2024 at 9:56:44 AM
840 Humboldt St
Victoria BC V8V 5B3
Canada


840 Humboldt St
Victoria BC V8V 5B3
Canada

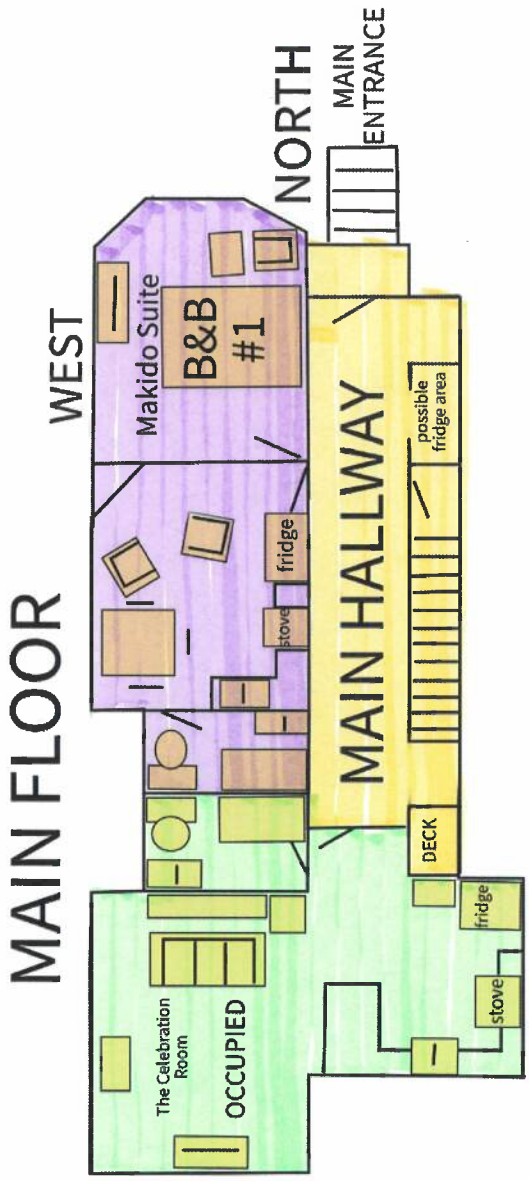

Jan 8, 2024 at 9:56:51 AM
840 Humboldt St
Victoria BC V8V 5B3
Canada

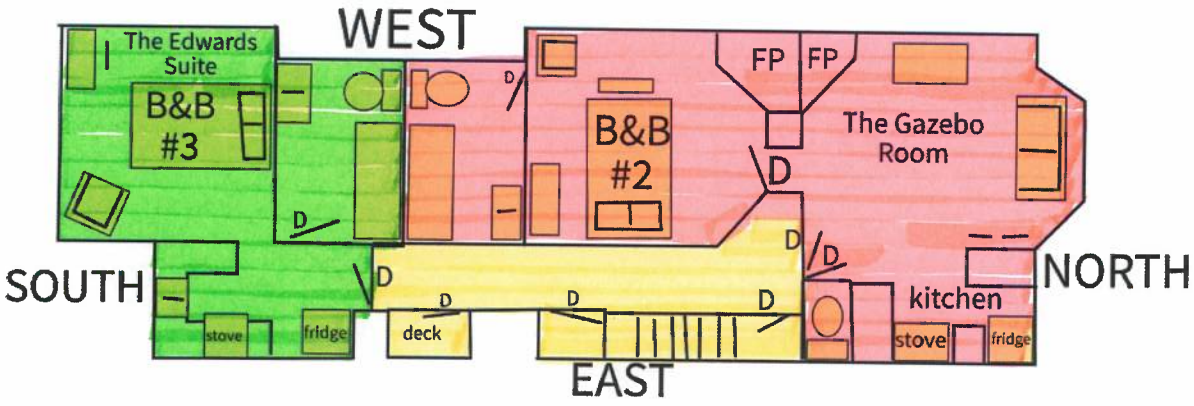

Jan 8, 2024 at 9:56:55 AM
840 Humboldt St
Victoria BC V8V 5B3
Canada

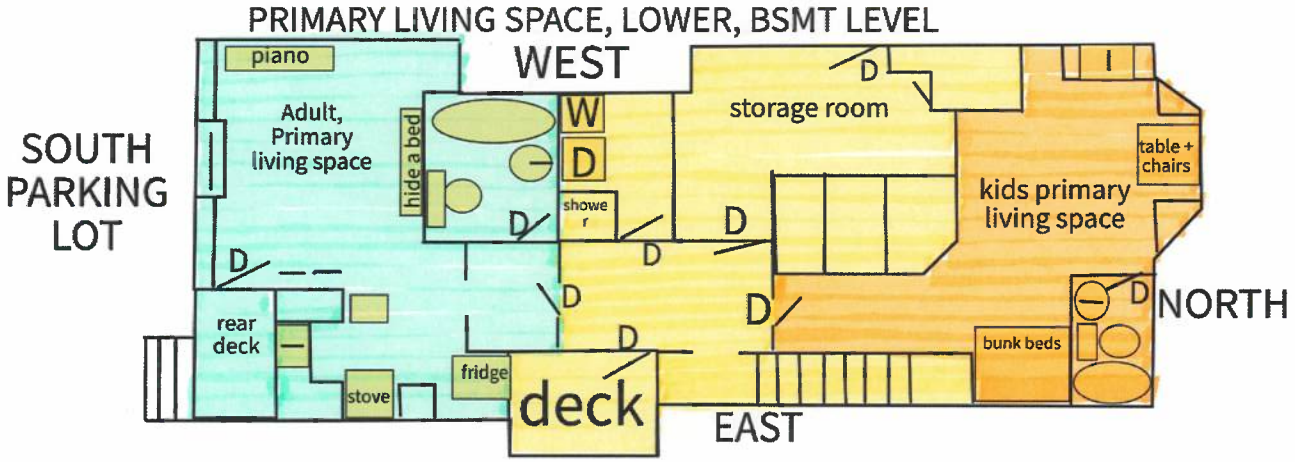

Jan 8, 2024 at 9:57:00 AM
840 Humboldt St
Victoria BC V8V 5B3
Canada


Jan 8, 2024 at 9:57:08 AM
840 Humboldt St
Victoria BC V8V 5B3
Canada


Jan 8, 2024 at 9:57:16 AM
840 Humboldt St
Victoria BC V8V 5B3
Canada


MAIN FLOOR
WEST
NORTH
MAIN ENTRANCE
Makido Suite
B&B #1
fridge
stove
MAIN HALLWAY
possible fridge area
DECK
fridge
stove
The Celebration Room
OCCUPIED


WEST
The Edwards Suite
B&B #3
B&B #2
FP
FP
The Gazebo Room
D
SOUTH
NORTH
EAST
kitchen
stove
fridge
deck
stove
fridge


PRIMARY LIVING SPACE, LOWER, BSMT LEVEL
WEST
SOUTH
PARKING
LOT
piano
Adult,
Primary
living space
hide a bed
W
D
showe
r
storage room
table +
chairs
kids primary
living space
rear
deck
stove
fridge
deck
bunk beds
NORTH
EAST

Crease Harman LLP
BARRISTERS & SOLICITORS
Since 1866

800-1070 Douglas Street
Victoria, BC V8W 2C4

t. (250) 388-5421
f. (250) 388-4294

www.crease.com

Reply to: Spencer C. J. Evans
Email: SEvans@crease.com
File No: 2240199001

May 7, 2024

By Electronic Mail: legislativeservices@victoria.ca

City of Victoria
1 Centennial Square
Victoria, BC V8W 1P6

Attention: Mayor & Council

Dear Sirs & Madams:

RE: Transient Accommodation Business Licence Renewal Application
CFS# 250057 – 867 Humboldt Street, Victoria, BC

Please accept this as the Appellants' response to the Licence Inspector's report dated April 25, 2024 (the **"Report"**). This response adopts the defined terms as defined in the Appellant's submission dated March 18, 2024 (the **"Initial Submission"**).

The Appellants rely on the supporting documents listed in **Schedule "A"** and authorities listed in **Schedule "B"** of the Initial Submission. Additional authorities cited in this response are listed in **Schedule "C"** enclosed.

The Property can be regarded as reasonably coming within the operation of a B&B

In the Initial Submission, the Appellants cited authorities for the rule that where a bylaw leaves a word undefined it is to be given a broad interpretation. The words "bed and breakfast" are not defined in the Bylaw, so these court decisions are binding in these circumstances.

Neilson involved a golf and country club which had purchased (with a related company) an adjacent property to open a restaurant, with the intention that the operation of the restaurant would

be contracted out to a private individual. The club already operated a restaurant on its original premises which was open to both members and the public.[1]

Neighbours of the club objected to the proposed restaurant and commenced a petition challenging the issuance of a permit by the building inspector on the basis that it contravened provisions of the applicable zoning bylaw.[2] A golf course was among the permitted uses, but a "commercial use" was not. The chambers judge found that the restaurant would be a commercial use if it catered to the public at large and declared the permit null and void.[3]

The Court of Appeal disagreed with the chambers judge's finding that the new restaurant fell within the bylaw's definition of commercial use.[4] Because the bylaw did not restrict the meaning of the words "golf course", they were to be given a broad interpretation encompassing "anything that can be regarded as reasonably coming within the operation of a golf course".[5] A golf club operating a golf course and which, in conjunction with the operation of the golf course, provided a restaurant on an adjacent property could "reasonably and naturally be said to operate the restaurant in question as a part of the operation of the golf course."[6]

This is consistent with guidance from the Supreme Court of Canada, with Spence J. opining in *Bayshore Shopping Centre Ltd. v. Nepean (Township)*, [1972] S.C.R. 755 (**"*Bayshore*"**) that "[n]o authority need be cited for the proposition that a man's property is his own which he may utilize as he deems fit so long as in such utilization he does not commit nuisance, entrap the unwary or act in breach of statutory prohibitions, and therefore by-laws restrictive of that right should be strictly construed."[7]

The Merriam-Webster dictionary defines "bed and breakfast" as "an establishment (such as an inn) offering lodging and breakfast".[8]

The word "lodging" is defined as:

> 1 a : a place to live : DWELLING

[1] See Document 10 of **Schedule "B"**: *Neilson* at paras. 3 – 4.
[2] See Document 10 of **Schedule "B"**: *Neilson* at para. 5.
[3] See Document 10 of **Schedule "B"**: *Neilson* at paras. 1, 10, 14.
[4] See Document 10 of **Schedule "B"**: *Neilson* at para. 15.
[5] See Document 10 of **Schedule "B"**: *Neilson* at para. 19.
[6] See Document 10 of **Schedule "B"**: *Neilson* at para. 20.
[7] See Document 1 of **Schedule "C"**: *Bayshore* at p. 14.
[8] See https://www.merriam-webster.com/dictionary/bed-and-breakfast.

b : LODGMENT

2 a (1): sleeping accommodations
found *lodging* in the barn

(2): a temporary place to stay
a *lodging* for the night

b: a room in the house of another used as a residence → usually used in plural

3: the act of lodging[9]

In this case, the Appellant's were offering lodging in the form of three suites.[10] No definition of the word lodging requires a common kitchen, bathroom or library, nor do they require that the lodging be provided in the operator's principal residence or single family dwelling.

The word "breakfast" is defined as:

1: the first meal of the day especially when taken in the morning

2: the food prepared for a breakfast
eat your *breakfast*[11]

The January 8, 2024 inspection of the Property revealed that cereal, granola bars, fruit, yogurt and beverages were provided in each suite. These are items normally consumed during the breakfast meal, but the Report finds it noteworthy that they were not served to guests in a shared space. The dictionary meaning of bed and breakfast merely requires that breakfast be "offered".

The word "offer" is defined as:

transitive verb

1 a: to present as an act of worship or devotion : SACRIFICE
to a Catholic church where she would *offer* a candle or so to his recovery

—F. M. Ford

b: to utter (something, such as a prayer) in devotion
offered up prayers of thanksgiving

2 a: to present for acceptance or rejection : TENDER
was *offered* a job

b: to present in order to satisfy a requirement
candidates for degrees may *offer* French as one of their foreign languages

3 a: PROPOSE, SUGGEST
offer a solution to a problem

[9] See https://www.merriam-webster.com/dictionary/lodging.
[10] See Schedule N in the Report.
[11] See https://www.merriam-webster.com/dictionary/breakfast.

b: to declare one's readiness or willingness
offered to help me

4 a: to try or begin to exert : PUT UP
offered stubborn resistance

b: THREATEN
offered to strike him with his cane

5 : **to make available** : AFFORD
The summit *offers* a panoramic view.

especially : to place (merchandise) on sale
offers a range of cameras at reasonable prices

6 : to present in performance or exhibition
offered a new comedy

7 : to propose as payment : BID
offered me $100 for the recliner[12]

[Emphasis added]

By making available various breakfast foods and beverages, the Appellants were offering breakfast to their guests within the ordinary meaning of those words. The requirement to serve breakfast in a common space has no basis in the wording of the Bylaw and should not be imported into the interpretation of the term "bed and breakfast", which should be construed broadly in accord with leading jurisprudence.

The Report implies that the purpose of re-zoning the Property in 1996 was limited to permitting its use as a B&B, construed strictly in the "traditional" sense. But this is belied by the examples of other zones in Victoria which place much greater restrictions on the use of properties, cited in the Initial Submission.

The R1-A6 Zone, Rockland Bed & Breakfast District permits "transient accommodation that is located in a building that is used as the principal residence of the operator of the transient accommodation."[13] This zone is located on Rockland Avenue, just to the north of Beacon Hill Park, in a residential neighbourhood.

[12] See https://www.merriam-webster.com/dictionary/offer.
[13] See Document 6 of **Schedule "B"**: Zoning Regulation Bylaw (No. 80-159), Schedule Part 1.71, R1-A6 ZONE, ROCKLAND BED & BREAKFAST DISTRICT.

The R2-28 Zone, Superior Bed & Breakfast District uses the same wording.[14] This zone is located on Superior Street, between Montreal Street and Oswego Street in James Bay, in a residential neighbourhood.

Even more restrictive is the R1-BB1 Zone, Oxford Bed & Breakfast District, which permits use as transient accommodation with the following conditions:

(i) that is located in a single family dwelling,

(ii) that is operated only by the family, or a member of it, and its employees for this purpose, that occupies the single family dwelling in which the transient accommodation is located,

(iii) that does not use more than 4 bedrooms,

(iv) that does not provide to its customers more than one meal per day or any meals after noon of any day,

(v) that does not provide liquor to its customers.[15]

This zone is located on Oxford Street, just to the east of Beacon Hill Park, in a residential neighbourhood.

So while other properties operating as B&Bs are located in purely residential neighbourhoods, the Property is at the southern edge of the downtown core adjacent to a theatre and across from a large hotel. Whereas the other properties have restrictions on their transient accommodation use, there are no such zoning limitations on the Property, of which the Zone permits "transient accommodation" without any conditions. In this way, the Property is similar to Abigail's Hotel – only two blocks away from the Property – in the T-25 Zone, McClure Transient Accommodation District which also permits "transient accommodation" without conditions.[16]

The only difference between the T-25 Zone and the Zone is their respective headings; the former contains the words "transient accommodation" and the latter "bed & breakfast". But this is not relevant.

[14] See Document 8 of **Schedule "B"**: Zoning Regulation Bylaw (No. 80-159), Part 2.85 - R2-28 ZONE, SUPERIOR BED & BREAKFAST DISTRICT.
[15] See Document 2 of **Schedule "C"**: Zoning Regulation Bylaw (No. 80-159), Part 1.64 – R1-BB1 ZONE, OXFORD BED & BREAKFAST DISTRICT at p. 17.
[16] See Document 3 of **Schedule "C"**: Zoning Regulation Bylaw (No. 80-159), Part 5.25 – T-25 ZONE, MCCLURE TRANSIENT ACCOMODATION DISTRICT at p. 18.

Section 11(1) of the *Interpretation Act*, R.S.B.C. 1996, c. 238 states:

> **11** (1) In an enactment, a head note to a provision or a reference after the end of a section or other division
>
> (a) is not part of the enactment, and
>
> (b) must be considered to have been added editorially for convenience of reference only.[17]

The Supreme Court of Canada has held that "[w]here the language of a section is ambiguous, the title and the headings of the statute in which it is found may be resorted to restrain or extend its meaning as best suits the intention of the statute, but neither the title nor the headings may be used to control the meaning of enacting words in themselves clear and unambiguous".[18]

As "transient accommodation" is a defined term in the Bylaw, there is no ambiguity. Therefore a consideration of the words "bed & breakfast" in the heading for the Zone are not required.

It was (and is) open to Council to amend the Bylaw to define the words "bed and breakfast" if a narrower interpretation of those words is deemed to be preferable. It was open to Council to include restrictions on the transient accommodation use in the Zone. But in the present circumstances there is no reason to import such a restrictive interpretation.

The Property can be regarded as reasonably coming within the operation of a B&B and the Decision to reject the Appellant's renewal because they were not operating a "traditional bed and breakfast" was unreasonable.

The Licence Inspector's *ex post facto* reliance on s. 8(1) of the *Business Licence Bylaw* cannot save an unreasonable decision

In the seminal decision *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (**"*Vavilov*"**), the Supreme Court of Canada stated that "the exercise of public power must be justified, intelligible and transparent, not in the abstract, but to the individuals subject to it."[19] The requirement to provide adequate reasons is a "shield against arbitrariness as well as the perception of arbitrariness in the exercise of public power".[20]

---

[17] See Document 4 of **Schedule "C"**: *Interpretation Act*, R.S.B.C. 1996, c. 238 at p. 20.
[18] See Document 5 of **Schedule "C"**: *Canada (Attorney General) v. Jackson*, [1946] S.C.J. No. 21 at pp. 24 – 25, para. 18, as cited in *Schoenhalz v. Insurance Corp. of British Columbia*, 2016 BCSC 661 at para. 58 (Document 6 of **Schedule "C"** at p. 27).
[19] See Document 7 of **Schedule "C"**: *Vavilov* at p. 87, para. 95
[20] See Document 7 of **Schedule "C"**: *Vavilov* at p. 85, para. 79 [further citations omitted].

As our highest court has explained:

> Where, even if the reasons given by an administrative decision maker for a decision are read with sensitivity to the institutional setting and in light of the record, they contain a fundamental gap or reveal that the decision is based on an unreasonable chain of analysis, it is not ordinarily appropriate for the reviewing court to fashion its own reasons in order to buttress the administrative decision. Even if the outcome of the decision could be reasonable under different circumstances, it is not open to a reviewing court to disregard the flawed basis for a decision and substitute its own justification for the outcome … To allow a reviewing court to do so would be to allow an administrative decision maker to abdicate its responsibility to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion. This would also amount to adopting an approach to reasonableness review focused solely on the outcome of a decision, to the exclusion of the rationale for that decision.[21] [Further citations omitted]

In the Report the Licence Inspector relies on section 8 of the *Business Licence Bylaw* (No. 89-071) (the **"BLB"**) to justify the Decision. This provision states that:

> Before issuing any licence, the License Inspector may require evidence to his reasonable satisfaction that the applicant has complied with any and all applicable bylaws, regulations and statutes, and may require the applicant to give full particulars of all convictions of any offences recorded against the applicant anywhere in Canada during the two years immediately preceding the date of application.[22]

Mr. Dolan's letter of January 18, 2024 does not mention section 8 of the BLB, nor does it suggest that the Appellants' renewal was rejected because they failed to produce evidence of compliance with applicable bylaws, regulations and statutes.[23]

Ex post facto justifications raised on review or appeal from a decision cannot be used to fill gaps identified in that decision.[24]

Further, if the Appellants' renewal *was* rejected based on non-compliance with City bylaws this would have been arbitrary and capricious, and therefore unreasonable.

The Report ignores the fact that the City inspected the Property in July of 2023. Bylaw Officer Barry McLean's July 26, 2023 email mentions that the inspection revealed at that time that work

---

[21] See Document 7 of **Schedule "C"**: *Vavilov* at at pp. 87 – 88, para. 96.
[22] See Document 8 of **Schedule "C"**: Business Licence Bylaw (No. 89-071) at p. 136.
[23] See Document 3 of **Schedule "A"**.
[24] See Document 9 of **Schedule "C"**: *Honey Fashions Ltd. v. Canada (Border Services Agency)*, 2020 FCA 64 at pp. 145 – 146, para. 40; Document 10 of **Schedule "C"**: *Peters First Nation v. Engstrom*, 2021 FCA 243 at p. 152, para. 23; Document 11 of **Schedule "C"**: *Uyanze c. Canada (Ministre de la Citoyenneté et de l'Immigration)*, 2024 CF 554 at p. 155, para. 6.

had been done without a permit and that this would be "dealt with in a new file."[25] But Mr. McLean never followed up regarding the unpermitted work.

The Report mentions unspecified "safety" issues, but this is the first time such issues have been brought to the Appellants' attention. It is not fair for the City to inspect a property after granting a licence, tell the owners that everything is fine, and then reject the renewal of their business licence based on something the owners were never told they needed to remediate. Again, this is merely an *ex post facto* attempt to justify the Decision which was actually made based on the Licence Inspector's personal and subjective views of what a "traditional" B&B should be.

If section 8(1) of the BLB formed the basis of the Decision then this should have been communicated to the Appellants. Even so, to deny a business licence application based on concerns that could have been raised at an earlier date is arbitrary and capricious. The Decision was not justified, intelligible or transparent to those affected by it, and it was therefore unreasonable.

Kind regards,

CREASE HARMAN LLP
Per:

Spencer Evans

Spencer C. J. Evans
SCJE/

[25] See Document 6 of **Schedule "A"**.

Schedule "C": List of Additional Authorities

Bayshore Shopping Centre Ltd. v. Nepean (Township)

Supreme Court Reports

Supreme Court of Canada

Present: Fauteux C.J. and Martland, Judson, Ritchie, Hall, Spence and Pigeon JJ.

1972: March 10 / 1972: March 30.

[1972] S.C.R. 755 | *[1972] R.C.S. 755* | 1972 CanLII 8

Bayshore Shopping Centre Limited, Appellant; and The Corporation of the Township of Nepean and William Bourne and March Ridge Developments Limited, Respondents.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Case Summary

Municipal law — Zoning by-law — Proposed shopping centre — Individual components included within permitted uses — Whether "shopping centre" a permitted use although not listed.

The individual respondent, the building inspector of the respondent municipality, had been on the point of granting to the appellant a building permit for the erection of a shopping centre upon certain lands when the respondent development company commenced an action against the municipality alleging that the by-laws of the municipality applicable to the lands in question did not permit the erection of a shopping centre. Therefore the building inspector and the municipality refrained from issuing the building permit. The appellant thereupon served notice of application for an order of mandamus compelling such issuance and named as respondents to that application not only the building inspector and the municipality but also the development company. The application, which was opposed by the development company only, was granted by the chambers judge. On appeal, the Court of Appeal allowed the appeal and quashed the order. An appeal to this Court ensued.

The one vital issue upon the appeal was the true construction of By-law 39-62 of the respondent municipality and the determination of whether, upon the proper construction of the said by-law, the appellant was entitled to have the respondent building inspector and the respondent municipality issue to it a building permit or building permits for the construction of the shopping centre in accordance with its application for such permits.

Held: The appeal should be allowed and the order of the judge of first instance restored.

In the zoning by-law in question there was no mention of "shopping centre" in a permitted uses section of any zone but there was set out as permitted uses in Commercial-Regional C1 Zone the words "retail store", "a service shop" and "department store". The Court was of the opinion that the words "retail store" "service shop" and "department store" would as generic terms cover a shopping centre when there were no words in the permitted uses sections of the by-law to make a distinction between these words and a "shopping centre". The omission of the words "shopping centre" in all the permitted use sections of the by-law far from indicating the intention of the Council to prohibit the erection of such structures indicated that in its view they were already covered in the three different permitted uses referred to above.

The final words of the definition of "retail store", i.e. "but does not include any other retail outlet otherwise classified or defined in this by-law", were regarded as clear indication that the Council intended to include within the definition not only a "retail store" but all retail outlets which were not otherwise classified or defined. A shopping centre was nothing but a group of "retail outlets".

The presence of the words "planned shopping centre" in a section of the by-law applying to all zones and respecting required parking facilities did not indicate that a shopping centre was "otherwise classified". The suggestion that the inclusion of the words "planned shopping centre" in the parking requirement was preparatory for some future amendments which might permit such alleged presently prohibited structures was not accepted.

Cases Cited

Thomas C. Watkins Ltd. v. Cambridge Leaseholds Ltd. et al., 1966 S.C.R. v; Oshawa Wholesale Ltd. et al. v. Canadia Niagara Falls Ltd. et al., *1972 1 O.R. 481*, distinguished.

APPEAL from a judgment of the Court of Appeal for Ontario allowing an appeal from an order of Keith J., directing the issue of a building permit. Appeal allowed.
D.K. Laidlaw, Q.C., for the appellant. Walter D. Baker, Q.C., for the respondents, William Bourne and Township of Nepean. W.B. Williston, Q.C., and L.H. Mandel, for the respondent, March Ridge Developments Ltd.

Solicitors for the appellant: McCarthy & McCarthy, Toronto. Solicitors for the respondents, Township of Nepean and William Borne: Bell, Baker, Thompson & Oyen, Ottawa. Solicitors for the respondent, March Ridge Developments Ltd.: Thompson, Rogers, Toronto.

The judgment of the Court was delivered by

SPENCE J.

SPENCE J.:— This is an appeal of Bayshore Shipping Centre Limited from the judgment of the Court of Appeal for Ontario pronounced on December 15, 1971. By that judgment the Court of Appeal for Ontario had allowed an appeal from the order of Keith J., pronounced on November 12, 1971, directing the respondents William Bourne and the Corporation of the Township of Nepean to issue to the appellant as building permit for the erection of a shopping centre upon the lands in question. The said Bourne, the building inspector of the Township of Nepean, had been on the point of granting such a permit when the respondent, March Ridge Developments Limited, commended an action against the respondent township of Nepean alleging that the by-laws of that municipal corporation applicable to the lands in question did not permit the erection of a shopping centre. Therefore the respondents Bourne and the Township of Nepean refrained from issuing the building permit for which the appellants had applied. The appellant thereupon served notice of application for the said mandamus compelling such issuance and named as respondents to that application not only the said Bourne and Township of Nepean but the said March Ridge Developments Ltd. The respondents Bourne and Township of Nepean have never opposed the issue of the permit nor of an order of the Court directing that they do so issue the said permit and have taken such position before Keith J., the Court of Appeal for Ontario and this Court. The respondent March Ridge Developments Ltd. has opposed the issuance of the permit and the appellant's application throughout. Keith J., giving no written reasons for his disposition, granted the appellant's application and refused this respondent's application for a stay of execution. The Court of Appeal for Ontario in a unanimous judgment pronounced on December 15, 1971, allowed the respondent March Ridge Developments Ltd.'s appeal from the order of Keith J. and quashed his order. The appeal to this Court ensued.

All counsel before this Court agreed that the one vital issue upon the appeal was the true construction of By-law 39-62 of the respondent Township of Nepean and the determination of whether, upon the proper construction of the said by-law the appellant was entitled to have the respondents Bourne and the Township of Nepean issue to it a building permit or building permits for the construction of the shopping centre in accordance with its application for such permits. Other issues had been canvassed before Keith J. and the Court of Appeal for Ontario but in this Court all counsel ignored such other issues and confined their submissions to the one issue of the true construction of the said By-law 39-62.

It was the initial submission of counsel for the appellant that the Court of Appeal for Ontario fell into error in believing that the construction of the said By-law 39-62 could be governed by the judgment of the same Court

similarly constituted in Oshawa Wholesale Ltd. et al. v. Canadia Niagara Falls Ltd. et al. which had been argued immediately before the appeal in the present case and which is now reported in *[1972] 1 O.R. 481*. That appeal also dealt with an application to compel the issuance of a building permit for a shopping centre. The decision and that in the present case were the latest in a few appeals to the Court of Appeal for Ontario, at least one of which came to this Court which need to be mentioned upon this point.

In Thomas C. Watkins Ltd. v. Cambridge Leaseholds et al. [1966] S.C.R. v.], the learned judge of first instance had granted a mandamus directing the issue of a building permit for the erection of a department store. The majority of the Court of Appeal for Ontario dismissed an appeal from that order but McGillivray J.A. in dissenting reasons would have allowed the appeal and quashed the order upon the basis that the zoning by-law in question had set out five different commercial zones and in only one of them had listed as a permitted use a department store although retail stores were listed as permitted uses in all five zones. The application before the Court was for a department store in one of the other four zones. McGillivray J.A. said in his reasons:

> It is reasonable to believe that by making these two items separate and distinct in the by-law there are to bear a different connotation and that the term "retail store" is not sufficiently comprehensive to include department store.

Upon appeal to this Court argued on June 10, 1966, the appeal was allowed in an oral judgment in which this Court expressly adopted the dissenting reasons of McGillivray J.A.

A not dissimilar issue came before Houlden J. in the Oshawa Wholesale Ltd. case, an action to have declared void a building permit already issued for erection of what was termed by an expert witness a "sub-regional shopping centre". The zoning by-law in question never listed as a permitted use a "sub-regional shopping centre" or even a shopping centre without descriptive adjectives, but did permit "local shopping centre". These words were defined in the by-law to mean "a group of smaller related stores situate for direct service within a residential neighbourhood unit". Houlden J. in lengthy and very carefully considered reasons dealt with many issues not her relevant and held that the by-law having specifically permitted one type of shopping centre, and it the smallest one according to the expert opinion which he accepted, could not be interpreted to permit a much larger shopping centre under the permitted uses entitled "retail stores" or "supermarkets". Houlden J. therefore gave judgment for the plaintiff making a declaratory order that the building permit was null and void. The appeal by the developer to the Court of Appeal for Ontario I have already referred to and is the judgment thereon which that court adopted in deciding the appeal in the present case against the present appellant Bayshore Shopping Centre Ltd. In his oral reasons Aylesworth J.A. did not merely adopt the reasons of Houlden J. although the learned justice in appeal did point out the very limited permitted use of "local shopping centre". Aylesworth J.A. went much further and relying on the evidence of the expert witness and upon reference to shopping centres in one American decision and by Roach J.A. in Re Hamilton & Dominion Stores Ltd. [[1962] O.W.N. 227.], neither of which dealt with zoning by-laws, held a shopping centre was a "distinct and separate use not within the terms of the by-law in question ...". Despite the very broad character of the statement in the rationale for the decision, I agree with counsel for the appellant that the judgment in the Oshawa Wholesale case given upon a by-law having the unique feature which I have outlined cannot be taken to have determined the interpretation of the quite different provisions of By-law 39-62 in question in this present case.l

Therefore I turn to the interpretation of the by-law in question. This is By-law 39-62 of the Township of Nepean enacted on June 11, 1962, as amended. This by-law is a general zoning by-law concerning the northern part of the township by the provision of which persons are prohibited from using any land or erecting any building or structure expect in conformity with the provisions of the by-law. The lands as to which Bayshore as agent for the registered owner Ivanhoe Corporation, applied for the building permit, and which were situate at the intersection of Provincial Highway 7 (Richmond Road) and Bayshore Drive in the Township of Nepean are within the area zoned in the by-law as COMMERCIAL-REGIONAL C1 ZONE. That zone is the most comprehensive of the commercial zones dealt with in the by-law and if any shopping centre is permitted in the northern part of Nepean Township permission for the erection and use must be found in the permitted used listed under this Commercial-Regional C1-Zone.

The by-law in ss. 7:1:1 and 7:1:2 provides in part for the permitted used in C1 Zone as follows:

COMMERCIAL-REGIONAL C1 ZONE

7:1:1 Permitted Uses:

A retail store, a service shop and a departmental store for the conducting of any retail business. A commercial and public garage, a clinic, a commercial school, a custom workshop, dry cleaning distributing station and a tailor's shop. A Church, a library, a business office, an eating establishment, funeral home and chapel and a place of amusement. A hotel, a tavern and a public house. An automobile service station, subject to the provision of Section 5:10. (By-law No. 63-63)

. . .

7:1:2 Zone Requirements:

For uses other than for automobile service stations

(By-law No. 63-63)

Lot Area (Minimum) Nil

Lot Frontage (Minimum) Nil

Lot Coverage (Minimum) a) Commercial 80% b) on 2nd Storey 50% of lot

Height (Maximum) 60 ft.

Front Yard (Minimum) 75 ft.

Side Yard (Minimum) Nil

Except where a Commercial Zone abuts a Residential Zone, a 20 foot side yard shall be required on the side that so abuts.

Rear Yard (Minimum) 20% of lot depth

but not necessarily more than 30 feet nor less than 20 feet.

Off-street parking--See Sections 5:17 and 5:18

Off-street loading-- see Sections 5:19(a)

A retail store is defined in s. 2.87 as:

2.87 "Retail Store" shall mean a building or part of a building where goods, wares, merchandise, substances, articles or things are offered or kept for sale at retail and includes storage on or about the store premises of limited quantities of such goods, wares, merchandise, substances, articles, or things sufficient only to service such stores but does not include any retail outlet otherwise classified or defined in this By-law:

A service shop is defined in s. 2.92 as:

> 2.92 "Service Shop" shall mean a building or part of a building where services are provided such as barber's shop, a ladies hairdressing establishment, a shoe shine shop and other similar services;

and a Department Store is defined in s. 2.26 as:

> 2.26 "Department Store" shall mean the use of an enclosed building in which various types of commodities are kept for retail sale in separate parts of the one building on two or more floors;

It is not necessary to cite the many other definitions which appear in By-law 39-62. There was filed as an exhibit in the examination of C.J. Magwood, the secretary of Bayshore upon his affidavit a document entitled "Confidential Memorandum for Institutional Investors Bayshore" and counsel for the appellant cited parts of that document to illustrate what was to compose the proposed shopping centre. I quote several paragraphs thereof:

> THE PROJECT
>
> Introduction
>
> Bayshore Shopping Centre ("Bayshore") will be a regional shopping centre located in the Ottawa Metropolitan Area. Bayshore will consist of department stores operated by The T. Eaton Company Limited ("Eaton's") and Hudson's Bay Company Limited ("The Bay"), a Steinberg's Food Store and Miracle Mart Department Store operated by Steinberg's Limited "(Steinberg's"), and a two-level air conditioned mall serving approximately 100 additional stores. It will have a unique multi-level parking facility with approximately 3,200 parking spaces, of which more than half will be under cover for shopping convenience; each parking level will have direct access to one of the two main shopping levels.
>
> The Site
>
> Bayshore will be located on a 23.4 acre site, approximately 7 miles west of Ottawa's central business district, in the north-west quadrant of the interchange at Richmond Road (Highway 7) and the Queensway, two major arterial roads in the western portion of the Ottawa Metropolitan Area. The map on page 4 shoes the location of Bayshore in relation to the City of Ottawa and surrounding communities and shows access routes to Bayshore from these communities.
>
> The Company will purchase the site on or about October 31, 1971 from Ivanhoe Corporation in accordance with and subject to conditions set out in an option agreement dated June 14, 1971.
>
> A small shopping centre now operating on a portion of this site is to be demolished to make room for Bayshore. Existing zoning regulation permit the development and construction of Bayshore as planned and adequate municipal services are available.

It will be seen that the various components of the proposed shopping centre fall within the three definitions I have quoted. Counsel for the appellant has submitted that no component of the proposed shopping centre could fail to be within the permitted used outline in s. 7:1:1 quoted above and at the same time be an appropriate unit for shopping centre. After perusal of the permitted uses I agree with this submission.

There still remains for determination whether a shopping centre is within these permitted uses even if every component of the proposed shopping centre would be within one of them. I find little assistance from decisions which purport to indicate the philosophic attitude which the Court should adopt in construing zoning by-laws. No authority need be cited for the proposition that a man's property is his own which he may utilize as he deems fit so long as in such utilization he does not commit nuisance, entrap the unwary or act in breach of statutory prohibitions, and therefore by-laws restrictive of that right should be strictly construed. Yet it has been said that modern zoning provisions have been enacted to protect the whole community and should be construed liberally having in certain the public interest: R. v. Brown Camps Ltd. [*[1970] 1 O.R. 388*.]; Re Bruce and City of Toronto et al. [*[1971] 3 O.R. 62*.], at p. 67. But such statements usually ere made when the Court was considering an application to permit the encroachment into a residential zone of some building which it was residential zone of some building which it was alleged would seriously affect the amenities of life of the residents thereof. In this case the lands in question are

situate in a general commercial zone and every component of the proposed shopping centre would be the proper subject-matter of a building permit as a permitted use under the By-law 39-62. I therefore approach the interpretation and application of the by-law without acknowledging any compulsion to consider its provision either strictly or liberally.

It must be noted, and it is of prime importance, that nowhere in the permitted use sections of By-law 39-62 do the words "shopping centre" either alone or accompanied by any adjective appear. This situation contrasts strongly with that which was present in Thomas C. Walkins Ltd. v. Cambridge Leaseholds Ltd. et al., supra, where a permit was sought for the erection of a department store in a C1 Zone where it was not a listed permitted use but in C5 Zone a department store was so listed. It also contrasts with the Oshawa Wholesale case where a permit was sought for a "sub-regional shopping centre" in a zone where it was no a permitted use but in another zone there was listed as a permitted use a "local shopping centre". In view of such express reference elsewhere in the permitted uses sections of the by-law and its omission in the zone as to which the application for permit was made, the term "retail store" could not be held to cover in the former case, a "department store" and in the latter, a "sub-regional shopping centre". In the present case there is no mention of "shopping centre" in a permitted uses section of any zone but there is set out as permitted uses in the C1 Regional-Commercial Zone the words "retail store", "a service shop" and department store". McGillivray J.A., in his reasons in the Cambridge leaseholds case, which this Court as I have pointed out, adopted said:

> There can be little doubt, and counsel for the appellant, I believe, agrees, that as a generic term "retail store" would include a department store which is concerned with retail business, but the review of the various sections of the act manifest the intention, in my opinion, of making a distinction between a department store and retail store.

Applying the same analysis I am of the opinion that the words "retail store" "service shop" and "department store" would as generic terms cover a shopping centre when there are no words in the permitted uses sections of the by-law to make a distinction between these words and a "shopping centre"--a distinction which McGillivray J.A. found in the Cambridge Leaseholds case. I have reached the conclusion that the omission of the words "shopping centre" in all the permitted use sections of the by-law far from indicating the intention of the Council to prohibit the erection of such structures indicated that in its view they were already covered in the three different permitted uses to which I have referred.

The final words of the definition of "retail store" are significant:

> but does not include any other retail outlet otherwise classified or defined in this by-law (the italicizing is my own).

I regard these words as clear indication that the Council intended to include within the definition not only a "retail store" but all retail outlets which were not otherwise classified or defined. Certainly a shopping centre is nothing but a group of "retail outlets".

Counsel for the respondent March Ridge Developments Ltd. however, submits that a "shopping centre" is otherwise "classified". He agrees the words were not "defined" in the by-law but he points to the provision of s. 7:1:2 ... "off-street parking--See Section 5:17 and 5:18" and cites s. 5:17 the schedule of which reads in part as follows:

SCHEDULE

Type of Nature of Building or Structure	Minimum Required Parking Facilities
6. A retail store, service store, or other similar establishment, a planned	1 parking space for each 180 square feet of floor area

> shopping centre or
>
> department store

It must be noted that s. 5:17 is in a part of the by-law entitled SECTION 5 GENERAL PROVISIONS TO ALL ZONES which part covers very many provisions but does not deal with permitted uses. Secondly, as I have stressed before, there has been no mention of a shopping centre in any permitted uses section and to provide parking regulations for a use which was prohibited seems not only surplusage but contradictory. I am quite unable to accept the suggestion that the inclusion of the words "planned shopping centre" in the parking requirement was preparatory for some future amendments which might permit such alleged presently prohibited structures. Surely the wise time to make such requirements would be when the use were permitted. I am therefore not ready to agree that the presence of these words "planned shopping centre" in s. 5:17 indicate that shopping centre was "otherwise classified". The meaning I attach to those words is "otherwise in the By-law a permitted use".

On the other hand, I regard the presence of the words "planned shopping centre" in s. 5:17 as a clear indication that Council had shopping centres in mind when it enacted By-law 39-62 and believed the permitted uses "retail store", "service store" and "department store", as well as a "business office" "an eating establishment" and "an automobile service station", sufficient to authorize a permit for a shopping centre. Council however realized that a shopping centre presented special parking problems. It might well be that the parking appropriate to many retain stores, service stores and department stores all in one group sharing a common great parking area and that the parking requirement should be one referring to the total floor area and not limited to the floor area of each retail store, service store or department store. The Council therefore enacted the provision as to parking requirements found in s. 5:17.

I have found nothing in the By-law 39-62 which would prevent one lot, in this case almost twenty-four acres, being put to various permitted uses. All types of permitted uses may utilize one lot and in fact various permitted uses may occupy the same building although it would appear that a department store must occupy its own building.

Maxwell on Interpretation of Statutes, 12th ed. at p. 264, cites authority, if any need be cited for the proposition that one may have regard to the conduct of those who were responsible for the creation of a provision to ascertain their understanding of its meaning. This By-law 39-62 was, as I have said, enacted on June 11, 1962. Even if we may not take judicial notes of the many shopping centres which have been erected in Nepean Township since that date we have the evidence of the secretary of the appellant that there exists today on the very lands which are the subject of the application for building permit for a shopping centre, a much smaller one which had been erected since 1962. Therefore it is apparent that the Council which enacted By-law 39-62 and the building inspector who acted under its direction, have always believed that a shopping centre was a permitted use on Regional-Commercial Zone C-2. In confirmation of this I note that counsel for Nepean Township filed a factum on this appeal and submitted.

> By-law 39-62 has been in force since 1962 and, under its authority, shopping centre development has taken place on the site in question and other sites within the Township of Nepean

and further:

> ... the respondents Nepean and bourne had or have no grounds upon which to base a rejection of the application for Building Permit.

For these reasons I have concluded that the appeal should be allowed and the order of Keith J. pronounced on November 12, 1971, should be restored. The appellant and the respondents, the Township of Nepean and William Bourne, will be entitled to their costs throughout from the respondent March Ridge Developments Limited.

Appeal allowed with costs.

End of Document

PART 1.64 - R1-BB1 ZONE, OXFORD BED & BREAKFAST DISTRICT

Uses 1 The following uses are the only uses permitted in this Zone:

(a) a single family dwelling the principal use of which is occupancy by only one family;

(b) accessory uses that are incidental to or normally associated with a single family dwelling;

(c) transient accommodation

(i) that is located in a single family dwelling,

(ii) that is operated only by the family, or a member of it, and its employees for this purpose, that occupies the single family dwelling in which the transient accommodation is located,

(iii) that does not use more than 4 bedrooms,

(iv) that does not provide to its customers more than one meal per day or any meals after noon of any day,

(v) that does not provide liquor to its customers.

Parking 2 There must be at least 4 parking spaces on a lot.

General 3 Single family dwelling use is subject to the regulations applicable in the R-BB Zone, Single Family Dwelling (Bed and Breakfast) District.

PART 5.25 – T-25 ZONE, MCCLURE TRANSIENT ACCOMMODATION DISTRICT

5.25.1 Permitted Uses in this Zone

The following uses are the only uses permitted in this Zone:

a. Transient accommodation

5.25.2 Lot Area, Number of Buildings

a. Lot area (minimum)	1850m^2
b. Notwithstanding Section 19 of the General Regulations, more than one building is permitted on a lot subject to the regulations in this Part	

5.25.3 Floor Space Ratio

a. Floor space ratio (maximum)	0.64:1

5.25.4 Height, Storeys

a. Building height (maximum)	10.55m
b. Storeys (maximum)	4

5.25.5 Setbacks, Projections

a. Front yard setback (minimum)	7.5m
b. Rear yard setback (minimum)	7.5m
c. Side yard setback from interior lot lines (minimum)	3.5m
d. Side yard setback on a flanking street for a corner lot (minimum)	7.5m
e. Projections into setbacks (maximum)	
Cornices, fin walls, slab edges, eaves, window overhangs and sunscreens	0.75m
f. Nothwithstanding subsections (a), (b), and (d), front yard, rear yard and flanking street side yard setbacks shall not apply to entrance canopies, steps, patios and balconies forming part of a building	
g. Separation distance between buildings (minimum)	4.0m

PART 5.25 – T-25 ZONE, MCCLURE TRANSIENT ACCOMMODATION DISTRICT

5.25.6 Site Coverage, Open Site Space	
a. Site Coverage (maximum)	30%
b. Open site space (minimum)	27%

5.25.7 Vehicle and Bicycle Parking	
a. Vehicle parking (minimum)	Subject to the regulations in Schedule “C”
b. Bicycle parking (minimum)	Subject to the regulations in Schedule “C”

Bylaw 19-087 adopted September 19, 2019

Effect of private Acts

6 A provision in a private Act does not affect the rights of any person, except only as referred to or mentioned in that Act.

Enactment always speaking

7 (1) Every enactment must be construed as always speaking.

(2) If a provision in an enactment is expressed in the present tense, the provision applies to the circumstances as they arise.

Enactment remedial

8 Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

Section 35 of *Constitution Act, 1982* and Declaration

8.1 (1) In this section:

"Declaration" has the same meaning as in the *Declaration on the Rights of Indigenous Peoples Act*;

"Indigenous peoples" has the same meaning as in the *Declaration on the Rights of Indigenous Peoples Act*;

"regulation" has the same meaning as in the *Regulations Act*.

(2) For certainty, every enactment must be construed as upholding and not abrogating or derogating from the aboriginal and treaty rights of Indigenous peoples as recognized and affirmed by section 35 of the *Constitution Act, 1982*.

(3) Every Act and regulation must be construed as being consistent with the Declaration.

Title and preamble

9 The title and preamble of an enactment are part of it and are intended to assist in explaining its meaning and object.

Enacting clause

10 The enacting clause of an Act of the Legislature may be in the following form: "Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:".

Reference aids and clarifications

11 (1) In an enactment, a head note to a provision or a reference after the end of a section or other division

(a) is not part of the enactment, and

(b) must be considered to have been added editorially for convenience of reference only.

(2) In an enactment, if a reference to a provision of the enactment or any other enactment is followed by italicized text in square brackets that is or purports to be descriptive of the subject matter of the provision, subsection (1) (a) and (b) applies to the text in square brackets.

(3) The Lieutenant Governor in Council may make regulations amending an enactment for the purpose of changing a reference to a specific minister or ministry in a provision of the enactment to the minister or ministry, as applicable, currently assigned responsibility in relation to the matter.

Definitions and interpretation provisions

12 Definitions or interpretation provisions in an enactment, unless the contrary intention appears in the enactment, apply to the whole enactment including the section containing a definition or interpretation provision.

Application of expressions in enactments to regulations

13 An expression used in a regulation has the same meaning as in the enactment authorizing the regulation.

Government bound by enactments; exception

14 (1) Unless it specifically provides otherwise, an enactment is binding on the government.

(2) Despite subsection (1), an enactment that would bind or affect the government in the use or development of land, or in the planning, construction, alteration, servicing, maintenance or use of improvements, as defined in the *Assessment Act*, does not bind or affect the government.

Power of repeal and amendment

15 (1) Every Act must be construed as to reserve to the Legislature the power of repealing or amending it, and of revoking, restricting or modifying a power, privilege or advantage that it vests in or grants to any person.

(2) An Act may be amended or repealed by an Act passed in the same session of the Legislature.

Proclamation

16 (1) In a proclamation, it is not necessary to mention that it is issued under an order of the Lieutenant Governor in Council.

Canada (Attorney General) v. Jackson

Supreme Court of Canada Judgments

Supreme Court of Canada

Present: Kerwin, Taschereau, Rand, Kellock and Estey JJ.

1945: May 3, 4, November 8 / 1946: February 5, 6 /

1946: March 29.

[1946] S.C.J. No. 21 | [1946] S.C.R. 489 | [1946] 2 D.L.R. 481 | 59 C.R.T.C. 273 | 1946 CarswellNB 28

Attorney-General of Canada (Plaintiff), Appellant; and Leslie C. Jackson (Defendant), Respondent.

(28 paras.)

ON APPEAL FROM THE SUPREME COURT OF NEW BRUNSWICK, APPEAL DIVISION

Case Summary

Crown — Master and servant — Automobile — Collision — Member of Armed Services injured while riding as gratuitous passenger --Crown's disbursements for wages and medical and hospital services — Action by Crown to recover same from owner and driver of motor car — Civil wrong, actionable by servant, prerequisite to right of master to recover expenses — Application of section 50 A Exchequer Court Act to proceedings in provincial courts — Its constitutionality — Exchequer Court Act, section 50A, enacted Dom. 1943-44, c. 25, s. 1 — Motor Vehicle Act (N.B.) 1934, c. 20, s. 52.

One D., a soldier on active service in the Canadian Army, being on leave of absence, was travelling to his home as a guest passenger with the respondent in the latter's motor car. A collision occurred and D. was severely injured. The Crown (Dominion) disbursed a sum of $1,855.24 for wages paid and medical and hospital services furnished through its Army organization during the period of incapacitation. The Attorney-General of Canada brought suit in the Supreme Court of New Brunswick to recover that amount from the respondent. Section 50A of the Exchequer Court Act (enacted 1943-44, c. 25, s. 1) establishes a master-servant relationship between the Crown (Dominion) and a Canadian serviceman. Section 52 of the Motor Vehicle Act (N.B. 1934, c. 20) negatives any right of action against the owner or driver of a motor car for loss or damage resulting from injury to, or death of, a gratuitous passenger. The action was dismissed by the trial judge, and that judgment was affirmed by the appellate court.

Held that the appeal to this Court should be dismissed. The Crown, while bearing under section 50A the relation of master towards a serviceman, has no direct or specific right of recovery against a third person for expenses incurred through injury caused by the latter to the serviceman: such right depends on whether the serviceman himself has any right of action arising from the act of the third person. Hence, where D., being a gratuitous passenger in the respondent's automobile at the time of his injury, could bring no action against the respondent, neither can the Crown.

Held also that the provisions of section 50A applied not only to actions brought in the Exchequer Court of Canada, but also to proceedings brought in any provincial court.

Per Kellock J.:-- The constitutional validity of section 50A may be supported under section 91(7) of the B.N.A. Act.

APPEAL from a judgment of the Supreme Court of New Brunswick, Appeal Division [(1945) 18 M.P.R. 138; [1945] 2 D.L.R. 438.], affirming the judgment of the trial judge, Le Blanc J. and dismissing an action by the Crown

(Dominion) to recover from the respondent, on the ground that he was a negligent driver of a motor car, amount of moneys paid to and on account of a Canadian serviceman injured while riding as a passenger.
F.P. Varcoe K.C. and W.R. Jackett, for the appellant. R.H. Allen, for the respondent at the hearing of the appeal. A.B. Gilbert K.C., for the respondent at the re-hearing ordered by the Court.

Solicitor for the appellant: F.P. Varcoe. Solicitors for the respondent: Allen & Allen.

The judgment of Kerwin, Taschereau, Rand and Estey JJ. was delivered by

RAND J.

1 This action arises out of injuries to a member of the Canadian Army in New Brunswick. The soldier, named Dunham, was on leave and was travelling to his home as a guest passenger with the respondent in the latter's auto. A collision occurred and the injuries resulted.

2 The claim is for wages paid and medical and hospital services furnished by the Crown through its Army organization during the period of incapacitation. It is based on negligence in the respondent, the relation of master and servant between the Crown and the serviceman, and the rule enabling a master to recover damages against one who negligently or wilfully injures his servant. This relation is put first as actual and alternatively as constructive by virtue of s. 50A of the Exchequer Court Act, enacted by c. 25, s. 1, of the statute of Canada 1943-44, as follows:

> 50A. For the purpose of determining liability in any action or other proceeding by or against His Majesty, a person who was at any time since the twenty-fourth day of June, one thousand nine hundred and thirty-eight, a member of the naval, military or air forces of His Majesty in right of Canada shall be deemed to have been at such time a servant of the Crown.

3 The Motor Vehicle Act of New Brunswick, c. 20 of the statutes of 1934, has negatived any right of action of the serviceman against the respondent by s. 52, in the following language:

> 52(1) Notwithstanding anything contained in Section 48, the owner or driver of a motor vehicle, other than a vehicle operated in the business of carrying passengers for hire or gain, shall not be liable for any loss or damage resulting from bodily injury to or death of any person being carried in or upon or entering or getting on or alighting from such motor vehicle.

4 The Supreme Court of that province has held that the relation was not that of master and servant in fact and that s. 50A of the Exchequer Court Act, being included--as was assumed--in a group of sections headed "Rules for Adjudicating upon Claims", applied only to actions brought in that court.

5 I do not find it necessary to decide the first of these questions. As to the second, it may be remarked that the amendment is embodied in an Act which contains nothing to indicate inclusion within the fascicules mentioned; one could just as easily place it under the heading which immediately precedes s. 51 of the Exchequer Court Act, "Effect of payment on judgment". Its matter is foreign to rules for computing damages and its terms and purposes are clear. It might have been enacted as a separate statute and in that case it could hardly be contended that its wide provision did not apply to such a proceeding as the present: and I see no difference in the form which has been given to it.

6 But while the Crown, under the amendment, bears the relation of master toward the serviceman, the fact that the latter has no right of action arising from the act of the respondent puts, I think, an end to the controversy. The rule by which the master claims against a third person is an exception to the broad principle that one party to a contract cannot complain of negligence toward a co-contractor that interferes with the latter's performance of the contract: Cattle v. Stockton Waterworks Co. [(1875) L.R. 10 Q.B. 453.]. It applies whether the servant is at the time acting for the master or is engaged in his own affairs. There is no suggestion in the early cases that damages in loss of wages and medical and hospital expenses where those were actually suffered or incurred could not be recovered by the servant, and such claims are a common place today. Nor is it suggested that the master's right is independent of conduct or action by the servant which defeats the claim on his own part. What English authority

there is tends to the contrary: Williams v. Holland [(1833) 172 E.R. 1129.]; Chaplin v. Hawes [(1828) 172 E.r. 543.]. In Alton v. Midland R. Co. [(1865) 19 C.B. (N.S.) 213.], Willes J. uses this language which is not within the criticism that has been made of the judgment in that case:

> It must be admitted by the defendants that a long series of authorities has established that a master may sue for loss of services caused by a pure wrong, a trespass, to his servant, as by beating him. On the other hand, it is indisputable that no such action has ever been sustained in a case in which the injury to the servant was not actionable in respect of the civil wrong, but only in respect of a duty arising out of and founded upon a contract with the servant.

Although it is the contrast between a civil wrong and the breach of a contractual duty that is being pointed here, nevertheless a civil wrong actionable by the servant seems to be indicated as a prerequisite to the right of the master. In Admiralty Commissioners v. S.S. Amerika [[1917] A.C. 38, at 55.] Lord Sumner says:

> They are two separate causes of action in two different persons in respect of the same act.

The act here, in relation to the servant, is not in law culpable and unless we import into the right given to the master the conception of an independent duty running to him in addition to the duty to the servant--an introduction which, in view of our ignorance of the principle underlying the rule and the comparative modernity of the concept of duty in negligence, I think wholly unwarranted--we must conclude that it is the quality of the act vis-à-vis the servant which determines its significance for purpose of liability to the master. The notion of an act at once innocent and culpable would here be an innovation whatever the theory behind the liability; and I should say that if there is no wrong to the servant the act is innocuous toward the master.

7 This qualification of the rule has been applied in Ontario where the claim was asserted by a parent for injury to his child, a right based on the same theory of deprivation of service: McKittrick v. Byers [*[1926] 1 D.L.R. 342*.]. The United States authorities are uniform in the same view: Beach on Contributory Negligence, 3rd ed., p. 189. In these cases the cause of action of the master was held to be dependent upon a right in the servant and to be defeated by the contributory negligence of the latter.

8 The case of Norton v. Jason [(1651) 82 E.R. 809.], cited by Mr. Varcoe, decides only that the bar of the Statute of Limitations against the servant cannot be raised against the master. The case was of parent and child and there was no question of the existence of a cause of action in the daughter; but the fact that the point raised would seem rather to assume the necessity of a right in the servant to support that of the master.

9 The injuria to the master is, then, a loss of service arising from an act which is an actionable wrong against the servant: and its effect is to permit the master to recover damages to a large extent the same as those in a proper case recoverable by the servant.

10 This view is indirectly supported by the reasoning in Attorney-General v. Valle-Jones [[1935] 2 K.B. 209.], where it is said that if the wages and expenses had not been paid by the Crown they could have been recovered from the defendant by the injured serviceman. Conversely, if not recoverable directly by the servant, the law should not be circumvented through indirect but substantial recovery by the master.

11 As Dunham, then, could bring no action against the respondent, neither can the Crown. The amendment, s. 50A, does not purport to create a direct and specific right in the Crown: it places the Crown in a recognized common law relation only, and its rights are those arising from that relation under the rules of that law. The fact that jurisdiction over the civil right of the servant affects what might otherwise be a right in the Dominion Crown is immaterial. The Crown's right is of the same nature as that of a private person: it can arise here only from a wrong to the servant over which the jurisdiction of the province is exclusive.

12 Mr. Varcoe advanced the further contention that in any event the act of Jackson was a wrong against the Crown within the principle of Donoghue v. Stevenson [[1932] A.C. 562.]. There it was held by the House of Lords that a person who for gain engages in the business of manufacturing articles of food and drink intended for consumption by the members public in the form in which he issues them is under a duty to take care in the manufacture of these

articles. Obviously the act of the manufacturer is specifically directed towards the consumer. If there were no consumer there would be no act, and it was not difficult to hold that, since a failure to observe care in that act might reasonably result in injury to the consumer, a duty toward the consumer to use care arose. But in the act with which we are dealing, only Dunham was in contemplation of the respondent. Conveying him to his home was a matter of fact to which the Crown was a stranger. Duty is annexed to prudent foresight of consequences in matter of fact and although we perhaps cannot say that a legal circumstance can never be a link in that fact, to apply the principle here would be to charge a person with a provision of contractual relations with third parties, which Cattle v. Stockton Waterworks [(1875) L.R. 10 Q.B. 453.] decided cannot be done.

13 The claim thus failing because of a fatal defect in the cause of action, I do not find it necessary to consider the interesting constitutional questions bearing upon the legislative fields of the Dominion and the Province that were so thoroughly canvassed on the re-argument.

14 I would dismiss the appeal with costs.

KELLOCK J.

15 This is an appeal by the plaintiff in an action brought in the Supreme Court of New Brunswick, King's Bench Division, for damages alleged to have been sustained by the Crown arising out of an injury to one Dunham, a member of the Veterans' Guard of Canada, on the 31st of October, 1940, the damages claimed being payments made by the Crown while Dunham was incapacitated. This soldier, a passenger in a motor vehicle owned and driven by the respondent, was injured when it came into collision with another motor vehicle occasioned, as it was alleged, by the negligence of the respondent. The trial judge found the respondent guilty of negligence, and this finding has not been interfered with by the Appeal Division. The trial judge, however, dismissed the action on the ground that the order in council under which payments had been made by the Crown had not been proven. The Appeal Division [*[1945] 2 D.L.R. 438*.] did not proceed upon this ground but on the ground that the action did not lie. Baxter C.J., who delivered the judgment of the Court, held that the relationship of master and servant, essential for the maintenance of such an action, did not obtain as between Dunham and the Crown. It was held also that s. 50A of the Exchequer Court Act, enacted by c. 25 of the statutes of Canada 1943-44, is not applicable to an action in a provincial court, and that in any event the claim was barred by virtue of s. 52 of the New Brunswick Motor Vehicle Act, c. 20 of the 1934 statutes, Dunham being a gratuitous passenger in the respondent's car at the time of the accident.

16 On this appeal the Crown contends that:

(1) the relationship of master and servant as between Dunham and the Crown did subsist at common law and that the point is now, in any event, concluded by s. 50A of the Exchequer Court Act;

(2) that section is not limited to proceedings in the Exchequer Court of Canada;

(3) section 52 of the Motor Vehicle Act does not affect the right of action of the appellant;

(4) the damages were properly proven.

It will be convenient to examine the second ground of appeal.

17 Sections 47 to 50A, inclusive, of R.S.C. 1927, c. 34, entitled "An Act Respecting the Exchequer Court of Canada", constitute a fascicules of sections under the heading "Rules for Adjudicating upon Claims". Section 50A was no doubt passed, partly at least, as a result of the decision of the Exchequer Court of Canada in McArthur v. The King [*[1943] Ex. C.R. 77*.]. That was the case of an action against the Crown under s. 19(c) of the Act but the new section is made to apply to an action by, as well as against, His Majesty. The judgment below proceeds upon the footing that this group of sections is governed by the above heading and is confined to claims in the Exchequer Court of Canada.

18 Where the language of a section is ambiguous, the title and the headings of the statute in which it is found may be resorted to restrain or extend its meaning as best suits the intention of the statute, but neither the title nor the

headings may be used to control the meaning of enacting words in themselves clear and unambiguous: The "Cairnbahn" [[1914] P. 25, at 30 and 38.]; Fletcher v. Birkenhead Corporation [[1907] 1 K.B. 205, at 214 and 218.].

19 Section 50A taken by itself is not ambiguous. I think it is not to be applied only to proceedings in the Exchequer Court of Canada. It is not expressly limited as are ss. 47, 48 and 50. Section 49 is not limited in terms and there appears to be no reason why its terms should not apply to the subject-matter of proceedings taken by the Crown in a provincial court.

20 Section 50A does not depend for its constitutional validity, in my opinion, upon s. 101 of the British North America Act. It may be supported under s. 91(7). In Grand Trunk Railway Co. v. Attorney General of Canada [*[1907] A.C. 65*.], Lord Dunedin at p. 68 said:

> It seems to their Lordships that, inasmuch as these railway corporations are the mere creatures of the Dominion Legislature--which is admitted--it cannot be considered out of the way that the Parliament which calls them into existence should prescribe the terms which were to regulate the relations of the employees to the corporation.

This principle applies equally to the present question, namely, the relationship between a soldier and the Crown. I assume that there is no other question which would render the provisions of the section inapplicable at the time of the occurrence here in question to the relations between Dunham and the Crown.

21 Coming to the third question, s. 52 of the Motor Vehicle Act reads as follows:

> 52(1) Notwithstanding anything contained in Section 48, the owner or driver of a motor vehicle, other than a vehicle operated in the business of carrying passengers for hire or gain, shall not be liable for any loss or damage resulting from bodily injury to or death of any person being carried in or upon or entering or getting on or alighting from such motor vehicle.

Mr. Varcoe contends that the cause of action arising in favour of a master who loses the services of his servant through injury to the servant caused by the wrongful act of a third person is independent of any cause of action which may enure to the servant himself. He argues that an act, causing loss to the master through injury to the servant, may be wrongful quo ad the master and therefore actionable, even although, by reason of the existence of a statutory provision which disentitles the servant to sue but which does not affect the quality of the act, the servant himself has no remedy. Put another way, he says that if the injury to the servant is "justifiable", neither the master nor the servant has any cause of action but a provision which merely bars proceedings by the servant does not affect the cause of action vested in the master. He submits that the statutory provision here in question is of the latter character and does not purport to affect the quality of the act.

22 Mr. Varcoe referred to the judgment of Lord Blackburn in Darley Main Colliery Co. v. Mitchell [(1886) 11 App. Cas. 127.] where in referring to the action "per quod" he said at p. 142:

> ... but no amount of damage would give the master an action if the beating were justifiable.

Mr. Varcoe argues that "justifiable" is to be interpreted as "innocent" (Machado v. Fontes [[1897] 2 Q.B. 231.]) and as by reason of s. 37 of the Motor Vehicle Act negligence in the operation of a motor vehicle on a highway is made the subject of a penalty, the conduct of the respondent is not innocent.

23 It is important to keep in mind that the cause of action here in question is an anomalous one, having arisen at a time when the relationship of master and servant was based on status and that it is illogical in a society based on contractual obligation: per Lord Parker in The "Amerika", [[1917] A.C. 38.] at p. 45 and per Lord Sumner in the same case at pp. 54 and 60. In the words of Lord Sumner at p. 60:

> Indeed, what is anomalous about the action per quod servitium amisit is not that it does not extend to the loss of service in the event of the servant being killed, but that it should exist at all. It appears to be a survival from time when service was a status.

The cause of action, therefore, is not to be extended beyond limits already marked out, however logical it might be to do so.

24 A convenient statement of the action per quod is to be found in Blackburn and George on Torts, 1944 ed., p. 181, namely:

> If A deprives B of his servant's services by a tort committed against the servant, B may sue A. In such a case B must prove (i) that A's actions are a tort against the servant; (ii) that B has thereby lost his servant's services.

Accordingly, if the defendant's conduct does not constitute a tort against the servant, the master has no cause of action.

25 The provisions of sub-section (1) of section 52 of the Act eliminate any duty to take care civilly as between persons in the relative positions of the respondent and Dunham. That being so there is no negligence on the part of the respondent. There is therefore no tort which Dunham can rely on and there is no authority to which we have been referred or which I have been able to find establishing a right on the part of a master to sue in such circumstances. The fact that the respondent's conduct may render him liable to a penalty is not enough.

26 The action for seduction referred to by Lord Sumner in the case cited [(1833) 6 Car & P. 23.] as the most artificial aspect of the action per quod is again itself anomalous in that the woman has no right of action: Salmond on Torts, 10th ed., pp. 356 and 361. In the case of a parent and child however, the parent's right to sue for damages for injury to the child was always affected at common law by contributory negligence on the part of the child: Blais v. Yachuk [*[1946] S.C.R. 1*, at 18.]; Hall v. Hollander [(1825) 4 B. & C. 660.]; Williams v. Holland [(1833) 6 Car. & P. 23.]; McKittrick v. Byers [*(1926) 58 O.L.R. 158*.]. I can find no authority showing that in the case of a true master and servant relation, the result was not the same. Unless therefore there be a wrong of which the servant can complain, with the single exception of seduction, referred to above, the master has no cause of action and in the case at bar there is no such wrong.

27 It is not necessary to deal with the other points argued. The appeal must be dismissed with costs.

28 Appeal dismissed with costs.

End of Document

Schoenhalz v. Insurance Corp. of British Columbia

Canadian Insurance Law Reporter Cases

Supreme Court of British Columbia

Before: Hyslop J

Decision: April 14, 2016.

Docket No. 49165

Canadian Insurance Law Reporter Cases > Cases > 2010s > 2016

[2016] I.L.R. para. I-5875 | *[2016] B.C.J. No. 743* | *2016 BCSC 661*

Trissteen Schoenhalz v. Insurance Corporation of British Columbia

History of Proceedings: Related to *Schoenhalz v. Reeves*, *[2013] I.L.R. para. M-2703* (BCSC)

Case Summary

Automobile insurance — Uninsured motorist — Entitlement to coverage — Plaintiff was injured in motor vehicle accident in 2007 at age 17 — R, who was 15 and did not have licence, was driver — Vehicle was owned by plaintiff and R's friend's mother — Mother only gave her son and his friend L consent to drive — In tort action, plaintiff obtained judgment against R — Plaintiff sought compensation from Uninsured Motorist Protection Fund under s. 20 of Insurance (Vehicle) Act — Defendant Insurance Corporation of British Columbia ("ICBC") argued claim was barred by s. 91 — Court found ICBC failed to discharge burden to prove plaintiff knew or ought to have known vehicle was being operated without owner's consent — Section 91 was not limited to stolen vehicles — Wording of s. 91 is clear and unambiguous — Unique circumstances of this case were that plaintiff and R were very young — Court did not find plaintiff subjectively knew R did not have consent from owner to drive — Plaintiff's claim was not barred by s. 91 — Action allowed — Insurance (Vehicle) Act, *RSBC 1996, c. 231, s. 20*, 91.

Facts: The plaintiff was injured in a motor vehicle accident in 2007 at age 17. R, who was 15 and did not have a licence, was driving the vehicle. The vehicle was owned by H. H's son, S, and his friend, L, who both had licences and permission to drive, had driven with R and the plaintiff to a campsite. L had given the keys to R and asked R and S to drive to a store. R lost control of the vehicle. In the plaintiff's tort action, she obtained judgment against R in the amount of $282,992 (see *[2013] I.L.R. para. M-2703* (BCSC)). The Court had found that H did not give R consent to drive the car and that S did not act as H's agent. The plaintiff brought an action under section 20 of the *Insurance (Vehicle) Act* (the "Act") for the defendant Insurance Corporation of British Columbia ("ICBC") to pay her $282,992 or its limits out of the Uninsured Motorist Protection Fund. ICBC argued that the claim was barred by section 91 of the Act, as the plaintiff knew or ought to have known that the vehicle was being operated without the owner's consent.
HELD: The action was allowed.

ICBC failed to discharge its burden to prove that the plaintiff knew or ought to have known that the vehicle was being operated without the consent of the owner. Although the heading of section 91 reads "Limitation on recovery in relation to stolen vehicles," the section is not limited to stolen vehicles. The Court found the wording of section 91 clear and unambiguous. It is intended to prevent recovery when a party was injured while in a vehicle they knew or ought to have known was being driven without the consent of the owner. Both the plaintiff and R believed that S owned the car, and the basis for that belief was reasonable. The Court did not find that the plaintiff subjectively knew that R did not have consent from the owner to drive. The unique circumstances of this case were that the

plaintiff and R were very young. ICBC did not prove that an ordinarily prudent 17-year-old would turn their mind to the question of consent when asked to drive a car. The plaintiff's claim was not barred by section 91.

Counsel

J.B. Carter and L. Bergerman for the plaintiff; J.D. James for the defendant

Table of Contents

Reasons for Judgment

H. HYSLOP J.

INTRODUCTION

1 The plaintiff, Trissteen Schoenhalz ("Ms. Schoenhalz"), seeks a declaration that she is entitled to an order pursuant to s. 20 of the *Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231* [*Act*], that the defendant, the Insurance Corporation of British Columbia ("ICBC") pay her $282,992.82 or its limits. She also seeks her costs, assessed at Scale B.

2 I rendered a judgment cited at *Schoenhalz v. Reeves*, *2013 BCSC 1196* ("Reasons"), where I granted a judgment in favour of the plaintiff against Chelsea Reeves ("Ms. Reeves") in the amount sought against ICBC in this action. Ms. Schoenhalz was injured in a motor vehicle accident which occurred on May 12, 2007. Ms. Reeves was driving a vehicle owned by the defendant, Brenda Hammond, in which Ms. Schoenhalz was a passenger. At the time of the accident, Ms. Reeves was 15 years old and not licensed to drive a motor vehicle. I found Ms. Reeves negligent in the Reasons. I found that Ms. Reeves did not have the consent of either Brenda Hammond or her son, Steven Hammond ("Steven"), to drive the vehicle.

3 The purpose of s. 20 of the *Act* is to provide a 'last-resort' for compensation to an injured person who obtains a judgment against an uninsured motorist: *McVea (Guardian ad litem of) v. British Columbia (Attorney General)*, *2005 BCCA 104* at para. 37, and *Buxton v. Tang*, *2007 BCSC 1101* at para. 7. Ms. Schoenhalz is not insured under s.

20, nor is there the creation of a contract between Ms. Schoenhalz and ICBC. It simply allows her to seek the amount of her judgement against ICBC.

4 ICBC does not allege that Ms. Schoenhalz's claim under s. 20 of the *Act* was improperly made. Ms. Schoenhalz swore and filed with ICBC all necessary declarations to make her claim.

5 At the trial of this action, *viva voce* evidence was not presented. Counsel for the parties agreed at a trial management conference that the evidence would be restricted to the pleadings, the Reasons, the record of the tort action, and the dates of birth of the relevant participants. It was agreed that the record would include the evidence in the tort action of Ms. Schoenhalz, the defendants, Ms. Reeves, Brenda Hammond, and Steven, and the notices to admit and the replies to the notices to admit in this action.

6 There are no reported cases as to the presentation of evidence to the court in actions brought pursuant to s. 20 of the *Act*. Presenting the evidence in this fashion is analogous to the presentation of evidence pursuant to s. 76(2) of the *Act*. Section 76(2) of the *Act* permits a person with a judgment against a tort feasor who was covered by third party liability insurance with ICBC or another insurer to recover up to the limits of the third party liability insurance policy. Under both s. 20(9) and s. 76(2), the plaintiff must have a judgment before an action for enforcement can be commenced. Section 76(2) requires the claim against the insured to be of the indemnity provided in the insurance policy. Section 20(9) requires that any claim under this section meets the requirements of the *Act* and its regulations.

7 The presentation of the evidence as proposed by Ms. Schoenhalz and ICBC is supported by *Collier v. Insurance Corp. of British Columbia* *(1995), 100 B.C.L.R. (2d) 201* (C.A.), and *Global General Insurance Co. v. Finlay*, *[1961] S.C.R. 539*, in s. 76(2)-like cases. Given the similarity of the legislative provisions at issue and the pre-requisites to launching such an action, I find this was the correct way to present the evidence at this trial.

FACTS

8 I will repeat the facts set out by ICBC with some exceptions.

9 Ms. Schoenhalz's version of the facts does not diverge from those set out by ICBC, other than to refer to some arguments that I rejected.

10 On May 12, 2007, five teenagers; Ms. Schoenhalz, Ms. Reeves, Steven, Luke Holman ("Luke"), and Dave Cochran travelled by car in a 1986 Camaro to Dry Lake Provincial Campground near Tappen for an outing. Luke was driving the Camaro to their destination.

11 The registered owner of the Camaro was Brenda Hammond.

12 Brenda Hammond had no objections to Steven's friend, Luke, driving the Camaro. Luke had a driver's license and had previously driven the Camaro with Steven as a passenger. Steven also had a driver's license.

13 All the occupants of the Camaro who travelled to the lake were friends, except for Steven and Ms. Schoenhalz. Ms. Schoenhalz and Ms. Reeves were close friends. Brenda Hammond had met Ms. Reeves briefly, but did not know her. Brenda Hammond did not know Ms. Schoenhalz.

14 At the time of the accident, Steven was 17 years of age. Luke was older than Steven; he was almost 20 years of age.

15 At the time of the accident, Ms. Reeves was 15. Steven knew this fact. Ms. Schoenhalz also knew Ms. Reeves was 15 and did not have a driver's license. Ms. Schoenhalz also did not have a driver's license. Ms. Schoenhalz was born May 8, 1990; she turned 17 four days prior to the accident.

16 Ms. Reeves testified that she had never driven on a public highway. However, Ms. Schoenhalz testified that she saw Ms. Reeves drive into her mother's driveway with Luke. Luke had his driving license, and Ms. Reeves knew this.

17 Ms. Schoenhalz testified that she knew a person needed a license to drive a car.

18 Both Ms. Reeves and Ms. Schoenhalz stated that they thought Steven was the owner of the car. Ms. Schoenhalz stated that she understood they needed the permission of the owner to drive the car.

19 After the teenagers reached the campsite, Luke asked Ms. Reeves and Ms. Schoenhalz to leave because he wanted "smokies", or hot dogs. Luke did not want to drive to get them. Luke first handed the keys to drive to Ms. Schoenhalz. Steven was not present when this occurred, as he had gone to collect firewood. Ms. Reeves entered the Camaro with Ms. Schoenhalz, who was in the driver's seat. However, the Camaro had a standard transmission, which Ms. Schoenhalz did not know how to operate. Ms. Schoenhalz and Ms. Reeves switched places and Ms. Reeves drove the vehicle.

20 There was no discussion or concern at the campsite by either Ms. Schoenhalz or Ms. Reeves as to whether they had consent to drive the Camaro.

21 Luke had put the keys to the Camaro in his pocket when they arrived at the campsite. Ms. Reeves testified that she thought she have been given permission by Luke to drive the car. Steven confirmed that Luke was in possession of the keys when they reached the campsite and he did not ask for them back. Steven also confirmed that he did not give permission to anyone else to drive the car.

22 Ms Reeves lost control of the car and it went over a bank. The car rolled several times. Ms. Schoenhalz was badly injured and suffered third degree burns to various parts of her body.

23 In her notice of civil claim, Ms. Schoenhalz alleged that the accident was caused by the negligence of Ms. Reeves. She also alleged that Steven and Ms. Hammond were negligent in consenting to Ms. Reeves' operation of the vehicle.

24 In their response, Ms. Hammond and Steven argued that Ms. Reeves was operating the vehicle without express or implied consent.

25 In the Reasons, I found that Brenda Hammond did not expect her Camaro would be driven by an unlicensed driver. She did not express her consent to Ms. Reeves driving her vehicle: para 181. Steven did not act as Ms. Hammond's agent and could not consent to the vehicle being operated by an underage driver: para. 181. There is no evidence to show that Brenda Hammond permitted anyone other than her son Steven and his friend Luke to drive the Camaro, or that she had willingness or an expectation that others would drive the Camaro: para 195. Brenda Hammond did not implicitly consent to Mr. Reeves driving her Camaro.

26 Alternatively, I stated in the Reasons if Steven was an owner, he did not consent to Ms. Reeves driving the Camaro: para 196.

LEGISLATIVE FRAMEWORK

27 Section 20(1) and (9) of the *Act* reads as follows:

> **Uninsured vehicles**
>
> **20** (1) In this section:
>
> **"claimant"** means a person who alleges that he or she has a right of action against an uninsured motorist for damages arising from bodily injury to or the death of a person, or loss of or damage to

property, caused by or arising out of the use or operation of a motor vehicle, but does not include a person who is entitled to bring an action against the corporation under section 24;

"motor vehicle" includes a trailer, but does not include

(a) a motor vehicle or trailer in respect of which there exists proof of financial responsibility given in the manner provided for by sections 106 to 113 of the *Motor Vehicle Act*, or

(b) a motor vehicle or trailer owned by, or by an agent of, the Crown in right of any other province or of Canada;

"owner", in relation to a motor vehicle, includes a lessee;

"uninsured motor vehicle" means a motor vehicle used or operated or owned by an uninsured motorist;

"uninsured motorist" means a person who uses or operates a motor vehicle on a highway in British Columbia when he or she is not insured under third party liability insurance coverage that provides indemnity in a prescribed amount, not less than $100 000, against liability imposed by law arising from bodily injury to or the death of a person, or loss of or damage to property, caused by or arising out of the use or operation of a motor vehicle, and includes the owner of a motor vehicle that is used or operated on a highway in British Columbia when the owner is not so insured.

...

(9) If the corporation enters into a settlement with a claimant or a claimant obtains a judgment against an uninsured motorist in accordance with this section and the claimant has otherwise complied with this section and the regulations, the corporation may, subject to the regulations, pay all or part of the settlement or judgment.

28 In denying compensation to Ms. Schoenhalz, ICBC relies on s. 91 of the *Act,* which limits recovery to an injured passenger in a vehicle they knew or ought to have known was being driven without the consent of the owner. Section 91 reads as follows:

Limitation on recovery in relation to stolen vehicles

91 (1) This section applies to a person who

(a) suffered bodily injury, death or loss of or damage to property that is caused by the use or operation of a vehicle, and

(b) at the time of the accident as a result of which the bodily injury, death or loss of or damage to property was suffered, was an operator of, or a passenger in or on, a vehicle that the person knew or ought to have known was being operated without the consent of the owner, and, in the case of a leased motor vehicle, the lessee.

(2) Despite the *Negligence Act* and section 100 of this Act,

...

(b) a person referred to in subsection (1) is not entitled to any recovery from the corporation under section 20.

ISSUES

1. Does s. 91 function such that ICBC bears the burden to prove that Ms. Schoenhalz's claim is barred, or does Ms. Schoenhalz have to prove her claim under s. 20 taking s. 91 into account?
2. Should the Court look to sources such as the heading to s. 91 and the *Handsard* debates to assist it in interpreting s. 91?
3. Is Ms. Schoenhalz's claim to collect her judgement barred by s. 91 of the *Act*?

POSITIONS

Plaintiff

29 Ms. Schoenhalz argues that ICBC has the burden of proving that her claim is barred by s. 91. Ms. Schoenhalz submits that she has brought a properly constituted application for benefits under s. 20 of the *Act*. Because ICBC has taken the position that Ms. Schoenhalz's recovery is limited by the application of s. 91 of the *Act*, the burden of proof lies with ICBC to establish that s. 91 applies.

30 Ms. Schoenhalz argues that the heading to s. 91 should be considered in its application. She argues that the use of the word "stolen" in the heading requires an intention to deny the owner possession of the vehicle, which is not present here. Ms. Schoenhalz also argues that the *Handsard* debates relevant to the enactment of s. 91 should be considered.

31 In regard to the application of s. 91 of the *Act,* Ms. Schoenhalz argues the issue is the state of mind of herself and Ms. Reeves. She argues that there is no indication that she knew or ought to have known that the vehicle was being operated without the consent of the owner. She argues the question for the Court is not whether Ms. Hammond would have permitted Ms. Reeves to drive the car had she been asked.

Defendant

32 ICBC's position is that the onus is on Ms. Schoenhalz to bring her claim within s. 20, taking into account s. 91 of the *Act*.

33 ICBC argues that the principles of legislative construction and the general approach to statutory interpretation apply to any interpretation of ss. 20 and 91 of the *Act*. ICBC submits that neither the heading to s. 91 nor the relevant *Hansard* debates are required to interpret s. 91

34 Pursuant to s. 91 of the *Act*, ICBC argues that Ms. Schoenhalz cannot successfully make a claim for compensation pursuant to s. 20 of the *Act* because she knew or ought to have known that the vehicle was being operated without the consent of the owner.

BURDEN OF PROOF

35 As previously stated, Ms. Shoenhalz alleges that ICBC has the burden of proving that she as a passenger knew or ought to have known the motor vehicle was being operated without Ms. Hammond's consent.

36 Ms. Shoenhalz relies on two cases: *Chrysler Financial Services of Canada Inc. v. ICBC,* 2011 BCSC 1795, and *Bevacqua v. I.C.B.C.*, 1999 BCCA 553. In both cases there was a contract of insurance. In both cases ICBC disputed paying the loss.

37 In *Chrysler,* ICBC alleged that the insured was involved with a theft of the vehicle at issue. In *Bevacqua*, ICBC alleged that the insured caused vandalism to his vehicle. The court held in both cases that the insured had the obligation of proving the loss fell within the coverage of the insured. ICBC had the obligation to prove intentional conduct to vitiate the claim on a balance of probabilities.

38 ICBC argues that the onus is on Ms. Shoenhalz to prove that her claim comes within s. 20, taking into account s. 91 of the *Act*. In support of this position, ICBC relies on *Hudson v. Insurance Corp. of British Columbia* (1991), 83 D.L.R. (4th) 377, and *Derbyshire v. ICBC*, 2011 BCSC 170. These are cases where an insurance agreement existed, and it was the obligation of the insured to prove that the loss occurred within the risk covered under that agreement. In *Hudson*, the vehicle was insured for pleasure. The loss that the vehicle suffered occurred in a parking lot, where the insured had left it in order to drive to work in a car pool. The court found that using it to travel to work and leaving it in the parking lot left the vehicle uninsured. The onus of proof was on the insured to prove his policy covered the risk.

39 The distinction between these two burdens of proof is set out in *Derbyshire*:

> [13] The alternative ground put forward by ICBC, that of s. 96(f) regarding the contribution which it is said has been played indirectly or directly by the pre-existing degenerative changes, also does not succeed, and I say so whether we regard s. 96(f) as an exclusion on coverage in respect of which the onus of proof would be on ICBC, or whether we regard it simply as a limitation on the scope of coverages available, in which case the onus would be on the plaintiff.

40 I reject these arguments. These burdens of proof are limited to situations where there is an insurance policy and a claim is made under the insurance policy. The insurance policy determines the obligations of the insured and the insurer. As previously stated, s. 20 does not create an insurance policy between Ms. Shoenhalz and ICBC. There are no contractual obligations between Ms. Shoenhalz and ICBC.

41 Section 91 is a defence available to ICBC to reject a claim under s. 20. The burden of proof rests with ICBC to prove that Ms. Shoenhalz knew that the Camaro was being operated without the consent of the owner or alternatively, ought to have known it was being operated without the consent of the owner.

ANALYSIS

Principles of Statutory Interpretation

42 The issue before the Court is an interpretation of s. 91 and how it applies to s. 20 of the *Act.* Specifically, I must determine whether Ms. Schoenhalz's claim against ICBC is barred by s. 91. Counsel for both Ms. Schoenhalz and ICBC state there are no cases in British Columbia relating to the interpretation of s. 91 and its effect on s. 20.

43 The starting point is the Supreme Court of Canada's adoption of Driedger's modern principle of construction of statutes in *Rizzo & Rizzo Shoes Ltd. (Re),* [1998] 1 S.C.R. 27. Justice Iacobucci stated:

> [21] Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, Statutory Interpretation (1997); Ruth Sullivan, Driedger on the Construction of Statutes (3rd ed. 1994) (hereinafter "Construction of Statutes"); Pierre-André Côté, The Interpretation of Legislation in Canada (2nd ed. 1991)), Elmer Driedger in Construction of Statutes (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

44 Justice Iacobucci at para. 22 in *Rizzo* stated that he also relied on the Ontario *Interpretation Act*, R.S.O. 1980, c. 219, which he quoted:

> ..."shall be deemed to be remedial" and directs that every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit".

45 The following section of the British Columbia *Interpretation Act*, *R.S.B.C. 1996, c. 238* [*IA*], has similar objectives:

> **Enactment remedial**
>
> 8 Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

46 *Sullivan on the Construction of Statutes*, 6th ed.(Markham, ON: Lexis Nexis Canada, 2014) ("*Sullivan*") (the successor to *Driedger*) breaks down interpretation of statutes and regulations into three dimensions:

1. The textual meaning, which *Driedger* calls the grammatical and ordinary sense of the words.
2. Legislative intent, which is that all words in the enactment are there for a reason:

> ...the law-maker wants to communicate the law that it intended to enact because that law, as set out in the provisions of a statute or regulation, is the means chosen by the law-maker to achieve a set of desired goals. Law-abiding readers (including those who administer or enforce the legislation and those who resolve disputes) try to identify the intended goals of the legislation and the means devised to achieve those goals, so that they can act accordingly. This aspect of interpretation is captured in Driedger's reference to the scheme and object of the Act and the intention of Parliament.
>
> (Page 8 at s.2.4.)

3. The modern principle is compliance with legal norms, as explained by *Driedger*:

> These norms are part of the "entire context" in which the words of an Act must be read. They are also an integral part of legislative intent, as that concept is explained by Dreidger. In the second edition he wrote:
>
> It may be convenient to regard 'intention of Parliament' as composed of four elements, namely
>
> * the expressed intention - the intention expressed by the enacted words;
> * the implied intention - the intention that may legitimately be implied from the enacted words;
> * the presumed intention - the intention that the courts will in the absence of an indication to the contrary impute to Parliament; and
> * the declared intention - the intention that Parliament itself has said may be or must be or must not be imputed to it.
>
> (Page 8 at s.2.5.)

47 A summary of these principles of *Driedger* are stated in *Sullivan*:

> s2.9 At the end of the day, after taking into account all relevant and admissible considerations, the court must adopt an interpretation that is appropriate. An appropriate interpretation is one that can be justified in terms of (a) its plausibility, that is, its compliance with the legislative text; (b) its efficacy, that is, its promotion of legislative intent; and (c) its acceptability, that is, the outcome complies with accepted legal norms; it is reasonable and just.

48 ICBC argues that s. 91 should be interpreted in accordance to the general approach to statutory interpretation. As stated in *Wormell v. Insurance Corp. of British Columbia*, *2011 BCCA 166*:

> [18] Although it is in the insurance context, what is at issue in this case is a regulation. The general approach to statutory interpretation remains that stated by Elmer Driedger in his *Construction of Statutes*, 2d ed. (Toronto: Butterworths, 1983) at 87:
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> See *Bell ExpressVu Limited Partnership v. Rex*, *2002 SCC 42*, *[2002] 2 S.C.R. 559* at para. 26.
>
> [19] Also relevant is the presumption against tautology. The presumption is described by Ruth Sullivan in, *Driedger on the Construction of Statutes*, 3d ed. (Toronto: Butterworths, 1994) at 159 and 162:
>
> > It is presumed that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain. Every word in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose.
> >
> > ...

> Although the presumption against tautology is frequently invoked, it is also easily rebutted. This can be done by coming up with a meaning or function for the words in question, to show that they are not in fact meaningless or superfluous. It can also be done by suggesting reasons why in these circumstances the legislature may have wished to be redundant or to include superfluous words. Repetition is not an evil when it serves an intelligible purpose.

See also *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, *2006 SCC 20*, *[2006] 1 S.C.R. 715* at paras. 45-46, and *Hill v. William Hill (Park Lane) Ltd.*, [1949] A.C. 530 (H.L.) at 546.

49 In *Wormell*, Mr. Wormell had been awarded a judgement that ICBC refused to pay. Mr. Wormell sued ICBC pursuant to s. 76 of the *Act*, seeking a declaration that ICBC was liable under the tortfeasor's insurance coverage and seeking payment of the amount of the judgment.

50 Although there was an insurance policy in *Wormell,* what was at issue was the interpretation of a regulation under the *Act.* The court cited the above principles of statutory interpretation and dismissed ICBC's appeal.

51 Sections 20 and 91 fall under different parts of the *Act.* Section 20 falls in Part 1 - Universal Compulsory Vehicle Insurance. Section 91 falls under Part 5 - General Provisions.

52 Section 74 of the *Act* states that Part 5 applies to all insurance policies issued in British Columbia, and the claims of insurance and the insured and insurers related to the insurance. Part 5 of the *Act* focuses on various defences and exemptions that ICBC can establish. For example, Part 5 allows ICBC to step into the shoes of the insured and defend a claim brought against them (s. 77), or permits ICBC to deny compensation where the insured makes a willingly false statement with respect to the claim (s. 75). On the other hand, it also permits recovery against ICBC. For example, s. 76 permits a person who has a judgement against an insured to start an action against ICBC to satisfy their judgement.

Headings in Legislation

53 Both parties made submissions as to whether the heading of s. 91 should be used to interpret the provision below. Section 91 is titled "Limitation on recovery in relation to stolen vehicles".

54 Ms. Shoenhalz argues that the word "consent" as it is used in the text of s. 91 is limited to theft. She argues that the heading of s. 91 limits recovery of a passenger or driver that knew or ought to have known that the vehicle was stolen.

55 Ms. Shoenhalz argues that the determining factor is her state of mind when she rode as a passenger in Brenda Hammond's vehicle, and not whether Ms. Reeves had Brenda Hammond's consent to drive the vehicle. Neither she nor Ms. Reeves intended to steal the vehicle.

56 Headings are referred to in s. 11 of the *IA*:

Reference aids and clarifications

11 (1) In an enactment, a head note to a provision or a reference after the end of a section or other division

(a) is not part of the enactment, and

(b) must be considered to have been added editorially for convenience of reference only.

(2) In an enactment, if a reference to a provision of the enactment or any other enactment is followed by italicized text in square brackets that is or purports to be descriptive of the subject matter of the provision, subsection (1) (a) and (b) applies to the text in square brackets.

(3) The Lieutenant Governor in Council may make regulations amending an enactment for the purpose of changing a reference to a specific minister or ministry in a provision of the enactment to the minister or ministry, as applicable, currently assigned responsibility in relation to the matter.

57 *Sullivan* states the following on headings:

> s14.50 *General.* In Parliamentary procedure headings are not considered an integral part of a bill as it goes through the legislative process. This peculiarity is reflected in some Canadian Interpretation Acts, which state that headings do not form part of the enactment in which they are found or (what amounts to the same thing, they are included for convenience only. This treatment is unsatisfactory. To any person reading legislation, headings appear to be as much a part of the enactment as any other component. There is no apparent reason why they should be assigned an inferior status.

58 *Sullivan* refers to the varied case law on headings, where some courts have refused to consider headings, while other courts resort to headings to resolve an ambiguity. *Sullivan* quotes the following passage from *Canada (Attorney General) v. Jackson*, *[1946] S.C.J. No. 21*, *[1946] 2 D.L.R. 481* at 486-87 (S.C.C.):

> ... to restrain or extend its meaning as best suits the intention of the statute, but neither the title nor the headings may be used to control the meaning of the enacting words in themselves clear and unambiguous ...

Page 460 at s 14.51

59 In *Law Society of Upper Canada v. Skapinker, [1984] 1 S.C.R. 357*, Justice Estey interpreted ss. 6(1), (2), (3) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), in the context of s. 28(c) of the Ontario *Law Society Act,* R.S.O. 1980, c. 233. In doing so he stated that the *Charter* was not subject to either federal or provincial interpretation acts, because of the *Charter's* supremacy. The *Charter* comes from neither level of the legislative branches of government, but from the Constitution itself. He concludes at para. 22:

> ... It is clear that these headings were systematically and deliberately included as an integral part of the Charter for whatever purpose. At the very minimum, the Court must take them into consideration when engaged in the process of discerning the meaning and application of the provisions of the Charter.

60 Justice Estey discusses headings and their legislation in *Upper Canada*:

> [22] The question of the role of the heading in the interpretation of statutes appears to be open. The same must, of course, be true where the Court is engaged in the analysis of a constitutional provision. Here we have a charter of individual rights incorporated in the broader expanse of the Constitution. ...
>
> [23] At a minimum the heading must be examined and some attempt made to discern the intent of the makers of the document from the language of the heading. It is at best one step in the constitutional interpretation process. It is difficult to foresee a situation where the heading will be of controlling importance. It is, on the other hand, almost as difficult to contemplate a situation where the heading could be cursorily rejected although, in some situations, such as in the case of "Legal Rights" which in the Charter is at the head of eight disparate sections, the heading will likely be seen as being only an announcement of the obvious.

61 In order to determine the purpose of s. 6(2) of the *Charter*, Mr. Justice Estey was required to reconcile s. 6 with the heading introducing it. He stated at para. 24:

> ... the section when read as a whole is clear and without ambiguity, the heading will not operate to change that clear and unambiguous meaning. Even in that midway position, a court should not, by the adoption of a technical rule of construction, shut itself off from whatever small assistance might be gathered from an examination of the heading as part of the entire constitutional document. This general approach I take to be consonant with the thinking expressed in the Canadian, British and United States authorities and texts discussed above.

62 At para. 25, Mr. Justice Estey reflects on how the heading "Mobility Rights" might impact each subsection of s. 6 of the *Charter.* Mr. Justice Estey, after analyzing s. 6 of the *Charter*, concludes:

> [28] ...Reading s. 6(2)*(b)* in light of the exceptions set out in s. 6(3)*(a)* also explains why the words "in any province" are used: citizens and permanent residents have the right, under s. 6(2)*(b)*, to earn a living in any province subject to the laws and practices of "general application" in that province which do not discriminate primarily on the basis of provincial residency.
>
> [29] There are many considerations which lead one to adopt the third interpretation of para. *(b)*, supra. Paragraph *(b)* is thereby accorded a meaning consistent with the heading of s. 6. The trans-provincial border commuter is accorded the right to work under *(b)* without the need of establishing residence in the province of employment in exercise of the right under para. *(a)*. There is a separation of function and purpose between *(a)* and *(b)*, and the need for separate clauses is demonstrated. The presence of s. 6(3)*(a)*, already discussed, is another supporting consideration.

63 ICBC's position is the words "a vehicle that the person knew or ought to have known was being operated without the consent of the owner" do not relate just to theft.

64 ICBC argues that the *IA* specifically addresses legislative headings and strongly indicates that a heading is not part of an enactment. ICBC argues that the heading of s. 91 must be seen as added editorially, and for convenience of reference only.

65 ICBC acknowledges that the courts in British Columbia have developed certain exceptions to this clear statement of law in s. 11(1) of the *IA.* One exception exists "where sections grouped under a heading will be presumed to be related to one another in some particular way." ICBC cites *Re Peters and the District of Chilliwack (1987), 43 D.L.R. (4th) 523*, and *British Columbia (Director of Civil Forfeiture) v. Violette*, *2014 BCSC 1520*.

66 In *Peters*, the issue was whether a municipal by-law prohibiting intensive pig farming was a zoning by-law. If it was a zoning by-law, it required a public hearing. No public hearing was held. The appellant argued this made the by-law invalid.

67 In considering whether it was a zoning by-law requiring a public hearing, Mr. Justice Lambert stated the following at p. 527:

> The true question we are looking at here is whether, in this statutory scheme, this by-law, and by-laws like it, are by-laws within s. 720, in relation to which the legislature has said that a public hearing must take place. In my opinion, the structure of the *Act* and the close linkage in the *Act* between s. 716 and s. 720 makes it clear that, in the time those sections were in effect, s. 720 was intended, in the scheme of the legislation, to apply to those by-laws that were passed under s. 716 and came within the general heading of zoning.
>
> Section 932 came under the heading of "Miscellaneous Powers" and came in Part 28 of the *Municipal Act*. In my opinion, s. 932 was not linked closely with s. 720 and its location in the *Act* did not suggest that it formed one of the group of by-laws for which public hearings were required.

68 Mr. Justice Lambert considered the s. 11 of the *IA*. He concludes at p. 527-528 by saying:

> The effect of that section is that the headings that followed the designation of Part 21 of the *Municipal Act* and the headings that followed the designation of Part 28 of the *Municipal Act* are not to be used explicitly as tools of interpretation. But in approaching the *Act* as I have done I have looked at the sections in groups within Parts, and while I have referred to the titles, the titles are not an essential part of the reasoning which leads me to conclude that the scheme of the *Act* comtemplates that only those zoning by-laws passed under s. 716 are required to meet the public hearing requirements of s. 720 and that the miscellaneous by-laws passed under s. 933 are not required to meet the public hearing requirements, even if they deal as part of their subject-matter with the regulation and use of land and the dividing of land into areas in order to deal with regulating the keeping of swine and carrying out the other subjects of s. 933.

69 In *Violette*, the underlying action was pursuant to the *Civil Forfeiture Act*, *S.B.C. 2005, c. 29*. The Crown was seeking particulars pursuant to Rule 21-1(7) of the *Supreme Court Civil Rules* (the "*Rules*"). The issue was whether the respondent had to provide particulars sought by the Director of Civil Forfeiture.

70 In the *Rules*, Rule 21-1(7) falls under the heading "Admiralty Matters". Mr. Justice Davies in *Violette* considered the relationship between Rule 21-1(1) and the heading under which these rules fall.

71 The Director argued that the headings have no substantive importance, citing s. 11 of the *IA* and Rule 1-1(3), which similarly states:

> (3) The titles and headings of these Supreme Court Civil Rules are for convenience only and are not intended as a guide to interpretation.

72 After analyzing Rule 21-1(7), Justice Davies concluded that the words "other property" in Rule 21-1(7) applied to the context of admiralty matters. In coming to this conclusion, Davies J. also considered *Tilbury Cement Ltd. v. Seaspan International Ltd.* *(1991), 47 C.P.C. (2d) 292* (B.C.S.C.), which considered the legislative predecessor to Rule 21-1(7). Justice Davies relied upon Justice Trainor's comments in *Tilbury Cement*:

> In dealing with maritime torts this court sits as an admiralty court exercising admiralty jurisdiction with responsibility to apply Canadian maritime law which is uniform throughout Canada. Recognition of this jurisdiction is to be found in Rule 55 of the Rules of Court which deal specifically with admiralty jurisdiction. [Emphasis in *Violette*]

73 In *Violette,* Davies J. concluded that Rule 21-1(7) applied only in the context of an admiralty matter.

74 ICBC argues that s. 91 stands alone in Part 5 of the *Act* and therefore does not fall under this exception. Therefore, the heading should not be read as part of s. 91.

75 Further, ICBC argues that despite these exceptions, the heading to s. 91 creates ambiguity in an otherwise clear provision. Therefore, it should not be given any weight.

76 Ms. Schoenhalz argues that the title of s. 91 should be considered, and indicates that s. 91 only applies to a vehicle that has been stolen. She argues that she did not know and should not have known that the vehicle qualified as stolen.

77 Ms. Shoenhalz states the following in her submissions:

> 41. It is submitted that stealing a vehicle is something significantly greater than merely operating a vehicle without the consent either express or implied of the owner. As the definitions indicate, stealing is a dishonest act which is intended to deprive the owner of the benefit of ownership or possession permanently. This is distinct from a situation where an individual is merely operating the vehicle without the consent, express or implied, of the owner perhaps by mistake or misunderstanding.
>
> 42. The act of stealing can only occur in circumstances where there is no consent from the owner. But not every act of operating a vehicle without the consent of the owner can be considered stealing.

Ms. Schoenhalz does not refer to any examples.

78 Ms. Schoenhalz argues that notwithstanding s. 11 of the *IA,* courts have used headings for statutory interpretation and viewed them as an indication of legislative intent. Counsel for Ms. Shoenhalz relies on *Jacobs v. Laumaillet*, *2010 BCSC 1229*, and *Arts Umbrella v. British Columbia (Assessor of Area 09 - Vancouver), 2007 BCCA 45*.

79 *Jacobs* is about priorities among or between creditors whose indebtedness is perfected under the *Personal*

Property Security Act, R.S.B.C. 1996, c. 359. Justice Butler made the following comment about the role of headings in interpreting legislation:

> [30] The residual priority rules and other priority rules are found in Part 3 of the *PPSA*, which is entitled "Perfection and Priorities". Sections 59 and 60 are found in Part 5 of the *PPSA*, entitled "Rights and Remedies on Default" which, as its title would suggest, is concerned with how and when a secured party may enforce the security agreement and deal with the collateral.
>
> [31] Section 11 of the *Interpretation Act*, *R.S.B.C. 1996, c. 238*, provides that a heading to a provision is not part of an enactment and must be considered to have been added editorially or for convenience of reference only. Notwithstanding this provision, courts have favoured the view that for the purposes of statutory interpretation, headings should be read and relied on like any other contextual feature. Headings are a valid indicator of legislative intent and may be taken into account on interpretation: Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis, 2008) at 392-397; *Arts Umbrella v. British Columbia (Assessor Of Area 9 - Vancouver)*, *2007 BCCA 45* at para. 3.
>
> [32] When provisions are grouped together under headings, it is presumed that they are related to one another in some particular way; there is a shared subject or a common feature to the provisions. Conversely, the placement of provisions elsewhere under a different heading suggests the absence of such a relationship.

80 In *Arts Umbrella*, counsel agreed:

> [3] ...that section headings can be used as a guide to interpretation of a statute (*Law Society of Upper Canada v. Skapinker*, *[1984] 1 S.C.R. 357* at 13-14, *9 D.L.R. (4th) 161*). Both parties further agree that the legislative history of the appeal provisions of the *Act* is the most effective guide to the task before me; however they disagree as to the correct interpretation of that history.

81 I disagree with ICBC's position. Section 91 does not stand alone. Earlier in these reasons I referred to the effect of Part 5 of the *Act.* I find that Part 5 offers a variety of remedies and avenues of action. The sections of Part 5 dictate situations where ICBC may avoid liability, and situations where ICBC must accept it. Although it is of no assistance to the Court, I find that the heading of "General Provisions" could be used to interpret s. 91. However, the heading that counsel refers to, "Limitation on recovery in relation to stolen vehicles", does not fall under this exception.

82 Therefore, the heading specifically introducing s. 91 cannot be used to define its meaning, particularly when there is nothing ambiguous in the text. There is nothing ambiguous in the text of s. 91. Headings should not be of controlling importance. The heading in this case indicates that a lack of consent includes a bar on recovery in relation to stolen vehicles. The heading of s. 91 does not have any effect on the interpretation of s. 91.

General Interpretation of s. 91

83 I will now turn to the arguments made as to how the text of s. 91 should be interpreted.

84 ICBC urges the Court to compare the words "know" and "knowingly" in s. 91 with the wording for the underinsured motorist protection ("UMP") claims under s. 148.1(3)(b) of the *Insurance (Vehicle) Regulation, B.C. Reg. 447/83 ("Regulation")*. Section 148.1(3)(b) of the *Regulation* states:

> (3) No coverage is provided under the underinsured motorist protection to an insured who is
>
> ...
>
> (b) an operator of, or a passenger in or on, a vehicle that the operator or passenger knew or ought to have known was being operated without the consent of the owner ...

85 UMP is available pursuant to a contract of insurance. There is no reference to theft in the *Regulation.* Pursuant to s. 148.2 of the *Regulation*, the resolution of UMP claims as to entitlement and amount are resolved by arbitration.

86 In support of its position, ICBC refers to *Dorey v. ICBC*, an arbitration award dated May 27, 2003. In that

decision, the arbitrator interpreted the phrase that the person "knew" or "ought to have known" that the vehicle was being operated without the consent of the owner.

87 In *Dorey*, there was a serious motor vehicle accident in which four people died. Amongst others, Mr. Dorey, a passenger in the vehicle, was injured. There were insufficient funds to pay all the judgements and Mr. Dorey brought a claim under the UMP provisions in the *Regulation.*

88 At the time of the accident, Marc Vezina was driving Ms. Pysh's vehicle. Marian Anne Pysh, the owner of the vehicle, did not know Mr. Vezina or Mr. Dorey.

89 On the day of the accident, Ms. Pysh had given her son Joshua, then age 16, permission to drive to the lake together with a friend to fish. Ms. Pysh, despite some evidence to the contrary, did not know that other young men were going to the lake with Joshua. Mr. Vezina, who was age 20, eventually took over the driving of Ms. Pysh's car to drive to the lake.

90 Mr. Vezina was driving southbound on the Chase-Faulkland Road when Mr. Vezina lost control of the car and it came across into the northbound lane colliding with a motorcycle, killing the driver.

91 There was lack of evidence as to whether Mr. Vezina had or did not have a driver's license. Mr. Vezina died in the accident.

92 It was found in a summary trial that Mr. Vezina was negligent and that his actions were the sole cause of the accident. Further, the court found that Mr. Vezina did not have the consent of the owner to drive the vehicle. Therefore Mr. Vezina was an uninsured driver under s. 20 of the *Act*. Mr. Vezina died without sufficient assets to meet the personal injury claims - in particular Mr. Dorey's. Mr. Dorey and the other parties settled their claims against Mr. Vezina, deceased, by an agreed division amongst the parties of the $200,000, permitted by s. 20 of the *Act*. It was agreed that Mr. Dorey's claim against the uninsured motorists' funds (s. 20) was not a bar to his claim under UMP.

93 For purposes of the arbitration, it was agreed that the claimant was "insured" as defined by s. 148.1 of the *Insurance (Vehicle) Regulation*, *B.C. Reg. 447/83* ("*Regulation"*). Mr. Vezina was an underinsured motorist as defined by s. 148.1 of the *Regulation*.

94 ICBC alleged that Mr. Dorey's claim was barred and that he was not entitled to damages on the basis that he knew or ought to have known that at the time of the accident Mr. Vezina operated the vehicle without the consent of Ms. Pysh. ICBC relied on s. 148.1(3) of the *Regulation,* which contains similar language to s. 91 of the *Act.*

95 In his decision, the arbitrator concluded that Mr. Dorey was *prima facie* entitled to UMP compensation and that the onus was on ICBC to prove on a balance of probabilities that Mr. Dorey was not entitled to coverage because of *Regulation*, s. 148.1(3)(b). The arbitrator concluded that Mr. Vezina drove Ms. Pysh's vehicle with the express consent of Joshua.

96 The arbitrator found that Mr. Dorey was unaware of the restrictions that Ms. Pysh had placed on Joshua as it related to driving her vehicle, which was that Joshua and his friend were going to the lake to fish.

97 The arbitrator found that Ms. Pysh's vehicle was never stolen, and in fact, Joshua was an occupant of the car whenever it was driven.

98 The arbitrator stated in para. 32 of his reasons that there was nothing in the language of the *Regulation* to restrict drivers and passengers in vehicles receiving compensation limited to being stolen. The arbitrator went on to say:

> ...Where the vehicle is not stolen, and the original borrower remains in possession of and an occupant in the vehicle, and where constraints regarding use are known to the original borrower and not disclosed to

> others in the vehicle, the burden of establishing facts that show a passenger ought to have known the owner would not consent should be onerous, even before taking into account that s. 148.1(3)(b) is an exclusion from coverage.

99 *Dorey* is not binding on this Court. However, in some ways the facts are similar to the facts in the case before me. The most obvious is that the drivers of the vehicle did not have the consent of the owners to drive it. Unlike Joshua, Steven did not consent to Ms. Reeves, or for that matter, Ms. Schoenhalz, driving the vehicle. Joshua did consent to Mr. Vezina driving his mother's vehicle.

100 Other than the similarity and the intent of the language that an operator and a passenger know or ought to have known that the vehicle was being operated without the consent of the owner, UMP is coverage is a contract of insurance between Mr. Psych and ICBC. Ms. Psych had a valid owner's certificate. In my opinion, this distinguishes the facts in *Dorey.*

101 ICBC's written submissions contained several additional arguments as to how other statutory provisions and surrounding case law should be used to interpret words found in s. 91. I do not accept these arguments but I shall summarize some of them here.

102 ICBC referred to instances where the word "permit" is used in the *Regulation.* An example includes s. 55(5) of the *Regulation,* where an individual is not authorized and qualified by law to operate a vehicle. ICBC argues Ms. Reeves did not have a license and even if there was consent, there would be still no coverage. I do not think that this argument is relevant, as the words that need to be interpreted do not include the word "permit".

103 ICBC also referred to the use of the work "belief" in the *Regulation* in ss. 96(b)(iii) and 49(1)(g). ICBC cited British Columbia cases that discuss whether the circumstances of the complainant should have caused the applicant seeking benefits to believe there was insurance on the vehicle. For example, ICBC cited *Chamberlin v. Insurance Corporation of British Columbia*, *2005 BCSC 1074*, where the court found it was reasonable that the insured relied on her husband to renew the insurance every year, even though he had forgotten to do so before the accident occurred. I do not find these cases are analogous to the case before the Court and I do not accept this argument.

104 ICBC compares the requirements of consent under s. 91 of the *Act* with implied consent under s. 86 of the *Motor Vehicle Act, R.S.B.C. 1996, c. 318*. In support of this, ICBC cites *Godsman v. Peck (1997), 29 B.C.L.R. (3d) 37* (C.A.). This case is about consent. I have already concluded in the Reasons that neither Steven nor Brenda Hammond gave express or implied consent to Ms. Reeves to drive the Camaro. Having decided that consent was not given, any analysis of implied or other kinds of consent is not required.

105 This brings me to the English case of *White (A.P.) v. White and the Motor Insurers Bureau,* [2001] UKHL 9, on which ICBC relies on in interpreting the words "knew or ought to have known". The facts in *White* were that two brothers, Brian and Shane, were in a single motor vehicle accident in which Shane was driving and Brian was a passenger. Brian was seriously injured. Shane was found to be at fault for the accident. Shane was unlicensed to drive and did not have insurance. He could not pay his brother's claim. Brian did not know that his brother Shane was unlicensed. Brian knew that in the past his brother had driven without a license.

106 In Britain, all insurance companies are required to contribute to a fund to compensate victims who could not collect on their judgments for injuries, MIB. The obligations of MIB are not found in any act of parliament and therefore the scheme is entirely contractual: *White* at para. 7. The MIB is contractually permitted to reject a claim of compensation when a person voluntarily enters a vehicle and knows it was uninsured.

107 The court in *White* held that the phrase "ought to have known" includes "where a passenger gave no thought to the question of insurance, even though an ordinarily prudent person, in his position and with his knowledge, would have made enquiries": para. 17. Based on *White,* ICBC submits that "ought to have known" will also cover

the situation where the person gave some thought to the question of consent but carelessly failed to make reasonable inquiries.

108 Although the scheme in *White* is contractual; in this case, this scheme is legislative. However, their purposes are the same, which is to provide minimum compensation to persons injured in automobile accidents where the vehicle or driver is not insured. I am not bound by *White*, but I find it persuasive as to how s. 91 should be interpreted.

HANSARD

109 In absence of any caselaw on point, I shall also examine legislative debates relevant to s. 91.

110 In support of considering extrinsic evidence, which includes the *Hansard* debates, *Sullivan* states:

> s23.4 This chapter begins by suggesting reasons why extrinsic aids might appropriately be relied on in interpretation: because they are part of the legal context; because they offer evidence or external context; because they are a source of authoritative opinion about the meaning or purpose of legislation; because they are part of the understanding on which legislation was enacted. This is followed by consideration of whether extrinsic materials should be consulted even if the legislative text appears to be plain rather than ambiguous. The chapter then reviews the rules governing the admissibility and use of extrinsic aids under the following headings: (1) legislative evolution (2) legislative history; (3) legal scholarship; (4) administrative interpretation; and (5) judicial interpretation.

111 Arising from legislative history, *Sullivan* refers to the exclusionary rule, which she defines at s.23.59 and s.23.60. *Sullivan* states:

> s23.61 This way of thinking is evident in the remarks of Muldoon J. in *Ru- parel v. Canada (Minister of Employment & Immigration).* In support of a particular interpretation of the *Immigration Act*, counsel invited the court to examine the remarks made by the Minister of Employment and Immigration upon moving for second reading of the Act. Muldoon J. refused for several reasons, including the following:
>
> > Other good reasons for rejecting speeches in Parliamentary debates is that they are not law, they sometimes misstate the law, and are frequently made for partisan advantage or public effect. In the instant example, whereas the Minister proudly mentioned [a particular point] (*Hansard*, at page 3075) ..., the Opposition spokesman ... in welcoming the proposed reforms (*Hansard,* at page 3078) chose to ignore that [point]... Whose version, in one chamber of the bicameral Parliament, can be said to unlock any secrets of interpretation?

112 Further objections are listed by *Sullivan* such as having ministers, members, and bureaucrats who cannot speak for the Legislature as a whole make points about the legislation in question. Additional concerns include the loss of materials and the assessment and the reliability of the materials.

113 However, *Sullivan* states that using legislative history to interpret an enactment may be justified:

> s23.66 The theoretical objections to the use of legislative history are more difficult to answer, but there are number of ways in which their use can be justified. First, it may be plausible in particular circumstances to conclude that a provision was enacted by the legislature on the understanding expressed by a Minister or contained in some other material comprising legislative history. As a corporate entity, the legislature can express itself only through legislation, but it can hear and read and respond to whatever is put before it. This includes not only statements made on the floor of the legislature, but any materials involved in the legislative process. In the case of legislation dealing with technical matters, it may include information supplied by experts in the field.
>
> s23.67 Second, the courts regularly rely on the opinions of other interpreters. Although such opinions are not binding, they may have considerable persuasive force. Because participants in the legislative process regard legislation from a unique vantage point, as insiders, their opinions about the meaning or purpose of an enactment may be worth taking into account. Of course, some opinions are more authoritative than

> others. In a Parliamentary system of government, there is likely to be a relatively small number of individuals whose intentions largely control the content of legislative initiatives. In the case of statutes, this would include the recommending Minister, who will reflect the views of Cabinet; it would also include the Parliamentarians who comprise a majority of the Committee that reviews the bill. In the case of regulations, at the federal level, it would include the bureaucrats who prepare the regulatory impact assessment ' statement that is published with the regulations.

114 The courts have stated that extrinsic evidence such as *Hansard* can be used to assist the court in resolving an ambiguity to determine why the Legislature was enacting certain legislation: *Bingo City Games Inc. v. B.C. Lottery Corp*., 2005 BCSC 25.

115 In *Rizzo*, Iacobucci J. used the legislative debates in Ontario to support his position in interpreting the *Ontario Employment Standards Act.* He stated:

> [34] This interpretation is also consistent with statements made by the Minister of Labour at the time he introduced the 1981 amendments to the *ESA.* With regard to the new severance pay provision he stated:
>
> > The circumstances surrounding a closure will govern the applicability of the severance pay legislation in some defined situations. For example, a bankrupt or insolvent firm will still be required to pay severance pay to employees to the extent that assets are available to satisfy their claims.
> >
> > . . .
> >
> > . . . the proposed severance pay measures will, as I indicated earlier, be retroactive to January 1 of this year. That retroactive provision, however, will not apply in those cases of bankruptcy and insolvency where the assets have already been distributed or where an agreement on a proposal to creditors has already been reached.
> >
> > (*Legislature of Ontario Debates*, 1st sess., 32nd Parl., June 4, 1981, at pp. 1236-37.)
>
> Moreover, in the legislative debates regarding the proposed amendments the Minister stated:
>
> > For purposes of retroactivity, severance pay will not apply to bankruptcies under the Bankruptcy Act where assets have been distributed. However, once this act receives royal assent, employees in bankruptcy closures will be covered by the severance pay provisions.
> >
> > (*Legislature of Ontario Debates*, 1st sess., 32nd Parl., June 16, 1981, at p. 1699.)
>
> [35] Although the frailties of Hansard evidence are many, this Court has recognized that it can play a limited role in the interpretation of legislation. Writing for the Court in *R. v. Morgentaler*, [1993] 3 S.C.R. 463, at p. 484, Sopinka J. stated:
>
> > . . . until recently the courts have balked at admitting evidence of legislative debates and speeches. . . The main criticism of such evidence has been that it cannot represent the "intent" of the legislature, an incorporeal body, but that is equally true of other forms of legislative history. Provided that the court remains mindful of the limited reliability and weight of Hansard evidence, it should be admitted as relevant to both the background and the purpose of legislation.

116 The Supreme Court of Canada in *Canada 3008 Inc., Re: Inter-Canadian (1991) Inc. (Trustee of)*, 2006 SCC 24, reconfirmed *Rizzo,* when Justice Binnie referred to *Hansard* for the legislative history of an enactment:

> [57] Though of limited weight, Hansard evidence can assist in determining the background and purpose of legislation; *Rizzo & Rizzo Shoes Ltd. (Re),* [1998] 1 S.C.R. 27, at para. 35; *R. v. Morgentaler*, [1993] 3 S.C.R. 463, at p. 484. In this case, it confirms Parliament's apparent intent to exclude legal titleholders from personal liability for air navigation charges. The legislative history and the statute itself make it clear that Parliament did not intend *CANSCA* to replace or override the existing regulatory framework but rather to fit cohesively within it. In introducing *CANSCA*, the Minister of Transport stated that the Aeronautics Act, which establishes the essential regulatory framework to maintain safety in the aviation industry, "will always take precedence over the commercialization legislation" (*House of Commons Debates,* March 25, 1996, at p 1154). In the Ontario Court of Appeal, Cronk J.A. highlighted a number of other instances where

government spokespersons emphasized to Members of Parliament that *CANSCA* was to fit within the existing regulatory framework which generally favours the narrow meaning of "owner"; see, e.g. *House of Commons Debates*, May 15, 1996, at p. 2834; May 29,1996, at p. 3144; June 4, 1996, at pp. 3394 and 3410; and Debates of the Senate, June 10, 1996, at pp. 588-89.

[58] In 1985, during passage of the *Aeronautics Act*, a concern was raised in Parliament that liability under s. 4.4(5) (that Act's liability provision) could extend to legal titleholders. In response, the Government inserted the term "registered owner". The Parliamentary Secretary to the Minister of Transport specifically stated that the change was made to ensure that liability did not extend to those who had a security or other financial interest in the aircraft; *House of Commons Debates*, vol. IV, 1st Sess., 33rd Parl., June 20, 1985, pp. 6065-66.

[59] In 1996, the Government considered Bill C-20 (which became *CANSCA*) as it transferred the operation of the civil navigation system from Transport Canada to NAV Canada. The Clause by Clause Analysis brief presented to the Senate Committee explained that s. 55 is based on the wording of the equivalent section of the *Aeronautics Act* which, as stated, restricts "owner" to *registered owner*; see "Clause by Clause Analysis for the *Civil Air Navigation Services Commercialization Act*", as presented to the Senate Committee on Transport and Communications, at pp. 51-52. However, the textual discrepancy noted above was not addressed.

117 Although it is of limited weight, I find that I can look to the statements of the Legislature in the *Hansard* debates.

What was the intention of the legislature when ss. 19.2(1) and (2) were enacted (now s. 91 of the *Act*)?

118 In 1997, the British Columbia legislature enacted ss. 19.1 and 19.2 under the *Traffic Safety Statutes Amendment Act,* S.B.C. 1997, c. 43, s. 51. The sections read as follows:

Limitation on recovery for acts of violence

19.1 If the dominant cause of any injury or death is the use of any weapon or any object, other than a motor vehicle or trailer, used as a weapon,

(a) the corporation is not liable under this Act or the regulations, including, without limitation, under section 20, 21 or 24 or under the plan established under this Act and the regulations, to indemnify or to pay any benefit to or make any other payment to

(i) the person using the weapon or object,

(ii) the person suffering the injury or death, or

(iii) a spouse, child, parent or personal representative of a person referred to in subparagraph (i) or (ii), and

(b) the person using the weapon or object is not a designated defendant, as that term is defined in section 52, for the purposes of Part 3.

Limitation on recovery in relation to stolen motor vehicles

19.2 (1) This section applies to a person who

(a) suffered injury, death or loss of or damage to property that arises out of the use or operation of a motor vehicle, and

(b) at the time of the accident as a result of which the injury, death or loss of or damage to property was suffered, was an operator of, or a passenger in or on, a motor vehicle that the person knew or ought to have known was being operated without the consent of the owner.

(2) Despite the *Negligence Act* and section 56 of this Act,

(a) if 2 or more persons are found at fault for the injury, death or loss of or damage to property referred to in subsection (1), they are liable to the person referred to in that subsection for any damages awarded for that injury, death or loss of or damage to property in the degree to which they are respectively found to have been at fault and are not liable to make contribution to and indemnify each other respecting that liability or any payment made in relation to it, and

(b) a person referred to in subsection (1) is not entitled to any recovery from the corporation under section 20.

119 Both ss. 19.1 and 19.2 were repealed in 2003 by the *Insurance (Motor Vehicle) Amendment Act,* S.B.C. 2003, c. 94, s. 14. Section 91 was enacted in their place.

120 When s. 19.2 was repealed and s. 91 was enacted in its place, there was no mention of the section by the Legislature. However, given the similarly of the two sections, the discussion of the provision when it was first enacted as s. 19.2 is applicable to s. 91. There was extensive discussion surrounding the enactment of s. 19.2 when the *Traffic Safety Statue Amendment Act* was before the Legislature.

121 During the First Reading, during the afternoon of June 17, 1997, the Honourable A. Petter (the member responsible for the bill) said that the bill was designed to take aim at auto crime and fraud, and the scheme represented "the most aggressive road safety program ever, aimed at making B.C. roads safer, reducing auto theft and fraud, and keeping auto insurance rates affordable."

122 During the Second Reading, in the morning of July 22, 1997, Hon. A. Petter stated the following:

> We will be greatly reducing insurance protection for those who participate in auto theft, including those who are passengers and a party to auto theft. From now on, any person who knows or ought to know that a car is stolen will not be eligible for future wage loss from ICBC.

123 The most extensive discussion of the provisions of 19.2 occurred during the Committee stage, which took place during the afternoon of July 24, 1997. I include significant portions of what was said in support of s. 19.2.

> ...
>
> **Hon. A. Petter:** Again, an example for me helps to explain the policy issue and how it has been defined here. If you have a situation where two or three individuals have, in concert, in a common enterprise decided to steal a car, and one happens to be the driver and then gets into an accident, right now the others can sue the driver, if the driver is at fault, and recover, with ICBC having to provide full insurance coverage as though the driver were being sued by an innocent party. What this does is, it says no. That person in the passenger seat who undertook that criminal activity knowingly and as a participant, accessory or what have you should be no better off than the driver -- should be able to recover the same limited benefits that are available, but should not be treated as an innocent bystander or participant as, say, a pedestrian or someone in another car.
>
> That does send a strong signal that when people enter into a course of conduct, particularly the stealing of a car, which is the most common in the circumstance we're thinking of here, they run the risks. Whether they're behind the driver's seat or they're encouraging that activity by sitting in the passenger's seat or indeed in the back seat, they should run the same risks. They should not be able to position themselves as though they were some kind of innocent party outside the enterprise that caused the accident.
>
> Again, these are choices that are made. But I think this is a move in the right direction from a public policy point of view -- albeit it will have some small saving in monetary terms to ICBC, as well, but in my view that's not the primary motivation.
>
> **G. Plant:** I want to make one other point in this context, although it's really just by way of an observation on the challenge that will face the courts. One of the phenomena in legislation that I find most interesting is the phenomenon of unintended consequences. The operation of this limitation is conditional on a situation arising where the vehicle is being used without the consent of the owner. Of course, there already is a long tradition in insurance law, including ICBC insurance law in British Columbia, of cases around the question

> of whether or not a motor vehicle is being used with or without the consent of the owner. I hope this section will be construed by the judiciary purposively, in a way which does not encourage some kind of accidental new industry around litigating consent in this context, because that would be unfortunate and, hopefully, will not come to pass.
>
> I guess the other issue is that there are two ways that you can deal with limiting recovery. One is that you can limit a person's right to recover at law -- that is, you can limit the liability of somebody altogether. The second way you can deal with it is to limit the Insurance Corporation's obligation to indemnify people in respect of those situations. That would leave the person, who for the sake of this argument I'll call the innocent victim - - although that may be an incorrect description -- with the option to still pursue the person who was negligent and to take his or her chances with respect to whether or not that individual had any assets that would be worth trying to recover at the end of the day.
>
> It looks to me that this section makes a public policy decision to limit recovery generally rather than to limit the right of action against the corporation. But that's only because I haven't yet read my way all the way through section 19.2(2)(a). It may be that (2)(b) moves us exactly into the second category. Because this is the only opportunity I'll have to get public clarification of that, could I have the minister's confirmation of which of these two categories we're in here?
>
> **Hon. A. Petter:** No, in fact the choice that has been made is the other choice that the member outlined. It's illustrated in 19.2(2)(b), where it says: ". . .a person referred to in subsection (1) is not entitled to any recovery from the corporation under section 20."
>
> So let's take the circumstance, and I'll see if I get it right. My officials will no doubt tell me if I don't. In the circumstance I outlined, if the driver were insured, the passenger would not be able to recover against that driver's insurance. If the driver were not insured, the passenger would not be able to recover against ICBC, based on the uninsured-motorist protection. That may be the confusion here. But if the driver has the means and the passenger has the will to pursue a private action, then as I understand it, there's nothing here that prevents that from happening.
>
> What's being prevented is the kind of coverage in which the corporation would stand behind the insurance risk of the driver. In the two instances I've given, what this section says is that the corporation will not provide insurance on behalf of the driver either as an uninsured motorist or as an insured motorist, in those circumstances.
>
> **G. Plant:** Picking up on that, the first question that occurs to me is: what, then, is the purpose of subsection 19.2(2)(a)? I don't want to try and unpack all of it. But am I right that it has something to do with the rules of contributory negligence around apportioning fault and ensuring that the innocent victim in this case doesn't have the ability to get through the back door that which we're trying to prevent him from getting through the front door?
>
> **Hon. A. Petter:** What paragraph 19.2(2)(a) does is simply ensure that the liability is several, so that you cannot visit the liability upon -- a term the member will appreciate -- the party with deep pockets. You have to in fact visit it according to the apportionment of liability.
>
> [My emphasis]

124 These comments make it clear that ICBC will no longer provide compensation to people injured in a motor vehicle accident who participate in theft of a car or should have known the car was stolen.

125 The plaintiff argues that legislative history, including *Hansard,* has been relied upon by the Supreme Court of Canada to determine legislative intent. She referred to *H.L. v. Canada (Attorney General)*, *2005 SCC 25*, for this proposition.

126 The issue before the Supreme Court of Canada in *H.L.* was the applicable standard of appellate review on questions of fact in Saskatchewan. In *H.L.*, the Court referred to Saskatchewan *Hansard* for the purpose of the enactment in question, which was "to update and clarify some of the provisions": para. 105. The Court cited

statements from *Hansard* where the Legislature said the act in question "doesn't change the jurisdiction of the Court of Appeal in any way, it simply restates the historical jurisdiction of the court in a way that can be understood by users of the Act": para. 10. Mr. Justice Fish for the Court said:

> [106] Though of limited weight, *Hansard* evidence can assist in determining the background and purpose of legislation: *Rizzo & Rizzo Shoes Ltd. (Re)*, *[1998] 1 S.C.R. 27*, at para. 35. In this case, it is particularly apposite, since it was contended by the Attorney General for Saskatchewan, an intervener in this Court, that the legislature's purpose in revising *The Court of Appeal Act* was to "clarify" that the Court of Appeal was to be placed "in a position of conducting an appeal by rehearing".

127 The plaintiff argues in this case that *Hansard* makes it certain and unequivocal that the enactment was directed at a passenger who was in injured in the course of the common enterprise with the driver to steal a car.

128 The plaintiff concludes that s. 91 is directed at "depriving a person of insurance coverage who was involved in criminal activity".

129 ICBC's position is that *Hansard* is not admissible in this case. Even if it is admissible, it is not useful for interpretation, but is only relevant as to the background and the purpose of the legislation. ICBC argues *Hansard* is not intended to be direct evidence used interpret legislation: *Rizzo* at paras. 35, 40, and *Reference Re: Firearms Act (Can)*, 2000 SC 31 at para. 17. ICBC argues that *Hansard* cannot be used to override plain language or read additional requirements into legislation: *R. v. McDonald*, *2012 BCCA 475* at para 14. I note the *McDonald* case does not consider *Hansard* debates, but another form of extrinsic evidence.

130 ICBC argues that in Mr. Petter's words in *Hansard* are not just focussed on stealing cars, but on situations other than stealing a car.

131 Ms. Schoenhalz is correct that the discussion in *Hansard* was focussed on stolen vehicles. It provides background to the passing of the legislation. However, given the clear text of s. 91, I find that I do not need to resort to the *Hansard* debates to interpret the section. However, even after a consideration of *Hansard,* there is nothing in the legislative discussion to indicate the legislation is limited to stolen vehicles. It is intended to prevent recovery when a party was injured while in a vehicle they knew or ought to have known was being driven without the consent of the owner, which naturally includes stolen vehicles.

DECISION

132 I conclude that the wording of s. 91 is clear and unambiguous. A driver who knows that the vehicle is being driven at the time of the accident without the consent of the owner cannot make a claim for compensation from what is known as the Uninsured Motorist Protection Fund which arises from s. 20 of the *Act*. Whether or not the vehicle is stolen is not determinative.

133 However, in these unusual circumstances, I find that ICBC has failed to discharge its burden to prove that Ms. Schoenhalz knew or ought to have known Ms. Reeves did not have permission of the owner to drive the vehicle.

134 "Knew or ought to have known" needs to be interpreted from Ms. Schoenhalz's perspective. Both Ms. Schoenhalz and Ms. Reeves were of the belief that Steven owned the car. The basis of this belief was reasonable, in that Ms. Schoenhalz had been in the vehicle before with Ms. Reeves, Luke and Steven. On the day of the accident, she was picked up and rode in the Camaro with Luke driving and Ms. Reeves and Steven as passengers. Ms. Schoenhalz did not know that Ms. Hammond was the owner, and there was no evidence before me that should have indicated to Ms. Schoenhalz that Steven was not the owner.

135 It is important to my decision that both Ms. Reeves and Ms. Schoenhalz thought Steven owned the car. While this does not affect my decision regarding liability, it is entirely relevant to the operation of s. 91. Section 91 asks the court to examine what the claimant, in this case Ms. Schoenhalz, knew or ought to have known about consent to

operate the vehicle. Therefore, as Ms. Schoenhalz's counsel suggests, I must approach s. 91 from her perspective, both subjectively and objectively.

136 I reiterate that ICBC has the burden of proving of a balance of probabilities that Ms. Schoenhalz knew or ought to have known Ms. Reeves did not have consent of the owner to drive the car.

137 I find that ICBC has not proven that Ms. Schoenhalz subjectively knew Ms. Reeves did not have the consent of the owner to operate the vehicle.

138 The more difficult question is whether ICBC has proven that an ordinary and prudent 17 year old girl, in Ms. Schoenhalz's position and with her knowledge, should have known Ms. Reeves did not have permission to drive the car. I reiterate once again that Ms. Schoenhalz reasonably believed Steven was the owner. ICBC has not proven that it would be unreasonable for a 17 year old girl to accept that Luke, who had driven the vehicle and maintained possession of the keys, could give them Steven's permission to drive the car. It seems reasonable that a young girl would believe that Luke, the eldest of the group, was able to give them Steven's permission when he directed them to take the car. I am not saying this would be a reasonable assumption for an adult to make. It surely would not. I limit my findings to Ms. Schoenhalz's specific circumstances. In this case, I find ICBC has not proven that Ms. Schoenhalz should have known Ms. Reeves did not have permission to drive the car.

139 Essential to my decision is the fact that both Ms. Schoenhalz and Ms. Reeves were incredibly young at the time of the accident. I find that the statement in para. 17 in *White*, where the court stated that the phrase 'ought to have known' encompassed "where a passenger gave no thought to the question of insurance, even though an ordinarily prudent person, in his position and with his knowledge, would have made enquiries" is helpful in my interpretation of s. 91. In my opinion, ICBC has not met the burden of proving that an ordinarily prudent 17 year old girl will turn their mind to the question of consent when asked to drive a car.

140 This situation is factually distinct from *White,* where I infer the two men were older. I note that Shane, the driver, had actually been disqualified from driving. It appears the brothers had a history of intentional illegal and uninsured driving, which they had discussed amongst themselves: para. 18. It seems logical to infer that the brothers in *White* clearly understood the implications of unlicensed driving and the operation of vehicle insurance.

141 In conclusion, the unique factual circumstances of this case, where I must consider the mental state of a very young girl, bring me to my decision. I find that ICBC has not proven that Ms. Schoenhalz's claim is barred by s. 91.

ORDER

142 The plaintiff's action is allowed with costs, pursuant to Appendix B, Scale B of the *Rules*, after their assessment.

H. HYSLOP J.

End of Document

Canada (Minister of Citizenship and Immigration) v. Vavilov

Supreme Court of Canada Judgments

Supreme Court of Canada

Present: R. Wagner C.J. and R.S. Abella, M.J. Moldaver, A. Karakatsanis, C. Gascon, S. Côté, R. Brown, M. Rowe and S.L. Martin JJ.

Heard: December 4, 5, 6, 2018;

Judgment: December 19, 2019.

File No.: 37748.

[2019] S.C.J. No. 65 | [2019] A.C.S. no 65 | 2019 SCC 65 | [2019] 4 S.C.R. 653 | 2020EXP-27 | 441 D.L.R. (4th) 1 | 59 Admin. L.R. (6th) 1 | 69 Imm. L.R. (4th) 1 | EYB 2019-335761 | 2019 CarswellNat 7883

Minister of Citizenship and Immigration, Appellant; v. Alexander Vavilov, Respondent, and Attorney General of Ontario, Attorney General of Quebec, Attorney General of British Columbia, Attorney General of Saskatchewan, Canadian Council for Refugees, Advocacy Centre for Tenants Ontario - Tenant Duty Counsel Program, Ontario Securities Commission, British Columbia Securities Commission, Alberta Securities Commission, Ecojustice Canada Society, Workplace Safety and Insurance Appeals Tribunal (Ontario), Workers' Compensation Appeals Tribunal (Northwest Territories and Nunavut), Workers' Compensation Appeals Tribunal (Nova Scotia), Appeals Commission for Alberta Workers' Compensation, Workers' Compensation Appeals Tribunal (New Brunswick), British Columbia International Commercial Arbitration Centre Foundation, Council of Canadian Administrative Tribunals, National Academy of Arbitrators, Ontario Labour- Management Arbitrators' Association, Conférence des arbitres du Québec, Canadian Labour Congress, National Association of Pharmacy Regulatory Authorities, Queen's Prison Law Clinic, Advocates for the Rule of Law, Parkdale Community Legal Services, Cambridge Comparative Administrative Law Forum, Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic, Canadian Bar Association, Canadian Association of Refugee Lawyers, Community & Legal Aid Services Programme, Association québécoise des avocats et avocates en droit de l'immigration and First Nations Child & Family Caring Society of Canada, Interveners

(343 paras.)

Appeal From:

ON APPEAL FROM THE FEDERAL COURT OF APPEAL

Case Summary

Administrative law — Judicial review and statutory appeal — Standard of review — Reasonableness — Appeal from Federal Court of Appeal judgment setting aside decision of Canadian Registrar of Citizenship (Registrar) cancelling Vavilov's certificate of citizenship, dismissed — Revised framework for determining standard of review began with presumption that reasonableness was applicable standard in all cases — Reviewing courts should derogate from this presumption only where required by clear indication of legislative intent or by rule of law — In conducting reasonableness review, court had to consider outcome of administrative decision in light of its underlying rationale to ensure transparency, intelligibility and justification — Section 3 of Citizenship Act did not intend s. 3(2)(a) to apply to children of individuals who had not been granted diplomatic privileges and immunities — Registrar's failure to justify decision with respect to these constraints rendered interpretation unreasonable — No purpose would be served by remitting this matter to Registrar — Vavilov was Canadian citizen.

Immigration law — Naturalization or citizenship — Right to citizenship — Persons born in Canada — Loss of or disqualification from citizenship — Appeals and judicial review — Citizenship Act and Regulations — Interpretation — Appeal from Federal Court of Appeal judgment setting aside decision of Canadian Registrar of Citizenship (Registrar) cancelling Vavilov's certificate of citizenship, dismissed — Revised framework for determining standard of review began with presumption that reasonableness was applicable standard in all cases — Reviewing courts should derogate from this presumption only where required by clear indication of legislative intent or by rule of law — In conducting reasonableness review, court had to consider outcome of administrative decision in light of its underlying rationale to ensure transparency, intelligibility and justification — Section 3 of Citizenship Act did not intend s. 3(2)(a) to apply to children of individuals who had not been granted diplomatic privileges and immunities — Registrar's failure to justify decision with respect to these constraints rendered interpretation unreasonable — No purpose would be served by remitting this matter to Registrar — Vavilov was Canadian citizen.

Appeal from a judgment of the Federal Court of Appeal setting aside a decision of the Canadian Registrar of Citizenship (Registrar) cancelling Vavilov's certificate of citizenship. Vavilov was born in Canada and his parents were later revealed to be Russian spies. The Registrar found, on the basis of an interpretation of s.á3(2)(a) of the Citizenship Act, that Vavilov was not a Canadian citizen and cancelled his certificate of citizenship under s. 26(3) of the Citizenship Regulations. The Court viewed the appeal as an opportunity to consider the law applicable to the judicial review of administrative decisions as addressed in Dunsmuir and subsequent cases.
HELD: Appeal dismissed.

Reasonableness review was an approach meant to ensure that courts intervene in administrative matters only where it was truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. Its starting point was the principle of judicial restraint and respect for the distinct role of administrative decision makers. However, it was not a "rubber-stamping" process or a means of sheltering administrative decision makers from accountability. It remained a robust form of review. In conducting a reasonableness review, a court had to consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole was transparent, intelligible and justified. The Court should focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place. The standard of review analysis required courts to give effect to the legislature's institutional design choices to delegate authority through statute. There was no convincing reason to presume that legislatures meant something different when they used the word "appeal" in an administrative law statute than they did in a criminal or commercial law context. Respect for the rule of law required courts to apply the standard of correctness for certain types of legal questions: constitutional questions, general questions of law of central importance to the legal system as a whole and questions regarding the jurisdictional boundaries between two or more administrative bodies. Written reasons were the means by which the decision maker communicated the rationale for its decision. A principled approach to reasonableness review was one which put those reasons first. To be reasonable, a decision had to be based on reasoning that was both rational and logical. A failure in this respect could lead a reviewing court to conclude that a decision must be set aside. The decision also had to be justified in relation to the relevant constellation of law and facts. Whether an interpretation was justified will depend on the context, including the language chosen by the legislature in describing the limits and contours of the decision maker's authority. Where the reasonableness standard was applied in conducting a judicial review, the choice of remedy had to be guided by the rationale for applying that standard to begin with, including the recognition by the reviewing court that the legislature had entrusted the matter to the administrative decision maker, and not to the court, to decide. Applying this analysis, the standard to be applied in reviewing the merits of the Registrar's decision in this case was reasonableness. The Registrar failed to justify her interpretation of s.á3(2)(a) of the Citizenship Act in light of the constraints imposed by the text of s.á3 as a whole, by other legislation and international treaties that informed the purpose of s. 3, by the jurisprudence on the interpretation of s.á3(2)(a), and by the potential consequences of her interpretation. It was unreasonable for the Registrar to find that the phrase "diplomatic or consular officer or other representative or employee in Canada of a foreign government" applied to individuals who had not been granted diplomatic privileges and immunities in Canada. Vavilov's parents had not been granted such privileges and immunities. Rules concerning citizenship

required a high degree of interpretive consistency in order to shield against a perception of arbitrariness and to ensure conformity with Canada's international obligations. Since Vavilov's parents, as undercover spies, were granted no such privileges, it would serve no purpose to remit the matter in this case to the Registrar. As a person who was born in Canada after February 14, 1977, Vavilov's status was governed only by the general rule set out in s. 3(1)(a) of the Citizenship Act. He was a Canadian citizen.

Statutes, Regulations and Rules Cited:

Act mainly to promote the efficiency of penal justice and to establish the terms governing the intervention of the Court of QuÚbec with respect to applications for appeal, Bill 32, 1st Sess., 42nd Leg., Quebec, 2019,

Administrative Tribunals Act, S.B.C. 2004, c.á45, s. 58, s. 59

Canadian Charter of Rights and Freedoms 1982, s. 1

Canadian Citizenship Act, R.S.C. 1970, c.áC19, s. 5(3)

Citizenship Act, *R.S.C. 1985, c. C29, s. 3*, s. 10, s. 22.1-22.4

Citizenship Regulations, SOR/93246, s. 26

Constitution Act, 1867, s. 96

Constitution Act, 1982, s. 35

Federal Courts Act, R.S.C. 1985, c.áF7, s. 18-18.2, s. 18.4, s. 27, s. 28

Foreign Missions and International Organizations Act, S.C. 1991, c.á41, s. 3, s. 4, Sch. I,II s. 1, Sch. I,II s. 41, Sch. I,II s. 43, Sch. I,II s. 49, Sch. I,II s. 53

Human Rights Code, R.S.B.C. 1996, c.á210, s. 32

Immigration and Refugee Protection Act, S.C. 2001, c.á27, s. 35-37

Interpretation Act, R.S.C. 1985, c.áI21, s. 35(1)

Municipal Government Act, R.S.A. 2000, c.áM26, s. 470

Ontario Human Rights Code, 196162, S.O. 196162, c.á93, s. 3

Optional Protocol to the Vienna Convention on Diplomatic Relations, concerning Acquisition of Nationality, 500 U.N.T.S. 223, art. II

Vienna Convention on Consular Relations, Can. T.S. 1974 No.á25,

Vienna Convention on Diplomatic Relations, Can. T.S. 1966 No.á29,

Subsequent History:

NOTE: This document is subject to editorial revision before its reproduction in final form in the Canada Supreme Court Reports.

Court Catchwords:

Administrative law -- Judicial review -- Standard of review -- Proper approach to judicial review of administrative decisions -- Proper approach to reasonableness review.

Citizenship -- Canadian citizens -- Registrar of Citizenship cancelling certificate of Canadian citizenship issued to Canadian-born son of parents later revealed to be Russian spies -- Decision of Registrar based on interpretation of statutory exception to general rule that person born in Canada is Canadian citizen -- Exception stating that Canadian-born child is not citizen if either parent was representative or employee in Canada of foreign government at time of child's birth -- Whether Registrar's decision to cancel certificate of citizenship was reasonable -- Citizenship Act, R.S.C. 1985, c. 29, s. 3(2)(a).

Court Summary:

V was born in Toronto in 1994. At the time of his birth, his parents were posing as Canadians under assumed names. In reality, they were foreign nationals working on assignment for the Russian foreign intelligence service. V did not know that his parents were not who they claimed to be. He believed that he was a Canadian citizen by birth, he lived and identified as a Canadian, and he held a Canadian passport. In 2010, V's parents were arrested in the United States and charged with espionage. They pled guilty and were returned to Russia. Following their arrest, V's attempts to renew his Canadian passport proved unsuccessful. However, in 2013, he was issued a certificate of Canadian citizenship.

Then, in 2014, the Canadian Registrar of Citizenship cancelled V's certificate on the basis of her interpretation of s. 3(2)(a) of the *Citizenship Act*. This provision exempts children of "a diplomatic or consular officer or other representative or employee in Canada of a foreign government" from the general rule that individuals born in Canada acquire Canadian citizenship by birth. The Registrar concluded that because V's parents were employees or representatives of Russia at the time of V's birth, the exception to the rule of citizenship by birth in s. 3(2)(a), as she interpreted it, applied to V, who therefore was not, and had never been, entitled to citizenship. V's application for judicial review of the Registrar's decision was dismissed by the Federal Court. The Court of Appeal allowed V's appeal and quashed the Registrar's decision because it was unreasonable. The Minister of Citizenship and Immigration appeals.

Held: The appeal should be dismissed.

Per **Wagner** C.J. and **Moldaver**, **Gascon**, **Côté**, **Brown**, **Rowe** and **Martin** JJ.: The Registrar's decision to cancel V's certificate of citizenship was unreasonable, and the Court of Appeal's decision to quash it should be upheld. It was not reasonable for the Registrar to interpret s. 3(2)(a) of the *Citizenship Act* as applying to children of individuals who have not been granted diplomatic privileges and immunities at the time of the children's birth.

More generally, this appeal and its companion cases (*Bell Canada v. Canada (Attorney General)*, 2019 SCC 66) provide an opportunity to consider and clarify the law applicable to the judicial review of administrative decisions as addressed in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, and subsequent cases. The submissions presented to the Court have highlighted two aspects of the current framework which need clarification. The first aspect is the analysis for determining the standard of review. The second aspect is the need for better guidance from this Court on the proper application of the reasonableness standard.

It has become clear that *Dunsmuir*'s promise of simplicity and predictability has not been fully realized. Certain aspects of the current standard of review framework are unclear and unduly complex. The former contextual analysis has proven to be unwieldly and offers limited practical guidance for courts attempting to determine the standard of review. The practical effect is that courts struggle in conducting the analysis, and debates surrounding the appropriate standard and its application continue to overshadow the review on the merits, thereby undermining access to justice. A reconsideration of the Court's approach is therefore necessary in order to bring greater coherence and predictability to this area of law. A revised framework to determine the standard of review where a court reviews the merits of an administrative decision is needed.

In setting out a revised framework, this decision departs from the Court's existing jurisprudence on standard of review in certain respects. Any reconsideration of past precedents can be justified only by compelling circumstances and requires carefully weighing the impact on legal certainty and predictability against the costs of continuing to follow a flawed approach. Although adhering to the established jurisprudence will generally promote certainty and predictability, in some instances doing so will create or perpetuate uncertainty. In such circumstances, following a prior decision would be contrary to the underlying values of clarity and certainty in the law.

The revised standard of review analysis begins with a presumption that reasonableness is the applicable standard in all cases. Where a legislature has created an administrative decision maker for the specific purpose of administering a statutory scheme, it must be presumed that the legislature also intended that decision maker to fulfill its mandate and interpret the law applicable to all issues that come before it. Where a legislature has not explicitly provided that a court is to have a more involved role in reviewing the decisions of that decision maker, it can safely be assumed that the legislature intended a minimum of judicial interference. Respect for these institutional design choices requires a reviewing court to adopt a posture of restraint. Thus, whenever a court reviews an administrative decision, it should start with the presumption that the applicable standard of review for all aspects of that decision will be reasonableness. As a result, it is no longer necessary for courts to engage in a contextual inquiry in order to identify the appropriate standard. Conclusively closing the door on the application of a contextual analysis to determine the applicable standard streamlines and simplifies the standard of review framework. As well, with the presumptive application of the reasonableness standard, the relative expertise of administrative decision makers is no longer relevant to a determination of the standard of review. It is simply folded into the new starting point. Relative expertise remains, however, a relevant consideration in conducting reasonableness review.

The presumption of reasonableness review can be rebutted in two types of situations. The first is where the legislature has indicated that it intends a different standard to apply. This will be the case where it has explicitly prescribed the applicable standard of review. Any framework rooted in legislative intent must respect clear statutory language. The legislature may also direct that derogation from the presumption is appropriate by providing for a statutory appeal mechanism from an administrative decision to a court, thereby signalling the legislature's intent that appellate standards apply when a court reviews the decision. Where a legislature has provided a statutory appeal mechanism, it has subjected the administrative regime to appellate oversight and it expects the court to scrutinize such administrative decisions on an appellate basis. The applicable standard is therefore to be determined with reference to the nature of the question and to the jurisprudence on appellate standards of review. Where, for example, a court hears an appeal from an administrative decision, it would apply the standard of correctness to questions of law, including on statutory interpretation and the scope of a decision maker's authority. Where the scope of the statutory appeal includes questions of fact or questions of mixed fact and law, the standard is palpable and overriding error for such questions.

Giving effect to statutory appeal mechanisms in this way departs from the Court's recent jurisprudence. This shift is necessary in order to bring coherence and conceptual balance to the standard of review analysis and is justified by weighing the values of certainty and correctness. First, there has been significant and valid judicial and academic criticism of the Court's recent approach to statutory appeal rights and of the inconsistency inherent in a standard of review framework based on legislative intent that otherwise declines to give meaning to an express statutory right of appeal. Second, there is no satisfactory justification for the recent trend in the Court's jurisprudence to give no effect to statutory rights of appeal in the standard of review analysis, absent exceptional wording. More generally, there is no convincing reason to presume that legislatures mean something entirely different when they use the word "appeal" in an administrative law statute. Accepting that the legislature intends an appellate standard of review to be applied also helps to explain why many statutes provide for both appeal and judicial review mechanisms, thereby indicating two roles for reviewing courts. Finally, because the presumption of reasonableness review is no longer premised upon notions of relative expertise and is now based on respect for the legislature's institutional design choice, departing from the presumption of reasonableness review in the context of a statutory appeal respects this legislative choice.

The second situation in which the presumption of reasonableness review will be rebutted is where the rule of law requires that the standard of correctness be applied. This will be the case for certain categories of legal questions, namely constitutional questions, general questions of law of central importance to the legal system as a whole and questions related to the jurisdictional boundaries between two or more administrative bodies. First, questions regarding the division of powers between Parliament and the provinces, the relationship between the legislature and the other branches of the state, the scope of Aboriginal and treaty rights under s. 35 of the *Constitution Act, 1982*, and other constitutional matters require a final and determinate answer from the courts. Second, the rule of law requires courts to have the final word with regard to general questions of law that are of central importance to the legal system as a whole because they require uniform and consistent answers. Third, the rule of law requires courts to intervene where one administrative body has interpreted the scope of its authority in a manner that is incompatible with the jurisdiction of another since the rule of law cannot tolerate conflicting orders and proceedings where they result in a true operational conflict between two administrative bodies. The application of the correctness standard for such questions therefore respects the unique role of the judiciary in interpreting the Constitution and ensures that courts are able to provide the last word on questions for which the rule of law requires consistency and for which a final and determinate answer is necessary.

The general rule of reasonableness review, when coupled with these limited exceptions, offers a comprehensive approach to determining the applicable standard of review. The possibility that another category could be recognized as requiring a derogation from the presumption of reasonableness review in a future case is not definitively foreclosed. However, any new basis for correctness review would be exceptional and would need to be consistent with this framework and the overarching principles set out in this decision. Any new correctness category based on legislative intent would require a signal of legislative intent as strong and compelling as a legislated standard of review or a statutory appeal mechanism. Similarly, a new correctness category based on the rule of law would be justified only where failure to apply correctness review would undermine the rule of law and jeopardize the proper functioning of the justice system in a manner analogous to the three situations described in this decision.

For example, the Court is not persuaded that it should recognize a distinct correctness category for legal questions on which there is persistent discord within an administrative body. A lack of unanimity within an administrative tribunal is the price to pay for decision-making freedom and independence. While discord can lead to legal incoherence, a more robust form of reasonableness review is capable of guarding against such threats to the rule of law. As well, jurisdictional questions should no longer be recognized as a distinct category subject to correctness review; there are no clear markers to distinguish such questions from other questions related to interpreting an administrative decision maker's enabling statute. A proper application of the reasonableness standard will enable courts to ensure that administrative bodies have acted within the scope of their lawful authority without having to conduct a preliminary assessment on jurisdictional issues and without having to apply the correctness standard.

Going forward, a court seeking to determine what standard of review is appropriate should look to this decision first in order to determine how the general framework applies. Doing so may require the court to resolve subsidiary questions on which past precedents will often continue to provide helpful guidance and will continue to apply essentially without modification, such as cases concerning general questions of law of central importance to the legal system as a whole or those relating to jurisdictional boundaries between administrative bodies. On other issues, such as the effect of statutory appeal mechanisms, true questions of jurisdiction or the former contextual analysis, certain cases will necessarily have less precedential force.

There is also a need for better guidance from the Court on the proper application of the reasonableness standard, what that standard entails and how it should be applied in practice. Reasonableness review is meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. Its starting point lies in the principle of judicial restraint and in demonstrating respect for the distinct role of administrative decision makers. However, it is not a "rubber-stamping" process or a means of sheltering decision makers from accountability. While courts must recognize the legitimacy and authority of administrative decision makers and adopt a posture of respect, administrative decision makers must adopt a culture of justification and demonstrate that their exercise of delegated public power can be justified.

In conducting reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale, to ensure that the decision as a whole is transparent, intelligible and justified. Judicial review is concerned with both the outcome of the decision and the reasoning process that led to that outcome. To accept otherwise would undermine, rather than demonstrate respect toward, the institutional role of the administrative decision maker.

Reasonableness review is methodologically distinct from correctness review. The court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it. A court applying the reasonableness standard does not ask what decision it would have made in place of the administrative decision maker, attempt to ascertain the range of possible conclusions, conduct a new analysis or seek to determine the correct solution to the problem. Instead, the reviewing court must consider only whether the decision made by the decision maker, including both the rationale for the decision and the outcome to which it led, was unreasonable.

In cases where reasons are required, they are the starting point for reasonableness review, as they are the primary mechanism by which decision makers show that their decisions are reasonable. Reasons are the means by which the decision maker communicates the rationale for its decision: they explain how and why a decision was made, help to show affected parties that their arguments have been considered and that the decision was made in a fair and lawful manner, and shield against arbitrariness. A principled approach to reasonableness review is therefore one which puts those reasons first. This enables a reviewing court to assess whether the decision as a whole is reasonable. Attention to the decision maker's reasons is part of how courts demonstrate respect for the decision-making process.

In many cases, formal reasons for a decision will not be given or required. Even without reasons, it is possible for the record and the context to reveal that a decision was made on the basis of an improper motive or for another impermissible reason. There will nonetheless be situations in which neither the record nor the larger context sheds light on the basis for the decision. In such cases, the reviewing court must still examine the decision in light of the relevant factual and legal constraints on the decision maker in order to determine whether the decision is reasonable.

It is conceptually useful to consider two types of fundamental flaws that tend to render a decision unreasonable. The first is a failure of rationality internal to the reasoning process. To be reasonable, a decision must be based on an internally coherent reasoning that is both rational and logical. A failure in this respect may lead a reviewing court to conclude that a decision must be set aside. Reasonableness review is not a line-by-line treasure hunt for error. However, the reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic. Because formal reasons should be read in light of the record and with due sensitivity to the administrative regime in which they were given, a decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis. A decision will also be unreasonable where the conclusion reached cannot follow from the analysis undertaken or if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point. Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies.

The second type of fundamental flaw arises when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it. Although reasonableness is a single standard that already accounts for context, and elements of a decision's context should not modulate the standard or the degree of scrutiny by the reviewing court, what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review. These contextual constraints dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt. The governing statutory scheme, other relevant statutory or common law, the principles of statutory interpretation, the evidence before the decision maker and facts of which the decision maker may take notice, the submissions of the parties, the past practices and decisions of the administrative body, and the potential impact of the decision on the individual to whom it applies, are all elements that will generally be relevant in evaluating whether a given decision

is reasonable. Such elements are not a checklist; they may vary in significance depending on the context and will necessarily interact with one another.

Accordingly, a reviewing court may find that a decision is unreasonable when examined against these contextual considerations. Because administrative decision makers receive their powers by statute, the governing statutory scheme is likely to be the most salient aspect of the legal context relevant to a particular decision. A proper application of the reasonableness standard is capable of allaying the concern that an administrative decision maker might interpret the scope of its own authority beyond what the legislature intended. Whether an interpretation is justified will depend on the context, including the language chosen by the legislature in describing the limits and contours of the decision maker's authority.

Both statutory and common law will also impose constraints on how and what an administrative decision maker can lawfully decide. Any precedents on the issue before the administrative decision maker or on a similar issue, as well as international law in some administrative decision making contexts, will act as a constraint on what the decision maker can reasonably decide. Whether an administrative decision maker has acted reasonably in adapting a legal or equitable doctrine involves a highly context-specific determination.

Matters of statutory interpretation are not treated uniquely and, as with other questions of law, may be evaluated on a reasonableness standard. Where this is the applicable standard, the reviewing court does not undertake a *de novo* analysis of the question or ask itself what the correct decision would have been. But an approach to reasonableness review that respects legislative intent must assume that those who interpret the law, whether courts or administrative decision makers, will do so in a manner consistent with the modern principle of statutory interpretation. Administrative decision makers are not required to engage in a formalistic statutory interpretation exercise in every case. 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.

Furthermore, the decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it. The reasons must also meaningfully account for the central issues and concerns raised by the parties, even though reviewing courts cannot expect administrative decision makers to respond to every argument or line of possible analysis.

While administrative decision makers are not bound by their previous decisions, they must be concerned with the general consistency of administrative decisions. Therefore, whether a particular decision is consistent with the administrative body's past decisions is also a constraint that the reviewing court should consider when determining whether an administrative decision is reasonable. Finally, individuals are entitled to greater procedural protection when the decision in question involves the potential for significant personal impact or harm. Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes. The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention.

The question of the appropriate remedy -- specifically, whether a court that quashes an unreasonable decision should exercise its discretion to remit the matter to the decision maker for reconsideration with the benefit of the court's reasons - - is multi-faceted. The choice of remedy must be guided by the rationale for applying the reasonableness standard to begin with, including the recognition by the reviewing court that the legislature has entrusted the matter to the administrative decision maker, and not to the court, concerns related to the proper administration of the justice system, the need to ensure access to justice and the goal of expedient and cost-efficient decision making. Giving effect to these principles in the remedial context means that where a decision reviewed by applying the reasonableness standard cannot be upheld, it will most often be appropriate to remit the matter to the decision maker for reconsideration with the benefit of the court's reasons. However, there are limited scenarios in which remitting the matter would stymie the timely and effective resolution of matters in a manner that no legislature could have intended. An intention that the administrative decision maker decide the matter at first

instance cannot give rise to endless judicial reviews and subsequent reconsiderations. Declining to remit a matter to the decision maker may be appropriate where it becomes evident that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose. Elements like concern for delay, fairness to the parties, urgency of providing a resolution to the dispute, the nature of the particular regulatory regime, whether the administrative decision maker had a genuine opportunity to weigh in on the issue in question, costs to the parties, and efficient use of public resources may also influence the exercise of a court's discretion to remit the matter.

In the case at bar, there is no basis for departing from the presumption of reasonableness review. The Registrar's decision has come before the courts by way of judicial review, not by way of a statutory appeal. Given that Parliament has not prescribed the standard to be applied, there is no indication that the legislature intended a standard of review other than reasonableness. The Registrar's decision does not give rise to any constitutional questions, general questions of law of central importance to the legal system as a whole or questions regarding the jurisdictional boundaries between administrative bodies. As a result, the standard to be applied in reviewing the Registrar's decision is reasonableness.

The Registrar's decision was unreasonable. She failed to justify her interpretation of s. 3(2)(a) in light of the constraints imposed by s. 3 considered as a whole, by international treaties that inform its purpose, by the jurisprudence on the interpretation of s. 3(2)(a), and by the potential consequences of her interpretation. Each of these elements -- viewed individually and cumulatively -- strongly supports the conclusion that s. 3(2)(a) was not intended to apply to children of foreign government representatives or employees who have not been granted diplomatic privileges and immunities. Though V had raised many of these considerations, the Registrar failed to address those submissions in her reasons and did not do more than conduct a cursory review of the legislative history of s. 3(2)(a) and conclude that her interpretation was not explicitly precluded by its text.

First, the Registrar failed to address the immediate statutory context of s. 3(2)(a), which provides clear support for the conclusion that all of the persons contemplated by s. 3(2)(a) must have been granted diplomatic privileges and immunities in some form for the exception to apply. Second, the Registrar disregarded compelling submissions that s. 3(2) is a narrow exception consistent with established principles of international law and with the leading international treaties that extend diplomatic privileges and immunities to employees and representatives of foreign governments. Third, it was a significant omission to ignore the relevant cases that were before the Registrar which suggest that s. 3(2)(a) was intended to apply only to those individuals whose parents have been granted diplomatic privileges and immunities. Finally, there is no evidence that the Registrar considered the potential consequences of expanding her interpretation of s. 3(2)(a) to include all individuals who have not been granted diplomatic privileges and immunities. Rules concerning citizenship require a high degree of interpretive consistency in order to shield against arbitrariness. The Registrar's interpretation cannot be limited to the children of spies -- its logic would be equally applicable to other scenarios. As well, provisions such as s. 3(2)(a) must be given a narrow interpretation because they potentially take away rights which otherwise benefit from a liberal and broad interpretation. Yet there is no indication that the Registrar considered the potential harsh consequences of her interpretation, or whether, in light of those potential consequences, Parliament would have intended s. 3(2)(a) to apply in this manner. Although the Registrar knew her interpretation was novel, she failed to provide a rationale for her expanded interpretation.

It was therefore unreasonable for the Registrar to find that s. 3(2)(a) can apply to individuals whose parents have not been granted diplomatic privileges and immunities in Canada. It is undisputed that V's parents had not been granted such privileges and immunities. No purpose would therefore be served by remitting this matter to the Registrar. Given that V was born in Canada, his status is governed only by the general rule of citizenship by birth. He is a Canadian citizen.

Per **Abella** and **Karakatsanis** JJ.: There is agreement with the majority that the appeal should be dismissed. The Registrar's decision to cancel V's citizenship certificate was unreasonable and was properly quashed by the Court of Appeal.

There is also agreement with the majority that there should be a presumption of reasonableness in judicial review. The contextual factors analysis should be eliminated from the standard of review framework, and "true questions of

jurisdiction" should be abolished as a separate category of issues subject to correctness review. However, the elimination of these elements does not support the foundational changes to judicial review outlined in the majority's framework that result in expanded correctness review. Rather than confirming a meaningful presumption of deference for administrative decision-makers, the majority strips away deference from hundreds of administrative actors, based on a formalistic approach that ignores the legislature's intention to leave certain legal and policy questions to administrative decision-makers. The majority's presumption of reasonableness review rests on a totally new understanding of legislative intent and the rule of law and prohibits any consideration of well-established foundations for deference. By dramatically expanding the circumstances in which generalist judges will be entitled to substitute their own views for those of specialized decision-makers who apply their mandates on a daily basis, the majority's framework fundamentally reorients the relationship between administrative actors and the judiciary, thus advocating a profoundly different philosophy of administrative law.

The majority's framework rests on a flawed and incomplete conceptual account of judicial review, one that unjustifiably ignores the specialized expertise of administrative decision-makers and reads out the foundations of the modern understanding of legislative intent. Instead of understanding legislative intent as being the intention to leave legal questions within their mandate to specialized decision-makers with expertise, the majority removes expertise from the equation entirely. In so doing, the majority disregards the historically accepted reason why the legislature intended to delegate authority to an administrative actor. In particular, such an approach ignores the possibility that specialization and expertise are embedded into this legislative choice. Post-*Dunsmuir*, the Court has been steadfast in confirming the central role of specialization and expertise, affirming their connection to legislative intent, and recognizing that they give administrative decision-makers the interpretative upper hand on questions of law. Specialized expertise has become the core rationale for deference. Giving proper effect to the legislature's choice to delegate authority to an administrative decision-maker requires understanding the advantages that the decision-maker may enjoy in exercising its mandate. Chief among those advantages are the institutional expertise and specialization inherent to administering a particular mandate on a daily basis. In interpreting their enabling statutes, administrative actors may have a particularly astute appreciation for the on-the-ground consequences of particular legal interpretations, of statutory context, of the purposes that a provision or legislative scheme are meant to serve, and of specialized terminology. The advantages stemming from specialization and expertise provide a robust foundation for deference. The majority's approach accords no weight to such institutional advantages and banishes expertise from the standard of review analysis entirely. The removal of the current conceptual basis for deference opens the gates to expanded correctness review.

In the majority's framework, deference gives way whenever the rule of law demands it. This approach, however, flows from a court-centric conception of the rule of law. The rule of law means that administrative decision-makers make legal determinations within their mandate; it does not mean that only judges decide questions of law with an unrestricted license to substitute their opinions for those of administrative actors through correctness review. The majority's approach not only erodes the presumption of deference; it erodes confidence in the fact that law-making and legal interpretation are shared enterprises between courts and administrative decision-makers. Moreover, access to justice is at the heart of the legislative choice to establish a robust system of administrative law. This goal is compromised when a narrow conception of the rule of law is invoked to impose judicial hegemony over administrative decision-makers, which adds unnecessary expense and complexity. Authorizing more incursions into the administrative system by judges and permitting *de novo* review of every legal decision adds to the delay and cost of obtaining a final decision.

The majority's reformulation of "legislative intent" invites courts to apply an irrebuttable presumption of correctness review whenever an administrative scheme includes a right of appeal. Elevating appeal clauses to indicators of correctness review creates a two-tier system that defers to the expertise of administrative decision-makers only where there is no appeal clause. Yet appeal rights do not represent a different institutional structure that requires a more searching form of review. The mere fact that a statute contemplates an appeal says nothing about the degree of deference required in the review process. The majority's position hinges almost entirely on a textualist argument -- i.e., that the presence of the word "appeal" indicates a legislative intent that courts apply the same standards of review found in civil appellate jurisprudence. This disregards long-accepted institutional distinctions between courts and administrative decision-makers. The continued use by legislatures of the term "appeal" cannot be imbued with

the intent that the majority ascribes to it. The idea that appellate standards of review must be applied to every right of appeal is entirely unsupported by the jurisprudence. For at least 25 years, the Court has not treated statutory rights of appeal as a determinative reflection of legislative intent, and such clauses have played little or no role in the standard of review analysis. Moreover, pre-*Dunsmuir*, statutory rights of appeal were still seen as only one factor and not as unequivocal indicators of correctness review. Absent exceptional circumstances, a statutory right of appeal does not displace the presumption of reasonableness.

The majority's disregard for precedent and *stare decisis* has the potential to undermine both the integrity of the Court's decisions, and public confidence in the stability of the law. *Stare decisis* places significant limits on the Court's ability to overturn its precedents. The doctrine promotes the predictable and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the integrity of the judicial process. Respect for precedent also safeguards the Court's institutional legitimacy. The precedential value of a judgment does not expire with the tenure of the panel of judges that decided it. When the Court does choose to overrule its own precedents, it should do so carefully, with moderation, and with due regard for all the important considerations that undergird the doctrine of *stare decisis*. A nuanced balance must be struck between maintaining the stability of the common law and ensuring that the law is flexible and responsive enough to adapt to new circumstances and societal norms. *Stare decisis* plays a critical role in maintaining that balance and upholding the rule of law.

There is no principled justification for departing from the existing jurisprudence and abandoning the Court's long-standing view of how statutory appeal clauses impact the standard of review analysis. In doing so, the majority disregards the high threshold required to overturn the Court's decisions. The unprecedented wholesale rejection of an entire body of jurisprudence that is particularly unsettling. The affected cases are numerous and include many decisions conducting deferential review even in the face of a statutory right of appeal and bedrock judgments affirming the relevance of administrative expertise to the standard of review analysis. Overruling these judgments flouts *stare decisis*, which prohibits courts from overturning past decisions that simply represent a choice with which the current bench does not agree. The majority's approach also has the potential to disturb settled interpretations of many statutes that contain a right of appeal; every existing interpretation of such statutes that has been affirmed under a reasonableness standard will be open to fresh challenge. Moreover, if the Court, in its past decisions, misconstrued the purpose of statutory appeal clauses, legislatures were free to clarify this interpretation through legislative amendment. In the absence of legislative correction, the case for overturning decisions is even less compelling.

The Court should offer additional direction on reasonableness review so that judges can provide careful and meaningful oversight of the administrative justice system while respecting its legitimacy and the perspectives of its front-line, specialized decision-makers. However, rather than clarifying the role of reasons and how to review them, the majority revives the kind of search for errors that dominated the Court's prior jurisprudence. The majority's multi-factored, open-ended list of constraints on administrative decision making will encourage reviewing courts to dissect administrative reasons in a line-by-line hunt for error. These constraints may function in practice as a wide-ranging catalogue of hypothetical errors to justify quashing an administrative decision. Structuring reasonableness review in this fashion effectively imposes on administrative decision-makers a higher standard of justification than on trial judges. Such an approach undercuts deference. Reasonableness review should instead focus on the concept of deference to administrative decision-makers and to the legislative intention to confide in them a mandate. Curial deference is the hallmark of reasonableness review, setting it apart from the substitution of opinion permitted under correctness.

Deference imposes three requirements on courts conducting reasonableness review. First, deference is the attitude a reviewing court must adopt towards an administrative decision-maker. Deference mandates respect for the legislative choice to entrust a decision to administrative actors rather than to the courts, for the important role that administrative decision-makers play, and for their specialized expertise and the institutional setting in which they operate. Reviewing courts must pay respectful attention to the reasons offered for an administrative decision, make a genuine effort to understand why the decision was made, and give the decision a fair and generous construction. Second, deference affects how a court frames the question it must answer and the nature of its analysis. A reviewing court does not ask how it would have resolved an issue, but rather whether the answer provided by the

decision-maker was unreasonable. Ultimately, whether an administrative decision is reasonable depends on the context, and a reviewing court must be attentive to all relevant circumstances, including the reasons offered to support the decision, the record, the statutory scheme and the particular issues raised, among other factors. Third, deferential review impacts how a reviewing court evaluates challenges to a decision. The party seeking judicial review bears the onus of showing that the decision was unreasonable; the decision-maker does not have to persuade the court that its decision is reasonable.

The administrative decision itself is the focal point of the review exercise. In all cases, the question remains whether the challenging party has demonstrated that a decision is unreasonable. Where reasons are neither required nor available, reasonableness may be justified by past decisions of the administrative body or in light of the procedural context. Where reasons are provided, they serve as the natural starting point to determine whether the decision-maker acted reasonably. By beginning with the reasons, read in light of the surrounding context and the grounds raised, reviewing courts provide meaningful oversight while respecting the legitimacy of specialized administrative decision making. Reviewing courts should approach the reasons with respect for the specialized decision-makers, their significant role and the institutional context chosen by the legislator. Reviewing courts should not second-guess operational implications, practical challenges and on-the-ground knowledge and must remain alert to specialized concepts or language. Further, a reviewing court is not restricted to the four corners of the written reasons and should, if faced with a gap in the reasons, look to other materials to see if they shed light on the decision, including: the record of any formal proceedings and the materials before the decision-maker, past decisions of the administrative body, and policies or guidelines developed to guide the type of decision under review. These materials may assist a court in understanding the outcome. In these ways, reviewing courts may legitimately supplement written reasons without supplanting the analysis. Reasons must be read together with the outcome to determine whether the result falls within a range of possible outcomes. This approach puts substance over form where the basis for a decision is evident on the record, but not clearly expressed in written reasons.

As well, a court conducting deferential review must view claims of error in context and with caution, cognizant of the need to avoid substituting its opinion for that of those empowered and better equipped to answer the questions at issue. Because judicial substitution is incompatible with deference, reviewing courts must carefully evaluate the challenges raised to ensure they go to the reasonableness of the decision rather than representing a mere difference of opinion. Courts must also consider the materiality of any alleged errors. An error that is peripheral to the reasoning process is not sufficient to justify quashing a decision. The same deferential approach must apply with equal force to statutory interpretation cases. In such cases, a court should not assess the decision by determining what, in its own view, would be a reasonable interpretation. Such an approach imperils deference. A *de novo* interpretation of a statute necessarily omits the perspective of the front-line, specialized administrative body that routinely applies the statutory scheme in question. By placing that perspective at the heart of the judicial review inquiry, courts display respect for specialization and expertise, and for the legislative choice to delegate certain questions to non-judicial bodies. Conversely, by imposing their own interpretation of a statute, courts undermine legislative intent.

In the instant case, there is agreement with the majority that the standard of review is reasonableness. The Registrar's reasons failed to respond to V's submission that the objectives of s. 3(2)(a) of the *Citizenship Act* require its terms to be read narrowly. Instead, the Registrar interpreted s. 3(2)(a) broadly, based on a purely textual assessment. This reading was only reasonable if the text is read in isolation from its objective. Nothing in the history of this provision indicates that Parliament intended to widen its scope. Furthermore, the judicial treatment of this provision also points to the need for a narrow interpretation. In addition, the text of s. 3(2)(c) can be seen as undermining the Registrar's interpretation of s. 3(2)(a), because the former denies citizenship to children born to individuals who enjoy diplomatic privileges and immunities equivalent to those granted to persons referred to in the latter. This suggests that s. 3(2)(a) covers only those employees in Canada of a foreign government who have such privileges and immunities, in contrast with V's parents. By ignoring the objectives of s. 3 as a whole, the Registrar's decision was unreasonable.

Cases Cited

By Wagner C.J. and Moldaver, Gascon, Côté, Brown, Rowe and Martin JJ.

Considered: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, [2018] 1 S.C.R. 6; *Nova Tube Inc./Nova Steel Inc. v. Conares Metal Supply Ltd.*, 2019 FCA 52; *Al-Ghamdi v. Canada (Minister of Foreign Affairs & International Trade)*, 2007 FC 559, 64 Imm. L.R. (3d) 67; *Lee v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 614, [2009] 1 F.C.R. 204; *Hitti v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 294, 310 F.T.R. 169; **explained:** *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708; **discussed:** *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; **referred to:** *Bell Canada v. Canada (Attorney General)*, 2019 SCC 66; *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, [2015] 2 S.C.R. 3; *Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40, [2014] 2 S.C.R. 135; *Canadian Artists' Representation v. National Gallery of Canada*, 2014 SCC 42, [2014] 2 S.C.R. 197; *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339; *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895; *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47, [2016] 2 S.C.R. 293; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31, [2018] 2 S.C.R. 230; *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29, [2016] 1 S.C.R. 770; *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101; *Canada v. Craig*, 2012 SCC 43, [2012] 2 S.C.R. 489; *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, [2011] 2 S.C.R. 3; *R. v. Henry*, 2005 SCC 76, [2005] 3 S.C.R. 609; *R. v. Bernard*, [1988] 2 S.C.R. 833; *Queensland v. Commonwealth* (1977), 139 C.L.R. 585; *Minister of Indian Affairs and Northern Development v. Ranville*, [1982] 2 S.C.R. 518; *R. v. B. (K.G.)*, [1993] 1 S.C.R. 740; *Crevier v. Attorney General of Quebec*, [1981] 2 S.C.R. 220; *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048; *Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corporation*, [1979] 2 S.C.R. 227; *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982; *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557; *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748; *Dr. Q v. College of Physicians and Surgeons of British Columbia*, 2003 SCC 19, [2003] 1 S.C.R. 226; *Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc.*, 2001 SCC 36, [2001] 2 S.C.R. 100; *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, [2002] 1 S.C.R. 249; *C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539; *R. v. Owen*, 2003 SCC 33, [2003] 1 S.C.R. 779; *British Columbia (Workers' Compensation Board) v. Figliola*, 2011 SCC 52, [2011] 3 S.C.R. 422; *Moore v. British Columbia (Education)*, 2012 SCC 61, [2012] 3 S.C.R. 360; *McCormick v. Fasken Martineau DuMoulin LLP*, 2014 SCC 39, [2014] 2 S.C.R. 108; *British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority*, 2016 SCC 25, [2016] 1 S.C.R. 587; *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62, [2017] 2 S.C.R. 795; *Seneca College of Applied Arts and Technology v. Bhadauria*, [1981] 2 S.C.R. 181; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Québec (Procureure générale) v. Montréal (Ville)*, 2016 QCCA 2108, 17 Admin. L.R. (6th) 328; *Bell Canada v. 7265921 Canada Ltd.*, 2018 FCA 174, 428 D.L.R. (4th) 311; *Garneau Community League v. Edmonton (City)*, 2017 ABCA 374, 60 Alta. L.R. (6th) 1; *Nova Scotia (Attorney General) v. S&D Smith Central Supplies Limited*, 2019 NSCA 22; *Atlantic Mining NS Corp. (D.D.V. Gold Limited) v. Oakley*, 2019 NSCA 14; *R. v. Robinson*, [1996] 1 S.C.R. 683; *Tervita Corp. v. Canada (Commissioner of Competition)*, 2015 SCC 3, [2015] 1 S.C.R. 161; *British Columbia Telephone Co. v. Shaw Cable Systems (B.C.) Ltd.*, [1995] 2 S.C.R. 739; *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 S.C.R. 247; *Barrie Public Utilities v. Canadian Cable Television Assn.*, 2003 SCC 28, [2003] 1 S.C.R. 476; *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, 2004 SCC 54, [2004] 3 S.C.R. 152; *Attorney General of Quebec v. Carrières Ste-Thérèse Ltée*, [1985] 1 S.C.R. 831; *Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 35, [2012] 2 S.C.R. 283; *Westcoast Energy Inc. v. Canada (National Energy Board)*, [1998] 1 S.C.R. 322; *Doré v. Barreau du Québec*, 2012 SCC 12, [2012] 1 S.C.R. 395; *Nova Scotia (Workers' Compensation Board) v. Martin*, 2003 SCC 54, [2003] 2 S.C.R. 504; *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77; *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53, [2016] 2 S.C.R. 555; *Chagnon v. Syndicat de la fonction publique et parapublique du Québec*, 2018 SCC 39, [2018] 2 S.C.R. 687; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471; *Commission scolaire de Laval v. Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8, [2016] 1 S.C.R. 29; *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34, [2013] 2 S.C.R.

458; *Barreau du Québec v. Quebec (Attorney General)*, 2017 SCC 56, [2017] 2 S.C.R. 488; *Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals*, 2011 SCC 59, [2011] 3 S.C.R. 616; *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, 2000 SCC 14, [2000] 1 S.C.R. 360; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Quebec (Attorney General)*, 2004 SCC 39, [2004] 2 S.C.R. 185; *Quebec (Attorney General) v. Guérin*, 2017 SCC 42, [2017] 2 S.C.R. 3; *City of Arlington, Texas v. Federal Communications Commission*, 569 U.S. 290 (2013); *Green v. Law Society of Manitoba*, 2017 SCC 20, [2017] 1 S.C.R. 360; *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22, [2018] 1 S.C.R. 635; *Domtar Inc. v. Quebec (Commission d'appel en matière de lésions professionnelles)*, [1993] 2 S.C.R. 756; *Ellis-Don Ltd. v. Ontario (Labour Relations Board)*, 2001 SCC 4, [2001] 1 S.C.R. 221; *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653; *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48, [2004] 2 S.C.R. 650; *R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869; *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 S.C.R. 3; *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5; *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3; *Delios v. Canada (Attorney General)*, 2015 FCA 117, 472 N.R. 171; *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)*, 2012 SCC 10, [2012] 1 S.C.R. 364; *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38, [2016] 2 S.C.R. 80; *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, [2018] 2 S.C.R. 293; *Komolafe v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 431, 16 Imm. L.R. (4th) 267; *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396, 276 B.C.A.C. 135; *Gonzalez v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 750, 27 Imm. L.R. (4th) 151; *Wright v. Nova Scotia (Human Rights Commission)*, 2017 NSSC 11, 23 Admin. L.R. (6th) 110; *Sangmo v. Canada (Citizenship and Immigration)*, 2016 FC 17; *Blas v. Canada (Citizenship and Immigration)*, 2014 FC 629, 26 Imm. L.R. (4th) 92; *Reid v. Criminal Injuries Compensation Board*, 2015 ONSC 6578; *Lloyd v. Canada (Attorney General)*, 2016 FCA 115, 2016 D.T.C. 5051; *Taman v. Canada (Attorney General)*, 2017 FCA 1, [2017] 3 F.C.R. 520; *Roncarelli v. Duplessis*, [1959] S.C.R. 121; *Montréal (City) v. Montreal Port Authority*, 2010 SCC 14, [2010] 1 S.C.R. 427; *Canada (Attorney General) v. Almon Equipment Limited*, 2010 FCA 193, [2011] 4 F.C.R. 203; *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810; *Canada (Transport, Infrastructure and Communities) v. Farwaha*, 2014 FCA 56, [2015] 2 F.C.R. 1006; *R. v. Hape*, 2007 SCC 26, [2007] 2 S.C.R. 292; *R. v. Appulonappa*, 2015 SCC 59, [2015] 3 S.C.R. 754; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559; *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601; *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65, [2012] 3 S.C.R. 405; *IWA v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282; *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, [2002] 1 S.C.R. 84; *D'Errico v. Canada (Attorney General)*, 2014 FCA 95; *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202; *Renaud v. Quebec (Commission des affaires sociales)*, [1999] 3 S.C.R. 855; *Groia v. Law Society of Upper Canada*, 2018 SCC 27, [2018] 1 S.C.R. 772; *Sharif v. Canada (Attorney General)*, 2018 FCA 205, 50 C.R. (7th) 1; *Maple Lodge Farms Ltd. v. Canadian Food Inspection Agency*, 2017 FCA 45, 411 D.L.R. (4th) 175; *Gehl v. Canada (Attorney General)*, 2017 ONCA 319; *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2, [2010] 1 S.C.R. 6; *GreCon Dimter inc. v. J.R. Normand inc.*, 2005 SCC 46, [2005] 2 S.C.R. 401; *B010 v. Canada (Citizenship and Immigration)*, 2015 SCC 58, [2015] 3 S.C.R. 704; *India v. Badesha*, 2017 SCC 44, [2017] 2 S.C.R. 127; *Office of the Children's Lawyer v. Balev*, 2018 SCC 16, [2018] 1 S.C.R. 398; *Benner v. Canada (Secretary of State)*, [1997] 1 S.C.R. 358; *Canada (Minister of Citizenship and Immigration) v. Tobiass*, [1997] 3 S.C.R. 391; *Brossard (Town) v. Québec (Commission des droits de la personne)*, [1988] 2 S.C.R. 279.

By Abella and Karakatsanis JJ.

Considered: *Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corporation*, [1979] 2 S.C.R. 227; *Anisminic Ltd. v. Foreign Compensation Commission*, [1969] 2 A.C. 147 ; *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982; *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38, [2016] 2 S.C.R. 80; *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019); **discussed:** *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; **referred to:** *Rasanen v. Rosemount Instruments Ltd.* (1994), 17 O.R. (3d) 267; *Metropolitan Life Insurance Company v. International Union of Operating Engineers, Local 796*, [1970] S.C.R. 425; *Bell v. Ontario Human Rights Commission*, [1971] S.C.R. 756; *Canada (Attorney General) v. Public Service Alliance*

of Canada, [1991] 1 S.C.R. 614; *National Corn Growers Assn. v. Canada (Import Tribunal)*, [1990] 2 S.C.R. 1324 ; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654 ; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31, [2018] 2 S.C.R. 230 ; *Domtar Inc. v. Quebec (Commission d'appel en matière de lésions professionnelles)*, [1993] 2 S.C.R. 756 ; *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048 ; *United Brotherhood of Carpenters and Joiners of America, Local 579 v. Bradco Construction Ltd.*, [1993] 2 S.C.R. 316; *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748 ; *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557; *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [1989] 1 S.C.R. 1722; *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 S.C.R. 247 ; *Cartaway Resources Corp. (Re)*, 2004 SCC 26, [2004] 1 S.C.R. 672; *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650; *R. v. Conway*, 2010 SCC 22, [2010] 1 S.C.R. 765; *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895 ; *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, [2015] 2 S.C.R. 3; *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47, [2016] 2 S.C.R. 293; *Bell Canada v. Bell Aliant Regional Communications*, 2009 SCC 40 , [2009] 2 S.C.R. 764; *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160; *ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission)*, 2015 SCC 45, [2015] 3 S.C.R. 219; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471; *Dr. Q v. College of Physicians and Surgeons of British Columbia*, 2003 SCC 19, [2003] 1 S.C.R. 226; *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, 2003 SCC 42, [2003] 2 S.C.R. 157 ; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 , [2011] 3 S.C.R. 708; *Doré v. Barreau du Québec*, 2012 SCC 12, [2012] 1 S.C.R. 395; *Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals*, 2011 SCC 59, [2011] 3 S.C.R. 616 ; *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29, [2016] 1 S.C.R. 770; *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Crevier v. Attorney General of Quebec*, [1981] 2 S.C.R. 220 ; *Bell Canada v. Canada (Attorney General)*, 2019 SCC 66; *Canada v. Craig*, 2012 SCC 43 , [2012] 2 S.C.R. 489; *Kimble v. Marvel Entertainment, LLC.*, 135 S. Ct. 2401 (2015); *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258 (2014); *Fitzleet Estates Ltd. v. Cherry* (1977), 51 T.C. 708; *R. v. Taylor*, [2016] UKSC 5, [2016] 4 All E.R. 617; *Willers v. Joyce (No. 2)*, [2016] UKSC 44, [2017] 2 All E.R. 383; *Knauer v. Ministry of Justice*, [2016] UKSC 9, [2016] 4 All E.R. 897 ; *Couch v. Attorney-General (No. 2)*, [2010] NZSC 27, [2010] 3 N.Z.L.R. 149; *Lee v. New South Wales Crime Commission*, [2013] HCA 39, 302 A.L.R. 363; *Camps Bay Ratepayers' and Residents' Association v. Harrison*, [2010] ZACC 19, 2011 (4) S.A. 42; *Buffalo City Metropolitan Municipality v. Asla Construction Ltd.*, [2019] ZACC 15, 2019 (4) S.A. 331; *Payne v. Tennessee*, 501 U.S. 808 (1991); *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101 ; *R. v. Bernard*, [1988] 2 S.C.R. 833; *Minister of Indian Affairs and Northern Development v. Ranville*, [1982] 2 S.C.R. 518; *Michigan v. Bay Mills Indian Community*, 572 U.S. 782 (2014); *Plourde v. Wal-Mart Canada Corp.*, 2009 SCC 54, [2009] 3 S.C.R. 465; *Planned Parenthood of Southeastern Pennsylvania v. Casey, Governor of Pennsylvania*, 505 U.S. 833 (1992); *Florida Department of Health and Rehabilitative Services v. Florida Nursing Home Association*, 450 U.S. 147 (1981); *Knick v. Township of Scott, Pennsylvania*, 139 S. Ct. 2162 (2019); *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37, [2001] 2 S.C.R. 132 ; *Association des courtiers et agents immobiliers du Québec v. Proprio Direct inc.*, 2008 SCC 32, [2008] 2 S.C.R. 195 ; *Nolan v. Kerry (Canada) Inc.*, 2009 SCC 39 , [2009] 2 S.C.R. 678; *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, [2011] 2 S.C.R. 3; *Nishi v. Rascal Trucking Ltd.*, 2013 SCC 33, [2013] 2 S.C.R. 438 ; *R. v. Henry*, 2005 SCC 76, [2005] 3 S.C.R. 609 ; *Binus v. The Queen*, [1967] S.C.R. 594; *Bilski v. Kappos, Under Secretary of Commerce for Intellectual Property and Director, Patent and Trademark Office*, 561 U.S. 593 (2010); *Bowles, Price Administrator v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945); *Auer v. Robbins*, 519 U.S. 452 (1997); *Baker v. Campbell*, [1983] HCA 39, 153 C.L.R. 52; *R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631; *H.L. v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 S.C.R. 401; *Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc.*, 2001 SCC 36, [2001] 2 S.C.R. 100; *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, [2002] 1 S.C.R. 84 ; *Harvard College v. Canada (Commissioner of Patents)*, 2002 SCC 76, [2002] 4 S.C.R. 45; *R. v. Salituro*, [1991] 3 S.C.R. 654; *Friedmann Equity Developments Inc. v. Final Note Ltd.*, 2000 SCC 34, [2000] 1 S.C.R. 842; *R. v. Kang-Brown*, 2008 SCC 18 , [2008] 1 S.C.R. 456; *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34, [2013] 2 S.C.R. 458; *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77; *Volvo Canada Ltd. v. U.A.W., Local 720*, [1980] 1 S.C.R. 178; *Mason v. Minister of Citizenship*

and Immigration, 2019 FC 1251; *Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4, [2018] 1 S.C.R. 83 ; *Mission Institution v. Khela*, 2014 SCC 24 , [2014] 1 S.C.R. 502; *May v. Ferndale Institution*, *2005 SCC 82*, *[2005] 3 S.C.R. 809*; *Northern Telecom Ltd. v. Communications Workers of Canada*, [1980] 1 S.C.R. 115; *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5 ; *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307; *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 S.C.R. 3; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65, [2012] 3 S.C.R. 405; *Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Association*, [1975] 1 S.C.R. 382 ; *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2 , [2018] 1 S.C.R. 6; *Mills v. Workplace Safety and Insurance Appeals Tribunal (Ont.)*, 2008 ONCA 436, 237 O.A.C. 71; *Celgene Corp. v. Canada (Attorney General)*, 2011 SCC 1, [2011] 1 S.C.R. 3; *Halifax (Regional Municipality) v. Canada (Public Works and Government Services)*, 2012 SCC 29, [2012] 2 S.C.R. 108 ; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559; *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, [2018] 2 S.C.R. 293; *Brossard (Town) v. Quebec (Commission des droits de la personne)*, [1988] 2 S.C.R. 279; *Medovarski v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51, [2005] 2 S.C.R. 539; *Greco v. Holy See (State of the Vatican City)*, [1999] O.J. No. 2467 (QL); *R. v. Bonadie* (1996), 109 C.C.C. (3d) 356; *Al-Ghamdi v. Canada (Minister of Foreign Affairs & International Trade)*, 2007 FC 559, 64 Imm. L.R. (3d) 67 .

Statutes and Regulations Cited

Administrative Tribunals Act, S.B.C. 2004, c. 45, ss. 58, 59.

An Act mainly to promote the efficiency of penal justice and to establish the terms governing the intervention of the Court of Québec with respect to applications for appeal, Bill 32, 1st Sess., 42nd Leg., Quebec, 2019.

Canadian Charter of Rights and Freedoms, s. 1.

Canadian Citizenship Act, R.S.C. 1970, c. C-19, s. 5(3).

Citizenship Act, R.S.C. 1985, c. C-29, ss. 3, 10, 22.1 to 22.4.

Citizenship Regulations, SOR/93-246, s. 26.

Constitution Act, 1867, s. 96.

Constitution Act, 1982, s. 35.

Federal Courts Act, R.S.C. 1985, c. F-7, ss. 18 to 18.2, 18.4, 27, 28.

Foreign Missions and International Organizations Act, S.C. 1991, c. 41, ss. 3, 4, Schs. I, II, arts. 1, 41, 43, 49, 53.

Human Rights Code, R.S.B.C. 1996, c. 210, s. 32.

Immigration and Refugee Protection Act, S.C. 2001, c. 27, ss. 35 to 37.

Interpretation Act, R.S.C. 1985, c. I-21, s. 35(1).

Municipal Government Act, *R.S.A. 2000, c. M-26, s. 470*.

Ontario Human Rights Code, 1961-62, S.O. 1961-62, c. 93, s. 3.

Treaties and Other International Instruments

Optional Protocol to the Vienna Convention on Diplomatic Relations, concerning Acquisition of Nationality, 500 U.N.T.S. 223, art. II.

Vienna Convention on Consular Relations, Can. T.S. 1974 No. 25.

Vienna Convention on Diplomatic Relations, Can. T.S. 1966 No. 29.

Authors Cited

Arthurs, H. W. "Protection against Judicial Review" (1983), 43 *R. du B.* 277.

Barak, Aharon. "Overruling Precedent" (1986), 21 *Is.L.R.* 269.

Biddulph, Michelle. "Rethinking the Ramification of Reasonableness Review: *Stare Decisis* and Reasonableness Review on Questions of Law" (2018), 56 Alta. L.R. 119.

Bingham, Tom. *The Rule of Law*. London: Allen Lane, 2010.

Brouwer, Andrew. *Statelessness in Canadian Context: A Discussion Paper*, July 2003 (online: https://www.unhcr.org/protection/statelessness/40629ffc7/ statelessness-canadian-context-discussion-paper.html[superscript ;] archived version: https://www.scc-csc.ca/cso-dce/2019SCC-CSC65_1_eng.pdf).

Brown, Donald J. M., and John M. Evans, with the assistance of David Fairlie. *Judicial Review of Administrative Action in Canada*. Toronto: Thomson Reuters, 2013 (loose-leaf updated December 2018, release 4).

Brownlie, Ian. *Principles of Public International Law*, 5th ed. Oxford: Clarendon Press, 1998.

Canada. House of Commons. *Minutes of Proceedings and Evidence of the Standing Committee on Broadcasting, Films and Assistance to the Arts, Respecting Bill C-20, An Act respecting citizenship*, No. 34, 1st Sess., 30th Parl., February 24, 1976, 34:23.

Coady, Jonathan M. "The Time Has Come: Standard of Review in Canadian Administrative Law" *(2017), 68 U.N.B.L.J. 87*.

Cohen-Eliya, Moshe, and Iddo Porat. "Proportionality and Justification" *(2014), 64 U.T.L.J. 458*.

Cromwell, Thomas A. "What I Think I've Learned About Administrative Law" (2017), 30 *C.J.A.L.P.* 307.

Daly, Paul. "Deference on Questions of Law" (2011), 74 *Mod. L. Rev.* 694.

Daly, Paul. "Unreasonable Interpretations of Law" *(2014), 66 S.C.L.R. (2d) 233*.

Daly, Paul. "Struggling Towards Coherence in Canadian Administrative Law? Recent Cases on Standard of Review and Reasonableness" *(2016), 62 McGill L.J. 527*.

Daly, Paul. "The Signal and the Noise in Administrative Law" *(2017), 68 U.N.B.L.J. 68*.

DeMarco, Jerry V. "Seeking Simplicity in Canada's Complex World of Judicial Review" (2019), 32 *C.J.A.L.P.* 67.

Dicey, Albert Venn. *Introduction to the Study of the Law of the Constitution*, 10th ed. London: Macmillan, 1959.

Duxbury, Neil. *The Nature and Authority of Precedent*. Cambridge: Cambridge University Press, 2008.

Dyzenhaus, David. "The Politics of Deference: Judicial Review and Democracy", in Michael Taggart, ed., *The Province of Administrative Law*. Oxford: Hart, 1997, 279.

Dyzenhaus, David. "Dignity in Administrative Law: Judicial Deference in a Culture of Justification" (2012), 17 Rev. Const. Stud. 87 .

Evans, John M. "Standards of Review in Administrative Law" (2013), 26 *C.J.A.L.P.* 67.

Evans, John M. "Triumph of Reasonableness: But How Much Does It Really Matter?" (2014), 27 *C.J.A.L.P.* 101.

Frankfurter, Felix. "Some Reflections on the Reading of Statutes" (1947), 47 *Colum. L. Rev.* 527.

Garner, Bryan A., et al. *The Law of Judicial Precedent*. St. Paul, Minn.: Thomson Reuters, 2016.

Gerhardt, Michael J. *The Power of Precedent*. New York: Oxford University Press, 2008.

Grant, Angus, and Lorne Sossin. "Fairness in Context: Achieving Fairness Through Access to Administrative Justice", in Colleen M. Flood and Lorne Sossin, eds., *Administrative Law in Context*, 3rd ed. Toronto: Emond, 2018, 341.

Green, Andrew. "Can There Be Too Much Context in Administrative Law? Setting the Standard of Review in Canadian Administrative Law" *(2014), 47 U.B.C. L. Rev. 443*.

Hall, Geoff R. "Two Unsettled Questions in the Law of Contractual Interpretation: A Call to the Supreme Court of Canada" (2011), 50 *Can. Bus. L.J.* 434.

Iacobucci, Frank. "Articulating a Rational Standard of Review Doctrine: A Tribute to John Willis" *(2002), 27 Queen's L.J. 859*.

Laskin, Bora. "Collective Bargaining in Ontario: A New Legislative Approach" (1943), 21 *Can. Bar Rev.* 684.

Lewans, Matthew. *Administrative Law and Judicial Deference*. Portland, Or.: Hart Publishing, 2016.

Lewans, Matthew. "Renovating Judicial Review" *(2017), 68 U.N.B.L.J. 109*.

Macdonald, R. A. "Absence of Jurisdiction: A Perspective" (1983), 43 *R. du B.* 307.

Macdonald, Roderick A., and David Lametti. "Reasons for Decision in Administrative Law" (1990), 3 *C.J.A.L.P.* 123.

Macklin, Audrey. "Citizenship Revocation, the Privilege to Have Rights and the Production of the Alien" *(2014), 40 Queen's L.J. 1*.

Macklin, Audrey. "Standard of Review: Back to the Future?", in Colleen M. Flood and Lorne Sossin, eds., *Administrative Law in Context*, 3rd ed. Toronto: Emond, 2018, 381.

Madden, Mike. "Conquering the Common Law Hydra: A Probably Correct and Reasonable Overview of Current Standards of Appellate and Judicial Review" (2010), 36 *Adv. Q.* 269.

Makela, Finn. "Acquired Expertise of Administrative Tribunals and the Standard of Judicial Review: The Case of Grievance Arbitrators and Human Rights Law" (2013), 17 *C.L.E.L.J.* 345.

McLachlin, Beverley. "The Roles of Administrative Tribunals and Courts in Maintaining the Rule of Law" (1998), 12 *C.J.A.L.P.* 171.

McLachlin, Beverley. *Administrative Tribunals and the Courts: An Evolutionary Relationship*, May 27, 2013 (online: https://www.scc-csc.ca/judges-juges/spe-dis/bm-2013-05-27-eng.aspx[superscript ;] archived version: https://www.scc-csc.ca/cso-dce/2019SCC-CSC65_2_eng.pdf).

McLachlin, Beverley. "'Administrative Law is Not for Sissies': Finding a Path Through the Thicket" (2016), 29 *C.J.A.L.P.* 127.

McLachlin, Beverley. "The Role of the Supreme Court of Canada in Shaping the Common Law", in Paul Daly, ed., *Apex Courts and the Common Law*. Toronto: University of Toronto Press, 2019, 25.

Morissette, Yves-Marie. "What is a 'reasonable decision'?" (2018), 31 *C.J.A.L.P.* 225.

Mullan, David. "Unresolved Issues on Standard of Review in Canadian Judicial Review of Administrative Action -- The Top Fifteen!" (2013), 42 *Adv. Q.* 1.

Munro, Katherine. "A 'Unique Experiment': The Ontario Labour Court, 1943-1944" (2014), 74 *Labour/Le travail* 199.

Pape, Paul J., and John J. Adair. "Unreasonable review: The losing party and the palpable and overriding error standard" (2008), 27 *Adv. J.* 6.

Perell, Paul M. "The Standard of Appellate Review and The Ironies of Housen v. Nikolaisen" (2004), 28 *Adv. Q.* 40.

Powell, Lewis F., Jr. "*Stare Decisis* and Judicial Restraint" (1990), 47 *Wash. & Lee L. Rev.* 281.

Régimbald, Guy. *Canadian Administrative Law*, 2nd ed. Markham, Ont.: LexisNexis, 2015.

Robertson, Joseph T. "Judicial Deference to Administrative Tribunals: A Guide to 60 Years of Supreme Court Jurisprudence" *(2014), 66 S.C.L.R. (2d) 1*.

Robertson, Joseph T. "Identifying the Review Standard: Administrative Deference in a Nutshell" *(2017), 68 U.N.B.L.J. 145*.

Robertson, Joseph T. *Administrative Deference: The Canadian Doctrine that Continues to Disappoint*, April 18, 2018 (online: https://poseidon01.ssrn.com/delivery.php?ID=025078121121077073088100069023108009116008031085056044126101104009101077075091124065033020049102118033018088023122126069087098105041060022013112086123073102103009066006050071070102011006127090124116080089064120081125100127104100026094125015101089105111&EXT=pdf[superscript ;] archived version: https://www.scc-csc.ca/cso-dce/2019SCC-CSC65_3_eng.pdf).

Sharpe, Robert J. *Good Judgment: Making Judicial Decisions*. Toronto: University of Toronto Press, 2018.

Stacey, Jocelyn, and Alice Woolley. "Can Pragmatism Function in Administrative Law?" *(2016), 74 S.C.L.R. (2d) 211*.

Stack, Kevin M. "Overcoming Dicey in Administrative Law" *(2018), 68 U.T.L.J. 293*.

Stratas, David. "The Canadian Law of Judicial Review: A Plea for Doctrinal Coherence and Consistency" *(2016), 42 Queen's L.J. 27*.

Sullivan, Ruth. *Sullivan on the Construction of Statutes*, 6thed. Markham, Ont.: LexisNexis, 2014.

Sullivan, Ruth. *Statutory Interpretation*, 3rd ed. Toronto: Irwin Law, 2016.

Van Harten, Gus, et al. *Administrative Law: Cases, Text, and Materials*, 7th ed. Toronto: Emond, 2015.

Waldron, Jeremy. "Stare Decisis and the Rule of Law: A Layered Approach" (2012), 111 *Mich. L. Rev.* 1.

Willes, John A. *The Ontario Labour Court: 1943-1944*. Kingston, Ont.: Industrial Relations Centre, Queen's University, 1979.

History and Disposition:

APPEAL from a judgment of the Federal Court of Appeal (Stratas, Webb and Gleason JJ.A.), *2017 FCA 132*, *[2018] 3 F.C.R. 75*, *52 Imm. L.R. (4th) 1*, *30 Admin. L.R. (6th) 1*, [2017] F.C.J. No. 638 (QL), *2017 CarswellNat 2791* (WL Can.), setting aside a decision of Bell J., *2015 FC 960*, *[2016] 2 F.C.R. 39*, *38 Imm. L.R. (4th) 110*, [2015] F.C.J. No. 981 (QL), *2015 CarswellNat 3740* (WL Can.). Appeal dismissed.

Counsel

Marianne Zoriae, for the appellant.

Hadayt Nazami, *Barbara Jackman* and *Sujith Xavier*, for the respondent.

Sara Blake and *Judie Im*, for the intervener the Attorney General of Ontario.

Stéphane Rochette, for the intervener the Attorney General of Quebec.

J. Gareth Morley and *Katie Hamilton*, for the intervener the Attorney General of British Columbia.

Kyle McCreary and *Johnna Van Parys*, for the intervener the Attorney General of Saskatchewan.

Jamie Liew, for the intervener the Canadian Council for Refugees.

Karen Andrews, for the intervener the Advocacy Centre for Tenants Ontario - Tenant Duty Counsel Program.

Matthew Britton and *Jennifer M. Lynch*, for the interveners the Ontario Securities Commission, the British Columbia Securities Commission and the Alberta Securities Commission.

Laura Bowman and *Bronwyn Roe*, for the intervener the Ecojustice Canada Society.

David Corbett and *Michelle Alton*, for the interveners the Workplace Safety and Insurance Appeals Tribunal (Ontario), the Workers' Compensation Appeals Tribunal (Northwest Territories and Nunavut), the Workers' Compensation Appeals Tribunal (Nova Scotia), the Appeals Commission for Alberta Workers' Compensation and the Workers' Compensation Appeals Tribunal (New Brunswick).

Written submissions only by *Gavin R. Cameron* and *Tom Posyniak*, for the intervener the British Columbia International Commercial Arbitration Centre Foundation.

Terrence J. O'Sullivan and *Paul Michell*, for the intervener the Council of Canadian Administrative Tribunals.

Written submissions only by *Susan L. Stewart*, *Linda R. Rothstein*, *Michael Fenrick*, *Angela E. Rae* and *Anne Marie*

Heenan, for the interveners the National Academy of Arbitrators, the Ontario Labour-Management Arbitrators' Association and Conférence des arbitres du Québec.

Steven Barrett, for the intervener the Canadian Labour Congress.

Written submissions only by *William W. Shores*, *Q.C.*, and *Kirk N. Lambrecht*, *Q.C.*, for the intervener the National Association of Pharmacy Regulatory Authorities.

Brendan Van Niejenhuis and *Andrea Gonsalves*, for the intervener the Queen's Prison Law Clinic.

Adam Goldenberg, for the intervener the Advocates for the Rule of Law.

Toni Schweitzer, for the intervener Parkdale Community Legal Services.

Paul Warchuk and *Francis Lévesque*, for the intervener the Cambridge Comparative Administrative Law Forum.

James Plotkin and *Alyssa Tomkins*, for the intervener the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic.

Guy Régimbald, for the intervener the Canadian Bar Association.

Audrey Macklin and *Anthony Navaneelan*, for the intervener the Canadian Association of Refugee Lawyers.

Written submissions only by *David Cote* and *Subodh Bharati*, for the intervener the Community & Legal Aid Services Programme.

Guillaume Cliche-Rivard and *Peter Shams*, for the intervener Association québécoise des avocats et avocates en droit de l'immigration.

Nicholas McHaffie, for the intervener the First Nations Child & Family Caring Society of Canada.

Daniel Jutras and *Audrey Boctor*, as *amici curiae*, and *Olga Redko* and *Edward Béchard Torres*.

The following is the judgment delivered by

1 THE CHIEF JUSTICE R. WAGNER AND M.J. MOLDAVER, C. GASCON, S. COTÉ, R. BROWN, M. ROWE AND S.L. MARTIN JJ. This appeal and its companion cases (see *Bell Canada v. Canada (Attorney General)*, 2019 SCC 66), provide this Court with an opportunity to re-examine its approach to judicial review of administrative decisions.

2 In these reasons, we will address two key aspects of the current administrative law jurisprudence which require reconsideration and clarification. First, we will chart a new course forward for determining the standard of review that applies when a court reviews the merits of an administrative decision. Second, we will provide additional guidance for reviewing courts to follow when conducting reasonableness review. The revised framework will continue to be guided by the principles underlying judicial review that this Court articulated in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190: that judicial review functions to maintain the rule of law while giving effect to legislative intent. We will also affirm the need to develop and strengthen a culture of justification in administrative decision making.

3 We will then address the merits of the case at bar, which relates to an application for judicial review of a decision by the Canadian Registrar of Citizenship concerning Alexander Vavilov, who was born in Canada and whose parents were later revealed to be Russian spies. The Registrar found on the basis of an interpretation of s. 3(2)(a)

of the *Citizenship Act*, R.S.C. 1985, c. C-29, that Mr. Vavilov was not a Canadian citizen and cancelled his certificate of citizenship under s. 26(3) of the *Citizenship Regulations*, SOR/93-246. In our view, the standard of review to be applied to the Registrar's decision is reasonableness, and the Registrar's decision was unreasonable. We would therefore uphold the Federal Court of Appeal's decision to quash it, and would dismiss the Minister of Citizenship and Immigration's appeal.

I. Need for Clarification and Simplification of the Law of Judicial Review

4 Over the past decades, the law relating to judicial review of administrative decisions in Canada has been characterized by continuously evolving jurisprudence and vigorous academic debate. This area of the law concerns matters which are fundamental to our legal and constitutional order, and seeks to navigate the proper relationship between administrative decision makers, the courts and individuals in our society. In parallel with the law, the role of administrative decision making in Canada has also evolved. Today, the administration of countless public bodies and regulatory regimes has been entrusted to statutory delegates with decision-making power. The number, diversity and importance of the matters that come before such delegates has made administrative decision making one of the principal manifestations of state power in the lives of Canadians.

5 Given the ubiquity and practical importance of administrative decision making, it is essential that administrative decision makers, those subject to their decisions and courts tasked with reviewing those decisions have clear guidance on how judicial review is to be performed.

6 In granting leave to appeal in the case at bar and in its companion cases, this Court's leave to appeal judgment made clear that it viewed these appeals as an opportunity to consider the law applicable to the judicial review of administrative decisions as addressed in *Dunsmuir* and subsequent cases. In light of the importance of this issue, the Court appointed two *amici curiae*, invited the parties to devote a substantial portion of their submissions to the standard of review issue, and granted leave to 27 interveners, comprising 4 attorneys general and numerous organizations representing the breadth of the Canadian administrative law landscape. We have, as a result, received a wealth of helpful submissions on this issue. Despite this Court's review of the subject in *Dunsmuir*, some aspects of the law remain challenging. In particular, the submissions presented to the Court have highlighted two aspects of the current framework which need clarification.

7 The first aspect is the analysis for determining the standard of review. It has become clear that *Dunsmuir*'s promise of simplicity and predictability in this respect has not been fully realized. In *Dunsmuir*, a majority of the Court merged the standards of "patent unreasonableness" and "reasonableness *simpliciter*" into a single "reasonableness" standard, thus reducing the number of standards of review from three to two: paras. 34-50. It also sought to simplify the analysis for determining the applicable standard of review: paras. 51-64. Since *Dunsmuir*, the jurisprudence has evolved to recognize that reasonableness will be the applicable standard for most categories of questions on judicial review, including, presumptively, when a decision maker interprets its enabling statute: see, e.g., *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654; *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, [2015] 2 S.C.R. 3, at para. 46; *Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40, [2014] 2 S.C.R. 135, at para. 55; *Canadian Artists' Representation v. National Gallery of Canada*, 2014 SCC 42, [2014] 2 S.C.R. 197, at para. 13; *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160, at paras. 26 and 28; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 25; *Dunsmuir*, at para. 54. The Court has indicated that this presumption may be rebutted by showing the issue on review falls within a category of questions attracting correctness review: see *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895, at para. 22. It may also be rebutted by showing that the context indicates that the legislature intended the standard of review to be correctness: *McLean*, at para. 22; *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47, [2016] 2 S.C.R. 293, at para. 32; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31, [2018] 2 S.C.R. 230 ("*CHRC*"), at paras. 45-46. However, uncertainty about when the contextual analysis remains appropriate and debate surrounding the scope of the correctness categories have sometimes caused confusion and made the analysis unwieldy: see, e.g., P. Daly,

"Struggling Towards Coherence in Canadian Administrative Law? Recent Cases on Standard of Review and Reasonableness" *(2016), 62 McGill L.J. 527*.

8 In addition, this analysis has in some respects departed from the theoretical foundations underpinning judicial review. While the application of the reasonableness standard is grounded, in part, in the necessity of avoiding "undue interference" in the face of the legislature's intention to leave certain questions with administrative bodies rather than with the courts (see *Dunsmuir*, at para. 27), that standard has come to be routinely applied even where the legislature has provided for a different institutional structure through a statutory appeal mechanism.

9 The uncertainty that has followed *Dunsmuir* has been highlighted by judicial and academic criticism, litigants who have come before this Court, and organizations that represent Canadians who interact with administrative decision makers. These are not light critiques or theoretical challenges. They go to the core of the coherence of our administrative law jurisprudence and to the practical implications of this lack of coherence. This Court, too, has taken note. In *Wilson v. Atomic Energy of Canada Ltd.*, *2016 SCC 29*, *[2016] 1 S.C.R. 770*, at para. 19, Abella J. expressed the need to "simplify the standard of review labyrinth we currently find ourselves in" and offered suggestions with a view to beginning a necessary conversation on the way forward. It is in this context that the Court decided to grant leave to hear this case and the companion cases jointly.

10 This process has led us to conclude that a reconsideration of this Court's approach is necessary in order to bring greater coherence and predictability to this area of law. We have therefore adopted a revised framework for determining the standard of review where a court reviews the merits of an administrative decision. The analysis begins with a presumption that reasonableness is the applicable standard in all cases. Reviewing courts should derogate from this presumption only where required by a clear indication of legislative intent or by the rule of law.

11 The second aspect is the need for better guidance from this Court on the proper application of the reasonableness standard. The Court has heard concerns that reasonableness review is sometimes perceived as advancing a two-tiered justice system in which those subject to administrative decisions are entitled only to an outcome somewhere between "good enough" and "not quite wrong". These concerns have been echoed by some members of the legal profession, civil society organizations and legal clinics. The Court has an obligation to take these perspectives seriously and to ensure that the framework it adopts accommodates all types of administrative decision making, in areas that range from immigration, prison administration and social security entitlements to labour relations, securities regulation and energy policy.

12 These concerns regarding the application of the reasonableness standard speak to the need for this Court to more clearly articulate what that standard entails and how it should be applied in practice. Reasonableness review is methodologically distinct from correctness review. It is informed by the need to respect the legislature's choice to delegate decision-making authority to the administrative decision maker rather than to the reviewing court. In order to fulfill *Dunsmuir*'s promise to protect "the legality, the reasonableness and the fairness of the administrative process and its outcomes", reasonableness review must entail a sensitive and respectful, but robust, evaluation of administrative decisions: para. 28.

13 Reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a "rubber-stamping" process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review.

14 On the one hand, courts must recognize the legitimacy and authority of administrative decision makers within their proper spheres and adopt an appropriate posture of respect. On the other hand, administrative decision makers must adopt a culture of justification and demonstrate that their exercise of delegated public power can be "justified to citizens in terms of rationality and fairness": the Rt. Hon. B. McLachlin, "The Roles of Administrative Tribunals and Courts in Maintaining the Rule of Law" (1998), 12 *C.J.A.L.P.* 171, at p. 174 (emphasis deleted); see also M. Cohen-Eliya and I. Porat, "Proportionality and Justification" *(2014), 64 U.T.L.J. 458*, at pp. 467-70.

15 In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified. What distinguishes reasonableness review from correctness review is that the court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place.

II. Determining the Applicable Standard of Review

16 In the following sections, we set out a revised framework for determining the standard of review a court should apply when the merits of an administrative decision are challenged. It starts with a presumption that reasonableness is the applicable standard whenever a court reviews administrative decisions.

17 The presumption of reasonableness review can be rebutted in two types of situations. The first is where the legislature has indicated that it intends a different standard or set of standards to apply. This will be the case where the legislature explicitly prescribes the applicable standard of review. It will also be the case where the legislature has provided a statutory appeal mechanism from an administrative decision to a court, thereby signalling the legislature's intent that appellate standards apply when a court reviews the decision. The second situation in which the presumption of reasonableness review will be rebutted is where the rule of law requires that the standard of correctness be applied. This will be the case for certain categories of questions, namely constitutional questions, general questions of law of central importance to the legal system as a whole and questions related to the jurisdictional boundaries between two or more administrative bodies. The general rule of reasonableness review, when coupled with these limited exceptions, offers a comprehensive approach to determining the applicable standard of review. As a result, it is no longer necessary for courts to engage in a "contextual inquiry" (*CHRC*, at paras. 45-47, see also *Dunsmuir*, at paras. 62-64; *McLean*, at para. 22) in order to identify the appropriate standard.

18 Before setting out the framework for determining the standard of review in greater detail, we wish to acknowledge that these reasons depart from the Court's existing jurisprudence on standard of review in certain respects. Any reconsideration such as this can be justified only by compelling circumstances, and we do not take this decision lightly. A decision to adjust course will always require the Court to carefully weigh the impact on legal certainty and predictability against the costs of continuing to follow a flawed approach: see *Canada (Attorney General) v. Bedford*, *2013 SCC 72*, *[2013] 3 S.C.R. 1101*, at para. 47; *Canada v. Craig*, *2012 SCC 43*, *[2012] 2 S.C.R. 489*, at paras. 24-27; *Ontario (Attorney General) v. Fraser*, *2011 SCC 20*, *[2011] 2 S.C.R. 3*, at paras. 56-57 and 129-31, 139; *R. v. Henry*, *2005 SCC 76*, *[2005] 3 S.C.R. 609*, at paras. 43-44; *R. v. Bernard*, *[1988] 2 S.C.R. 833*, at pp. 849-50.

19 On this point, we recall the observation of Gibbs J. in *Queensland v. Commonwealth* (1977), 139 C.L.R. 585 (H.C.A.), which this Court endorsed in *Craig*, at para. 26:

> No Justice is entitled to ignore the decisions and reasoning of his predecessors, and to arrive at his own judgment as though the pages of the law reports were blank, or as though the authority of a decision did not survive beyond the rising of the Court. A Justice, unlike a legislator, cannot introduce a programme of reform which sets at nought decisions formerly made and principles formerly established. It is only after the most careful and respectful consideration of the earlier decision, and after giving due weight to all the circumstances, that a Justice may give effect to his own opinions in preference to an earlier decision of the Court.

20 Nonetheless, this Court has in the past revisited precedents that were determined to be unsound in principle, that had proven to be unworkable and unnecessarily complex to apply, or that had attracted significant and valid judicial, academic and other criticism: *Craig*, at paras. 28-30; *Henry*, at paras. 45-47; *Fraser*, at para. 135 (per Rothstein J., concurring in the result); *Bernard*, at pp. 858-59. Although adhering to the established jurisprudence will generally promote certainty and predictability, in some instances doing so will create or perpetuate uncertainty in the law: *Minister of Indian Affairs and Northern Development v. Ranville*, *[1982] 2 S.C.R. 518*, at p. 528; *Bernard*,

at p. 858; *R. v. B. (K.G.)*, [1993] 1 S.C.R. 740, at p. 778. In such circumstances, "following the prior decision because of *stare decisis* would be contrary to the underlying value behind that doctrine, namely, clarity and certainty in the law": *Bernard*, at p. 858. These considerations apply here.

21 Certain aspects of the current framework are unclear and unduly complex. The practical effect of this lack of clarity is that courts sometimes struggle in conducting the standard of review analysis, and costly debates surrounding the appropriate standard and its application continue to overshadow the review on the merits in many cases, thereby undermining access to justice. The words of Binnie J. in his concurring reasons in *Dunsmuir*, at para. 133, are still apt:

> [J]udicial review is burdened with undue cost and delay. Litigants understandably hesitate to go to court to seek redress for a perceived administrative injustice if their lawyers cannot predict with confidence even what standard of review will be applied ... . If litigants do take the plunge, they may find the court's attention focussed not on their complaints, or the government's response, but on lengthy and arcane discussions of something they are told is [the choice of standard analysis] ... . A victory before the reviewing court may be overturned on appeal because the wrong "standard of review" was selected. A small business denied a licence or a professional person who wants to challenge disciplinary action should be able to seek judicial review without betting the store or the house on the outcome ... .

Regrettably, we find ourselves in a similar position following *Dunsmuir*. As Karakatsanis J. observed in *Edmonton East*, at para. 35, "[t]he contextual approach can generate uncertainty and endless litigation concerning the standard of review." While counsel and courts attempt to work through the complexities of determining the standard of review and its proper application, litigants "still find the merits waiting in the wings for their chance to be seen and reviewed": *Wilson*, at para. 25, per Abella J.

22 As noted in *CHRC*, this Court "has for years attempted to simplify the standard of review analysis in order to 'get the parties away from arguing about the tests and back to arguing about the substantive merits of their case'": para. 27, quoting *Alberta Teachers*, at para. 36, citing *Dunsmuir*, at para. 145, per Binnie J. The principled changes set out below seek to promote the values underlying *stare decisis* and to make the law on the standard of review more certain, coherent and workable going forward.

A. *Presumption That Reasonableness Is the Applicable Standard*

23 Where a court reviews the merits of an administrative decision (i.e., judicial review of an administrative decisions other than a review related to a breach of natural justice and/or the duty of procedural fairness), the standard of review it applies must reflect the legislature's intent with respect to the role of the reviewing court, except where giving effect to that intent is precluded by the rule of law. The starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness.

24 Parliament and the provincial legislatures are constitutionally empowered to create administrative bodies and to endow them with broad statutory powers: *Dunsmuir*, at para. 27. Where a legislature has created an administrative decision maker for the specific purpose of administering a statutory scheme, it must be presumed that the legislature also intended that decision maker to be able to fulfill its mandate and interpret the law as applicable to all issues that come before it. Where a legislature has not explicitly prescribed that a court is to have a role in reviewing the decisions of that decision maker, it can safely be assumed that the legislature intended the administrative decision maker to function with a minimum of judicial interference. However, because judicial review is protected by s. 96 of the *Constitution Act, 1867*, legislatures cannot shield administrative decision making from curial scrutiny entirely: *Dunsmuir*, at para. 31; *Crevier v. Attorney General of Quebec*, [1981] 2 S.C.R. 220, at pp. 236-37; *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048, at p. 1090. Nevertheless, respect for these institutional design choices made by the legislature requires a reviewing court to adopt a posture of restraint on review.

25 For years, this Court's jurisprudence has moved toward a recognition that the reasonableness standard should be the starting point for a court's review of an administrative decision. Indeed, a presumption of reasonableness review is already a well-established feature of the standard of review analysis in cases in which administrative

decision makers interpret their home statutes: see *Alberta Teachers*, at para. 30; *Saguenay*, at para. 46; *Edmonton East*, at para. 22. In our view, it is now appropriate to hold that whenever a court reviews an administrative decision, it should start with the presumption that the applicable standard of review for all aspects of that decision will be reasonableness. While this presumption applies to the administrative decision maker's interpretation of its enabling statute, the presumption also applies more broadly to other aspects of its decision.

26 Before turning to an explanation of how the presumption of reasonableness review may be rebutted, we believe it is desirable to clarify one aspect of the conceptual basis for this presumption. Since *C.U.P.E. v. N.B. Liquor Corporation*, [1979] 2 S.C.R. 227, the central rationale for applying a deferential standard of review in administrative law has been a respect for the legislature's institutional design choice to delegate certain matters to non-judicial decision makers through statute: *C.U.P.E.*, at pp. 235-36. However, this Court has subsequently identified a number of other justifications for applying the reasonableness standard, some of which have taken on influential roles in the standard of review analysis at various times.

27 In particular, the Court has described one rationale for applying the reasonableness standard as being the relative expertise of administrative decision makers with respect to the questions before them: see, e.g., *C.U.P.E.*, at p. 236; *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982, at paras. 32-35; *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557, at pp. 591-92; *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748, at paras. 50-53; *Dunsmuir*, at para. 49, quoting D. J. Mullan, "Establishing the Standard of Review: The Struggle for Complexity?" (2004), 17 *C.J.A.L.P.* 59, at p. 93; see also *Dunsmuir*, at para. 68. However, this Court's jurisprudence has sometimes been deeply divided on the question of what expertise entails in the administrative context, how it should be assessed and how it should inform the standard of review analysis: see, e.g., *Khosa*, at paras. 23-25, per Binnie J. for the majority, compared to paras. 93-96, per Rothstein J., concurring in the result; *Edmonton East*, at para. 33, per Karakatsanis J. for the majority, compared to paras. 81-86, per Côté and Brown JJ., dissenting. In the era of what was known as the "pragmatic and functional" approach, which was first set out in *Bibeault*, a decision maker's expertise relative to that of the reviewing court was one of the key contextual factors said to indicate legislative intent with respect to the standard of review, but the decision maker was not presumed to have relative expertise. Instead, whether a decision maker had greater expertise than the reviewing court was assessed in relation to the specific question at issue and on the basis of a contextual analysis that could incorporate factors such as the qualification of an administrative body's members, their experience in a particular area and their involvement in policy making: see, e.g., *Pezim*, at pp. 591-92; *Southam*, at paras. 50-53; *Dr. Q v. College of Physicians and Surgeons of British Columbia*, 2003 SCC 19, [2003] 1 S.C.R. 226, at paras. 28-29; *Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc.*, 2001 SCC 36, [2001] 2 S.C.R. 100, at paras. 28-32; *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, [2002] 1 S.C.R. 249, at para. 50.

28 Unfortunately, this contextual analysis proved to be unwieldly and offered limited practical guidance for courts attempting to assess an administrative decision maker's relative expertise. More recently, the dominant approach in this Court has been to accept that expertise simply inheres in an administrative body by virtue of the specialized function designated for it by the legislature: *Edmonton East*, at para. 33. However, if administrative decision makers are understood to possess specialized expertise on all questions that come before them, the concept of expertise ceases to assist a reviewing court in attempting to distinguish questions for which applying the reasonableness standard is appropriate from those for which it is not.

29 Of course, the fact that the specialized role of administrative decision makers lends itself to the development of expertise and institutional experience is not the only reason that a legislature may choose to delegate decision-making authority. Over the years, the Court has pointed to a number of other compelling rationales for the legislature to delegate the administration of a statutory scheme to a particular administrative decision maker. These rationales have included the decision maker's proximity and responsiveness to stakeholders, ability to render decisions promptly, flexibly and efficiently, and ability to provide simplified and streamlined proceedings intended to promote access to justice.

30 While specialized expertise and these other rationales may all be reasons for a legislature to delegate decision-

making authority, a reviewing court need not evaluate which of these rationales apply in the case of a particular decision maker in order to determine the standard of review. Instead, in our view, it is the *very fact* that the legislature has chosen to delegate authority which justifies a default position of reasonableness review. The Court has in fact recognized this basis for applying the reasonableness standard to administrative decisions in the past. In *Khosa*, for example, the majority understood *Dunsmuir* to stand for the proposition that "with or without a privative clause, a measure of deference has come to be accepted as appropriate where a particular decision had been allocated to an administrative decision-maker rather than to the courts": para. 25. More recently, in *Edmonton East*, Karakatsanis J. explained that a presumption of reasonableness review "respects the principle of legislative supremacy and the choice made to delegate decision making to a tribunal, rather than the courts": para. 22. And in *CHRC*, Gascon J. explained that "the fact that the legislature has allocated authority to a decision maker other than the courts is itself an indication that the legislature intended deferential review": para. 50. In other words, respect for this institutional design choice and the democratic principle, as well as the need for courts to avoid "undue interference" with the administrative decision maker's discharge of its functions, is what justifies the presumptive application of the reasonableness standard: *Dunsmuir*, at para. 27.

31 We wish to emphasize that because these reasons adopt a presumption of reasonableness as the starting point, expertise is no longer relevant to a determination of the standard of review as it was in the contextual analysis. However, we are not doing away with the role of expertise in administrative decision making. This consideration is simply folded into the new starting point and, as explained below, expertise remains a relevant consideration in conducting reasonableness review.

32 That being said, our starting position that the applicable standard of review is reasonableness is not incompatible with the rule of law. However, because this approach is grounded in respect for legislative choice, it also requires courts to give effect to clear legislative direction that a different standard was intended. Similarly, a reviewing court must be prepared to derogate from the presumption of reasonableness review where respect for the rule of law requires a singular, determinate and final answer to the question before it. Each of these situations will be discussed in turn below.

B. *Derogation From the Presumption of Reasonableness Review on the Basis of Legislative Intent*

33 This Court has described respect for legislative intent as the "polar star" of judicial review: *C.U.P.E. v. Ontario (Minister of Labour)*, *2003 SCC 29*, *[2003] 1 S.C.R. 539*, at para. 149. This description remains apt. The presumption of reasonableness review discussed above is intended to give effect to the legislature's choice to leave certain matters with administrative decision makers rather than the courts. It follows that this presumption will be rebutted where a legislature has indicated that a different standard should apply. The legislature can do so in two ways. First, it may explicitly prescribe through statute what standard courts should apply when reviewing decisions of a particular administrative decision maker. Second, it may direct that derogation from the presumption of reasonableness review is appropriate by providing for a statutory appeal mechanism from an administrative decision maker to a court, thereby signalling the application of appellate standards.

(1) Legislated Standards of Review

34 Any framework rooted in legislative intent must, to the extent possible, respect clear statutory language that prescribes the applicable standard of review. This Court has consistently affirmed that legislated standards of review should be given effect: see, e.g., *R. v. Owen*, *2003 SCC 33*, *[2003] 1 S.C.R. 779*, at paras. 31-32; *Khosa*, at paras. 18-19; *British Columbia (Workers' Compensation Board) v. Figliola*, *2011 SCC 52*, *[2011] 3 S.C.R. 422*, at para. 20; *Moore v. British Columbia (Education)*, *2012 SCC 61*, *[2012] 3 S.C.R. 360*, at para. 55; *McCormick v. Fasken Martineau DuMoulin LLP*, *2014 SCC 39*, *[2014] 2 S.C.R. 108*, at para. 16; *British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority*, *2016 SCC 25*, *[2016] 1 S.C.R. 587*, at paras. 8 and 29; *British Columbia Human Rights Tribunal v. Schrenk*, *2017 SCC 62*, *[2017] 2 S.C.R. 795*, at para. 28.

35 It follows that where a legislature has indicated that courts are to apply the standard of correctness in reviewing certain questions, that standard must be applied. In British Columbia, the legislature has established the applicable standard of review for many tribunals by reference to the *Administrative Tribunals Act*, *S.B.C. 2004, c. 45*: see ss.

58 and 59. For example, it has provided that the standard of review applicable to decisions on questions of statutory interpretation by the B.C. Human Rights Tribunal is to be correctness: *ibid.*, s. 59(1); *Human Rights Code*, R.S.B.C. 1996, c. 210, s. 32. We continue to be of the view that where the legislature has indicated the applicable standard of review, courts are bound to respect that designation, within the limits imposed by the rule of law.

(2) Statutory Appeal Mechanisms

36 We have reaffirmed that, to the extent possible, the standard of review analysis requires courts to give effect to the legislature's institutional design choices to delegate authority through statute. In our view, this principled position also requires courts to give effect to the legislature's intent, signalled by the presence of a statutory appeal mechanism from an administrative decision to a court, that the court is to perform an appellate function with respect to that decision. Just as a legislature may, within constitutional limits, insulate administrative decisions from judicial interference, it may also choose to establish a regime "which does not exclude the courts but rather makes them part of the enforcement machinery": *Seneca College of Applied Arts and Technology v. Bhadauria*, [1981] 2 S.C.R. 181, at p. 195. Where a legislature has provided that parties may appeal from an administrative decision to a court, either as of right or with leave, it has subjected the administrative regime to appellate oversight and indicated that it expects the court to scrutinize such administrative decisions on an appellate basis. This expressed intention necessarily rebuts the blanket presumption of reasonableness review, which is premised on giving effect to a legislature's decision to leave certain issues with a body other than a court. This intention should be given effect. As noted by the intervener Attorney General of Quebec in its factum, [TRANSLATION] "[t]he requirement of deference must not sterilize such an appeal mechanism to the point that it changes the nature of the decision-making process the legislature intended to put in place": para. 2.

37 It should therefore be recognized that, where the legislature has provided for an appeal from an administrative decision to a court, a court hearing such an appeal is to apply appellate standards of review to the decision. This means that the applicable standard is to be determined with reference to the nature of the question and to this Court's jurisprudence on appellate standards of review. Where, for example, a court is hearing an appeal from an administrative decision, it would, in considering questions of law, including questions of statutory interpretation and those concerning the scope of a decision maker's authority, apply the standard of correctness in accordance with *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 8. Where the scope of the statutory appeal includes questions of fact, the appellate standard of review for those questions is palpable and overriding error (as it is for questions of mixed fact and law where the legal principle is not readily extricable): see *Housen*, at paras. 10, 19 and 26-37. Of course, should a legislature intend that a different standard of review apply in a statutory appeal, it is always free to make that intention known by prescribing the applicable standard through statute.

38 We acknowledge that giving effect to statutory appeal mechanisms in this way departs from the Court's recent jurisprudence. However, after careful consideration, we are of the view that this shift is necessary in order to bring coherence and conceptual balance to the standard of review analysis and is justified by a weighing of the values of certainty and correctness: *Craig*, at para. 27. Our conclusion is based on the following considerations.

39 First, there has been significant judicial and academic criticism of this Court's recent approach to statutory appeal rights: see, e.g., Y.-M. Morissette, "What is a 'reasonable decision'?" (2018), 31 *C.J.A.L.P.* 225, at p. 244; the Hon. J.T. Robertson, *Administrative Deference: The Canadian Doctrine that Continues to Disappoint* (April 18, 2018) (online), at p. 8; the Hon. D. Stratas, "The Canadian Law of Judicial Review: A Plea for Doctrinal Coherence and Consistency" (2016), 42 Queen's L.J. 27, at p. 33; Daly, at pp. 541-42; *Québec (Procureure générale) v. Montréal (Ville)*, 2016 QCCA 2108, 17 Admin. L.R. (6th) 328, at paras. 36-46; *Bell Canada v. 7265921 Canada Ltd.*, 2018 FCA 174, 428 D.L.R. (4th) 311, at paras. 190- 92, per Nadon J.A., concurring, and at 66 and 69-72, per Rennie J.A., dissenting; *Garneau Community League v. Edmonton (City)*, 2017 ABCA 374, 60 Alta. L.R. (6th) 1, at paras. 91 and 93-95, per Slatter J.A., concurring; *Nova Scotia (Attorney General) v. S&D Smith Central Supplies Limited*, 2019 NSCA 22, at paras. 250, 255-64 and 274-302 (CanLII), per Beveridge J.A., dissenting; *Atlantic Mining NS Corp. (D.D.V. Gold Limited) v. Oakley*, 2019 NSCA 14, at paras. 9-14 (CanLII). These critiques seize on the inconsistency inherent in a standard of review framework based on legislative intent that otherwise declines to give meaning to an express statutory right of appeal. This criticism observes that legislative choice is not one-

dimensional; rather, it pulls in two directions. While a legislative choice to delegate to an administrative decision maker grounds a presumption of reasonableness on the one hand, a legislative choice to enact a statutory right of appeal signals an intention to ascribe an appellate role to reviewing courts on the other hand.

40 This Court has in the past held that the existence of significant and valid judicial, academic and other criticism of its jurisprudence may justify reconsideration of a precedent: *Craig*, at para. 29; *R. v. Robinson*, [1996] 1 S.C.R. 683, at paras. 35-41. This consideration applies in the instant case. In particular, the suggestion that the recent treatment of statutory rights of appeal represents a departure from the conceptual basis underpinning the standard of review framework is itself a compelling reason to re-examine the current approach: *Khosa*, at para. 87, per Rothstein J., concurring in the result.

41 Second, there is no satisfactory justification for the recent trend in this Court's jurisprudence to give no effect to statutory rights of appeal in the standard of review analysis absent exceptional wording: see *Tervita Corp. v. Canada (Commissioner of Competition)*, 2015 SCC 3, [2015] 1 S.C.R. 161, at paras. 35-39. Indeed, this approach is itself a departure from earlier jurisprudence: the Hon. J. T. Robertson, "Judicial Deference to Administrative Tribunals: A Guide to 60 Years of Supreme Court Jurisprudence" *(2014), 66 S.C.L.R. (2d) 1*, at pp. 91-93. Under the former "pragmatic and functional" approach to determining the applicable standard of review, the existence of a privative clause or a statutory right of appeal was one of four contextual factors that a court would consider in order to determine the standard that the legislature intended to apply to a particular decision. Although a statutory appeal clause was not determinative, it was understood to be a key factor indicating that the legislature intended that a less deferential standard of review be applied: see, e.g., *Pezim*, at pp. 589-92; *British Columbia Telephone Co. v. Shaw Cable Systems (B.C.) Ltd.*, [1995] 2 S.C.R. 739, at paras. 28-31; *Southam*, at paras. 30-32, 46 and 54-55; *Pushpanathan*, at paras. 30-31; *Dr. Q*, at para. 27; *Mattel*, at paras. 26-27; *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 S.C.R. 247, at paras. 21 and 27-29; *Barrie Public Utilities v. Canadian Cable Television Assn.*, 2003 SCC 28, [2003] 1 S.C.R. 476, at para. 11; *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, 2004 SCC 54, [2004] 3 S.C.R. 152, at para. 7.

42 The Court did indeed sometimes find that, even in a statutory appeal, a deferential standard of review was warranted for the legal findings of a decision maker that lay at the heart of the decision maker's expertise: see, e.g., *Pezim*. In other instances, however, the Court concluded that the existence of a statutory appeal mechanism and the fact that the decision maker did not have greater expertise than a court on the issue being considered indicated that correctness was the appropriate standard, including on matters involving the interpretation of the administrative decision maker's home statute: see, e.g., *Mattel*, at paras. 26-33; *Barrie Public Utilities*, at paras. 9-19; *Monsanto*, at paras. 6-16.

43 Yet as, in *Dunsmuir*, *Alberta Teachers*, *Edmonton East* and subsequent cases, the standard of review analysis was simplified and shifted from a contextual analysis to an approach more focused on categories, statutory appeal mechanisms ceased to play a role in the analysis. Although this simplification of the standard of review analysis may have been a laudable change, it did not justify ceasing to give *any* effect to statutory appeal mechanisms. *Dunsmuir* itself provides little guidance on the rationale for this change. The majority in *Dunsmuir* was silent on the role of a statutory right of appeal in determining the standard of review, and did not refer to the prior treatment of statutory rights of appeal under the pragmatic and functional approach.

44 More generally, there is no convincing reason to presume that legislatures mean something entirely different when they use the word "appeal" in an administrative law statute than they do in, for example, a criminal or commercial law context. Accepting that the word "appeal" refers to the same type of procedure in all these contexts also accords with the presumption of consistent expression, according to which the legislature is presumed to use language such that the same words have the same meaning both within a statute and across statutes: R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014), at p. 217. Accepting that the legislature intends an appellate standard of review to be applied when it uses the word "appeal" also helps to explain why many statutes provide for *both* appeal and judicial review mechanisms in different contexts, thereby indicating two roles for reviewing courts: see, e.g., *Federal Courts Act*, R.S.C. 1985, c. F-7, ss. 27 and 28. This offers further support for giving effect to

statutory rights of appeal. Our colleagues' suggestion that our position in this regard "hinges" on what they call a "textualist argument" (at para. 246) is inaccurate.

45 That there is no principled rationale for ignoring statutory appeal mechanisms becomes obvious when the broader context of those mechanisms is considered. The existence of a limited right of appeal, such as a right of appeal on questions of law or a right of appeal with leave of a court, does not preclude a court from considering other aspects of a decision in a judicial review proceeding. However, if the same standards of review applied regardless of whether a question was covered by the appeal provision, and regardless of whether an individual subject to an administrative decision was granted leave to appeal or applied for judicial review, the appeal provision would be completely redundant -- contrary to the well-established principle that the legislature does not speak in vain: *Attorney General of Quebec v. Carrières Ste-Thérèse Ltée*, [*[1985] 1 S.C.R. 831*](), at p. 838.

46 Finally, and most crucially, the appeals now before the Court have allowed for a comprehensive and considered examination of the standard of review analysis with the goal of remedying the conceptual and practical difficulties that have made this area of the law challenging for litigants and courts alike. To achieve this goal, the revised framework must, for at least two reasons, give effect to statutory appeal mechanisms. The first reason is conceptual. In the past, this Court has looked past an appeal clause primarily when the decision maker possessed greater relative expertise -- what it called the "specialization of duties" principle in *Pezim*, at p. 591. But, as discussed above, the presumption of reasonableness review is no longer premised upon notions of relative expertise. Instead, it is now based on respect for the legislature's institutional design choice, according to which the authority to make a decision is vested in an administrative decision maker rather than in a court. It would be inconsistent with this conceptual basis for the presumption of reasonableness review to disregard clear indications that the legislature has intentionally chosen a more involved role for the courts. Just as recognizing a presumption of reasonableness review on all questions respects a legislature's choice to leave some matters first and foremost to an administrative decision maker, departing from that blanket presumption in the context of a statutory appeal respects the legislature's choice of a more involved role for the courts in supervising administrative decision making.

47 The second reason is that, building on developments in the case law over the past several years, this decision conclusively closes the door on the application of a contextual analysis to determine the applicable standard, and in doing so streamlines and simplifies the standard of review framework. With the elimination of the contextual approach to selecting the standard of review, the need for statutory rights of appeal to play a role becomes clearer. Eliminating the contextual approach means that statutory rights of appeal must now either play no role in administrative law or be accepted as directing a departure from the default position of reasonableness review. The latter must prevail.

48 Our colleagues agree that the time has come to put the contextual approach espoused in *Dunsmuir* to rest and adopt a presumption of reasonableness review. We part company on the extent to which the departure from the contextual approach requires corresponding modifications to other aspects of the standard of review jurisprudence. We consider that the elimination of the contextual approach represents an incremental yet important adjustment to Canada's judicial review roots. While it is true that this Court has, in the past several years of jurisprudential development, warned that the contextual approach should be applied "sparingly" (*CHRC*, at para. 46), it is incorrect to suggest that our jurisprudence was such that the elimination of the contextual analysis was "all but complete": reasons of Abella and Karakatsanis JJ., at para. 277; see, in this regard, *CHRC*, at paras. 44-54; *Saguenay*, at para. 46; *Tervita*, at para. 35; *McLean*, at para. 22; *Edmonton East*, at para. 32; *Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada*, [*2012 SCC 35*](), [*[2012] 2 S.C.R. 283*](), at para. 15. The contextual analysis was one part of the broader standard of review framework set out in *Dunsmuir*. A departure from this aspect of the *Dunsmuir* framework requires a principled rebalancing of the framework as a whole in order to maintain the equilibrium between the roles of administrative decision makers and reviewing courts that is fundamental to administrative law.

49 In our view, with the starting position of this presumption of reasonableness review, and in the absence of a searching contextual analysis, legislative intent can only be given effect in this framework if statutory appeal

mechanisms, as clear signals of legislative intent with respect to the applicable standard of review, are given effect through the application of appellate standards by reviewing courts. Conversely, in such a framework that is based on a presumption of reasonableness review, contextual factors that courts once looked to as signalling deferential review, such as privative clauses, serve no independent or additional function in identifying the standard of review.

50 We wish, at this juncture, to make three points regarding how the presence of a statutory appeal mechanism should inform the choice of standard analysis. First, we note that statutory regimes that provide for parties to appeal to a court from an administrative decision may allow them to do so in all cases (that is, as of right) or only with leave of the court. While the existence of a leave requirement will affect whether a court will hear an appeal from a particular decision, it does not affect the standard to be applied if leave is given and the appeal is heard.

51 Second, we note that not all legislative provisions that contemplate a court reviewing an administrative decision actually provide a right of appeal. Some provisions simply recognize that all administrative decisions are subject to judicial review and address procedural or other similar aspects of judicial review in a particular context. Since these provisions do not give courts an appellate function, they do not authorize the application of appellate standards. Some examples of such provisions are ss. 18 to 18.2, 18.4 and 28 of the *Federal Courts Act*, which confer jurisdiction on the Federal Court and the Federal Court of Appeal to hear and determine applications for judicial review of decisions of federal bodies and grant remedies, and also address procedural aspects of such applications: see *Khosa*, at para. 34. Another example is the current version of s. 470 of Alberta's *Municipal Government Act*, *R.S.A. 2000, c. M-26*, which does not provide for an appeal to a court, but addresses procedural considerations and consequences that apply "[w]here a decision of an assessment review board is the subject of an application for judicial review": s. 470(1).

52 Third, we would note that statutory appeal rights are often circumscribed, as their scope might be limited with reference to the types of questions on which a party may appeal (where, for example, appeals are limited to questions of law) or the types of decisions that may be appealed (where, for example, not every decision of an administrative decision maker may be appealed to a court), or to the party or parties that may bring an appeal. However, the existence of a circumscribed right of appeal in a statutory scheme does not on its own preclude applications for judicial review of decisions, or of aspects of decisions, to which the appeal mechanism does not apply, or by individuals who have no right of appeal. But any such application for judicial review is distinct from an appeal, and the presumption of reasonableness review that applies on judicial review cannot then be rebutted by reference to the statutory appeal mechanism.

C. *The Applicable Standard Is Correctness Where Required by the Rule of Law*

53 In our view, respect for the rule of law requires courts to apply the standard of correctness for certain types of legal questions: constitutional questions, general questions of law of central importance to the legal system as a whole and questions regarding the jurisdictional boundaries between two or more administrative bodies. The application of the correctness standard for such questions respects the unique role of the judiciary in interpreting the Constitution and ensures that courts are able to provide the last word on questions for which the rule of law requires consistency and for which a final and determinate answer is necessary: *Dunsmuir*, at para. 58.

54 When applying the correctness standard, the reviewing court may choose either to uphold the administrative decision maker's determination or to substitute its own view: *Dunsmuir*, at para. 50. While it should take the administrative decision maker's reasoning into account -- and indeed, it may find that reasoning persuasive and adopt it -- the reviewing court is ultimately empowered to come to its own conclusions on the question.

(1) Constitutional Questions

55 Questions regarding the division of powers between Parliament and the provinces, the relationship between the legislature and the other branches of the state, the scope of Aboriginal and treaty rights under s. 35 of the *Constitution Act, 1982*, and other constitutional matters require a final and determinate answer from the courts. Therefore, the standard of correctness must continue to be applied in reviewing such questions: *Dunsmuir*, para. 58; *Westcoast Energy Inc. v. Canada (National Energy Board)*, [1998] 1 S.C.R. 322.

56 The Constitution -- both written and unwritten -- dictates the limits of all state action. Legislatures and administrative decision makers are bound by the Constitution and must comply with it. A legislature cannot alter the scope of its own constitutional powers through statute. Nor can it alter the constitutional limits of executive power by delegating authority to an administrative body. In other words, although a legislature may choose what powers it delegates to an administrative body, it cannot delegate powers that it does not constitutionally have. The constitutional authority to act must have determinate, defined and consistent limits, which necessitates the application of the correctness standard.

57 Although the *amici* questioned the approach to the standard of review set out in *Doré v. Barreau du Québec*, 2012 SCC 12, [2012] 1 S.C.R. 395, a reconsideration of that approach is not germane to the issues in this appeal. However, it is important to draw a distinction between cases in which it is alleged that the effect of the administrative decision being reviewed is to unjustifiably limit rights under the *Canadian Charter of Rights and Freedoms* (as was the case in *Doré*) and those in which the issue on review is whether a provision of the decision maker's enabling statute violates the *Charter* (see, e.g., *Nova Scotia (Workers' Compensation Board) v. Martin*, 2003 SCC 54, [2003] 2 S.C.R. 504, at para. 65). Our jurisprudence holds that an administrative decision maker's interpretation of the latter issue should be reviewed for correctness, and that jurisprudence is not displaced by these reasons.

(2) General Questions of Law of Central Importance to the Legal System as a Whole

58 In *Dunsmuir*, a majority of the Court held that, in addition to constitutional questions, general questions of law which are "both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise" will require the application of the correctness standard: para. 60, citing *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77, at para. 62, per LeBel J., concurring. We remain of the view that the rule of law requires courts to have the final word with regard to general questions of law that are "of central importance to the legal system as a whole". However, a return to first principles reveals that it is not necessary to evaluate the decision maker's specialized expertise in order to determine whether the correctness standard must be applied in cases involving such questions. As indicated above (at para. 31) of the reasons, the consideration of expertise is folded into the new starting point adopted in these reasons, namely the presumption of reasonableness review.

59 As the majority of the Court recognized in *Dunsmuir*, the key underlying rationale for this category of questions is the reality that certain general questions of law "require uniform and consistent answers" as a result of "their impact on the administration of justice as a whole": *Dunsmuir*, para. 60. In these cases, correctness review is necessary to resolve general questions of law that are of "fundamental importance and broad applicability", with significant legal consequences for the justice system as a whole or for other institutions of government: see *Toronto (City)*, at para. 70; *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53, [2016] 2 S.C.R. 555, at para. 20; *Canadian National Railway*, at para. 60; *Chagnon v. Syndicat de la fonction publique et parapublique du Québec*, 2018 SCC 39, [2018] 2 S.C.R. 687, at para. 17; *Saguenay*, at para. 51; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471 ("*Mowat*"), at para. 22; *Commission scolaire de Laval v. Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8, [2016] 1 S.C.R. 29, at para. 38. For example, the question in *University of Calgary* could not be resolved by applying the reasonableness standard, because the decision would have had legal implications for a wide variety of other statutes and because the uniform protection of solicitor-client privilege -- at issue in that case -- is necessary for the proper functioning of the justice system: *University of Calgary*, at paras. 19-26. As this shows, the resolution of general questions of law "of central importance to the legal system as a whole" has implications beyond the decision at hand, hence the need for "uniform and consistent answers".

60 This Court's jurisprudence continues to provide important guidance regarding what constitutes a general question of law of central importance to the legal system as a whole. For example, the following general questions of law have been held to be of central importance to the legal system as a whole: when an administrative proceeding will be barred by the doctrines of *res judicata* and abuse of process (*Toronto (City)*, at para. 15); the

scope of the state's duty of religious neutrality (*Saguenay*, at para. 49); the appropriateness of limits on solicitor-client privilege (*University of Calgary*, at para. 20); and the scope of parliamentary privilege (*Chagnon*, at para. 17). We caution, however, that this jurisprudence must be read carefully, given that expertise is no longer a consideration in identifying such questions: see, e.g., *CHRC*, at para. 43.

61 We would stress that the mere fact that a dispute is "of wider public concern" is not sufficient for a question to fall into this category -- nor is the fact that the question, when framed in a general or abstract sense, touches on an important issue: see, e.g., *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34, [2013] 2 S.C.R. 458, at para. 66; *McLean*, at para. 28; *Barreau du Québec v. Quebec (Attorney General)*, 2017 SCC 56, [2017] 2 S.C.R. 488, at para. 18. The case law reveals many examples of questions this Court has concluded are *not* general questions of law of central importance to the legal system as a whole. These include whether a certain tribunal can grant a particular type of compensation (*Mowat*, at para. 25); when estoppel may be applied as an arbitral remedy (*Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals*, 2011 SCC 59, [2011] 3 S.C.R. 616, at paras. 37-38); the interpretation of a statutory provision prescribing timelines for an investigation (*Alberta Teachers*, at para. 32); the scope of a management rights clause in a collective agreement (*Irving Pulp & Paper*, at paras. 7, 15-16 and 66, per Rothstein and Moldaver JJ., dissenting but not on this point); whether a limitation period had been triggered under securities legislation (*McLean*, at paras. 28-31); whether a party to a confidential contract could bring a complaint under a particular regulatory regime (*Canadian National Railway*, at para. 60); and the scope of an exception allowing non-advocates to represent a minister in certain proceedings (*Barreau du Québec*, at paras. 17-18). As these comments and examples indicate, this does not mean that simply because expertise no longer plays a role in the selection of the standard of review, questions of central importance are now transformed into a broad catch-all category for correctness review.

62 In short, general questions of law of central importance to the legal system as a whole require a single determinate answer. In cases involving such questions, the rule of law requires courts to provide a greater degree of legal certainty than reasonableness review allows.

(3) Questions Regarding the Jurisdictional Boundaries Between Two or More Administrative Bodies

63 Finally, the rule of law requires that the correctness standard be applied in order to resolve questions regarding the jurisdictional boundaries between two or more administrative bodies: *Dunsmuir*, para. 61. One such question arose in *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, 2000 SCC 14, [2000] 1 S.C.R. 360, in which the issue was the jurisdiction of a labour arbitrator to consider matters of police discipline and dismissal that were otherwise subject to a comprehensive legislative regime. Similarly, in *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Quebec (Attorney General)*, 2004 SCC 39, [2004] 2 S.C.R. 185, the Court considered a jurisdictional dispute between a labour arbitrator and the Quebec Human Rights Tribunal.

64 Administrative decisions are rarely contested on this basis. Where they are, however, the rule of law requires courts to intervene where one administrative body has interpreted the scope of its authority in a manner that is incompatible with the jurisdiction of another. The rationale for this category of questions is simple: the rule of law cannot tolerate conflicting orders and proceedings where they result in a true operational conflict between two administrative bodies, pulling a party in two different and incompatible directions: see *British Columbia Telephone Co.*, at para. 80, per McLachlin J. (as she then was), concurring. Members of the public must know where to turn in order to resolve a dispute. As with general questions of law of central importance to the legal system as a whole, the application of the correctness standard in these cases safeguards predictability, finality and certainty in the law of administrative decision making.

D. *A Note Regarding Jurisdictional Questions*

65 We would cease to recognize jurisdictional questions as a distinct category attracting correctness review. The majority in *Dunsmuir* held that it was "without question" (para. 50) that the correctness standard must be applied in reviewing jurisdictional questions (also referred to as true questions of jurisdiction or *vires*). True questions of

jurisdiction were said to arise "where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter": see *Dunsmuir*, at para. 59; *Quebec (Attorney General) v. Guérin*, 2017 SCC 42, [2017] 2 S.C.R. 3, at para. 32. Since *Dunsmuir*, however, majorities of this Court have questioned the necessity of this category, struggled to articulate its scope and "expressed serious reservations about whether such questions can be distinguished as a separate category of questions of law": *McLean*, at para. 25, referring to *Alberta Teachers*, at para. 34; *Edmonton East*, at para. 26; *Guérin*, at paras. 32-36; *CHRC*, at paras. 31-41.

66 As Gascon J. noted in *CHRC*, the concept of "jurisdiction" in the administrative law context is inherently "slippery": para. 38. This is because, in theory, any challenge to an administrative decision can be characterized as "jurisdictional" in the sense that it calls into question whether the decision maker had the authority to act as it did: see *CHRC*, at para. 38; *Alberta Teachers*, at para. 34; see similarly *City of Arlington, Texas v. Federal Communications Commission*, 569 U.S. 290 (2013), at p. 299. Although this Court's jurisprudence contemplates that only a much narrower class of "truly" jurisdictional questions requires correctness review, it has observed that there are no "clear markers" to distinguish such questions from other questions related to the interpretation of an administrative decision maker's enabling statute: see *CHRC*, at para. 38. Despite differing views on whether it is possible to demarcate a class of "truly" jurisdictional questions, there is general agreement that "it is often difficult to distinguish between exercises of delegated power that raise truly jurisdictional questions from those entailing an unremarkable application of an enabling statute": *CHRC*, at para. 111, per Brown J., concurring. This tension is perhaps clearest in cases where the legislature has delegated broad authority to an administrative decision maker that allows the latter to make regulations in pursuit of the objects of its enabling statute: see, e.g., *Green v. Law Society of Manitoba*, 2017 SCC 20, **[2017] 1 S.C.R. 360**; *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22, [2018] 1 S.C.R. 635.

67 In *CHRC*, the majority, while noting this inherent difficulty -- and the negative impact on litigants of the resulting uncertainty in the law -- nonetheless left the question of whether the category of true questions of jurisdiction remains necessary to be determined in a later case. After hearing submissions on this issue and having an adequate opportunity for reflection on this point, we are now in a position to conclude that it is not necessary to maintain this category of correctness review. The arguments that support maintaining this category -- in particular the concern that a delegated decision maker should not be free to determine the scope of its own authority -- can be addressed adequately by applying the framework for conducting reasonableness review that we describe below. Reasonableness review is both robust and responsive to context. A proper application of the reasonableness standard will enable courts to fulfill their constitutional duty to ensure that administrative bodies have acted within the scope of their lawful authority without having to conduct a preliminary assessment regarding whether a particular interpretation raises a "truly" or "narrowly" jurisdictional issue and without having to apply the correctness standard.

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 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. Without seeking to import the U.S. jurisprudence on this issue wholesale, we find that the following comments of the Supreme Court of the United States in *Arlington*, at p. 307, are apt:

> The fox-in-the-henhouse syndrome is to be avoided not by establishing an arbitrary and undefinable category of agency decision-making that is accorded no deference, but by taking seriously, and applying rigorously, in all cases, statutory limits on agencies' authority. Where [the legislature] has established a clear line, the agency cannot go beyond it; and where [the legislature] has established an ambiguous line, the agency can go no further than the ambiguity will fairly allow. But in rigorously applying the latter rule, a court need not pause to puzzle over whether the interpretive question presented is "jurisdictional" ... .

E. *Other Circumstances Requiring a Derogation from the Presumption of Reasonableness Review*

69 In these reasons, we have identified five situations in which a derogation from the presumption of reasonableness review is warranted either on the basis of legislative intent (i.e., legislated standards of review and statutory appeal mechanisms) or because correctness review is required by the rule of law (i.e., constitutional questions, general questions of law of central importance to the legal system as a whole, and questions regarding jurisdictional boundaries between administrative bodies). This framework is the product of careful consideration undertaken following extensive submissions and based on a thorough review of the relevant jurisprudence. We are of the view, at this time, that these reasons address all of the situations in which a reviewing court should derogate from the presumption of reasonableness review. As previously indicated, courts should no longer engage in a contextual inquiry to determine the standard of review or to rebut the presumption of reasonableness review. Letting go of this contextual approach will, we hope, "get the parties away from arguing about the tests and back to arguing about the substantive merits of their case": *Alberta Teachers*, at para. 36, quoting *Dunsmuir*, at para. 145, per Binnie J., concurring.

70 However, we would not definitively foreclose the possibility that another category could be recognized as requiring a derogation from the presumption of reasonableness review in a future case. But our reluctance to pronounce that the list of exceptions to the application of a reasonableness standard is closed should not be understood as inviting the routine establishment of new categories requiring correctness review. Rather, it is a recognition that it would be unrealistic to declare that we have contemplated every possible set of circumstances in which legislative intent or the rule of law will require a derogation from the presumption of reasonableness review. That being said, the recognition of any new basis for correctness review would be exceptional and would need to be consistent with the framework and the overarching principles set out in these reasons. In other words, any new category warranting a derogation from the presumption of reasonableness review on the basis of legislative intent would require a signal of legislative intent as strong and compelling as those identified in these reasons (i.e., a legislated standard of review or a statutory appeal mechanism). Similarly, the recognition of a new category of questions requiring correctness review that is based on the rule of law would be justified only where failure to apply correctness review would undermine the rule of law and jeopardize the proper functioning of the justice system in a manner analogous to the three situations described in these reasons.

71 The *amici curiae* suggest that, in addition to the three categories of legal questions identified above, the Court should recognize an additional category of legal questions that would require correctness review on the basis of the rule of law: legal questions regarding which there is persistent discord or internal disagreement within an administrative body leading to legal incoherence. They argue that correctness review is necessary in such situations because the rule of law breaks down where legal inconsistency becomes the norm and the law's meaning comes to depend on the identity of the decision maker. The *amici curiae* submit that, where competing reasonable legal interpretations linger over time at the administrative level -- such that a statute comes to mean, simultaneously, both "yes" and "no" -- the courts must step in to provide a determinative answer to the question without according deference to the administrative decision maker: factum of the *amici curiae*, at para. 91.

72 We are not persuaded that the Court should recognize a distinct correctness category for legal questions on which there is persistent discord within an administrative body. In *Domtar Inc. v. Quebec (Commission d'appel en matière de lésions professionnelles)*, [1993] 2 S.C.R. 756, this Court held that "a lack of unanimity [within a tribunal] is the price to pay for the decision-making freedom and independence given to the members of these tribunals": p. 800; see also *Ellis-Don Ltd. v. Ontario (Labour Relations Board)*, 2001 SCC 4, [2001] 1 S.C.R. 221, at para. 28. That said, we agree that the hypothetical scenario suggested by the *amici curiae* -- in which the law's meaning depends on the identity of the individual decision maker, thereby leading to legal incoherence -- is antithetical to the rule of law. In our view, however, the more robust form of reasonableness review set out below, which accounts for the value of consistency and the threat of arbitrariness, is capable, in tandem with internal administrative processes to promote consistency and with legislative oversight (see *Domtar*, at p. 801), of guarding against threats to the rule of law. Moreover, the precise point at which internal discord on a point of law would be so serious, persistent and unresolvable that the resulting situation would amount to "legal incoherence" and require a court to step in is not

obvious. Given these practical difficulties, this Court's binding jurisprudence and the hypothetical nature of the problem, we decline to recognize such a category in this appeal.

III. Performing Reasonableness Review

73 This Court's administrative law jurisprudence has historically focused on the analytical framework used to determine the applicable standard of review, while providing relatively little guidance on how to conduct reasonableness review in practice.

74 In this section of our reasons, we endeavour to provide that guidance. The approach we set out is one that focuses on justification, offers methodological consistency and reinforces the principle "that reasoned decision-making is the lynchpin of institutional legitimacy": *amici curiae* factum, at para. 12.

75 We pause to note that our colleagues' approach to reasonableness review is not fundamentally dissimilar to ours. Our colleagues emphasize that reviewing courts should respect administrative decision makers and their specialized expertise, should not ask how they themselves would have resolved an issue and should focus on whether the applicant has demonstrated that the decision is unreasonable: paras. 288, 289 and 291. We agree. As we have stated above, at para. 13, reasonableness review finds its starting point in judicial restraint and respects the distinct role of administrative decision makers. Moreover, as explained below, reasonableness review considers all relevant circumstances in order to determine whether the applicant has met their onus.

A. *Procedural Fairness and Substantive Review*

76 Before turning to a discussion of the proposed approach to reasonableness review, we pause to acknowledge that the requirements of the duty of procedural fairness in a given case -- and in particular whether that duty requires a decision maker to give reasons for its decision -- will impact how a court conducts reasonableness review.

77 It is well established that, as a matter of procedural fairness, reasons are not required for all administrative decisions. The duty of procedural fairness in administrative law is "eminently variable", inherently flexible and context-specific: *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, at p. 682; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paras. 22-23; *Moreau-Bérubé*, at paras. 74?75; *Dunsmuir*, at para. 79. Where a particular administrative decision-making context gives rise to a duty of procedural fairness, the specific procedural requirements that the duty imposes are determined with reference to all of the circumstances: *Baker*, at para. 21. In *Baker*, this Court set out a non-exhaustive list of factors that inform the content of the duty of procedural fairness in a particular case, one aspect of which is whether written reasons are required. Those factors include: (1) the nature of the decision being made and the process followed in making it; (2) the nature of the statutory scheme; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made by the administrative decision maker itself: *Baker*, at paras. 23-27; see also *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48, [2004] 2 S.C.R. 650, at para. 5. Cases in which written reasons tend to be required include those in which the decision-making process gives the parties participatory rights, an adverse decision would have a significant impact on an individual or there is a right of appeal: *Baker*, at para. 43; D. J. M. Brown and the Hon. J. M. Evans, with the assistance of D. Fairlie, *Judicial Review of Administrative Action in Canada* (loose-leaf), vol. 3, at p. 12-54.

78 In the case at bar and in its companion cases, reasons for the administrative decisions at issue were both required and provided. Our discussion of the proper approach to reasonableness review will therefore focus on the circumstances in which reasons for an administrative decision are required and available to the reviewing court.

79 Notwithstanding the important differences between the administrative context and the judicial context, reasons generally serve many of the same purposes in the former as in the latter: *R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869, at paras. 15 and 22-23. Reasons explain how and why a decision was made. They help to show affected parties that their arguments have been considered and demonstrate that the decision was made in a fair

and lawful manner. Reasons shield against arbitrariness as well as the perception of arbitrariness in the exercise of public power: *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine*, at paras. 12-13. As L'Heureux-Dubé J. noted in *Baker*, "[t]hose affected may be more likely to feel they were treated fairly and appropriately if reasons are given": para. 39, citing S.A. de Smith, J. Jowell and Lord Woolf, *Judicial Review of Administrative Action* (5th ed. 1995), at pp. 459-60. And as Jocelyn Stacey and the Hon. Alice Woolley persuasively write, "public decisions gain their democratic and legal authority through a process of public justification" which includes reasons "that justify [the] decisions [of public decision makers] in light of the constitutional, statutory and common law context in which they operate": "Can Pragmatism Function in Administrative Law?" (2016), 74 *S.C.L.R.* (2d) 211, at p. 220.

80 The process of drafting reasons also necessarily encourages administrative decision makers to more carefully examine their own thinking and to better articulate their analysis in the process: *Baker*, at para. 39. This is what Justice Sharpe describes -- albeit in the judicial context -- as the "discipline of reasons": *Good Judgment*: *Making Judicial Decisions* (2018), at p. 134; see also *Sheppard*, at para. 23.

81 Reasons facilitate meaningful judicial review by shedding light on the rationale for a decision: *Baker*, at para. 39. In *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, *2011 SCC 62*, *[2011] 3 S.C.R. 708*, the Court reaffirmed that "the purpose of reasons, when they are required, is to demonstrate 'justification, transparency and intelligibility'": para. 1, quoting *Dunsmuir*, at para. 47; see also *Suresh v. Canada (Minister of Citizenship and Immigration)*, *2002 SCC 1*, *[2002] 1 S.C.R. 3*, at para. 126. The starting point for our analysis is therefore that where reasons are required, they are the primary mechanism by which administrative decision makers show that their decisions are reasonable -- both to the affected parties and to the reviewing courts. It follows that the provision of reasons for an administrative decision may have implications for its legitimacy, including in terms both of whether it is procedurally fair and of whether it is substantively reasonable.

B. *Reasonableness Review Is Concerned With the Decision-making Process and Its Outcomes*

82 Reasonableness review aims to give effect to the legislature's intent to leave certain decisions with an administrative body while fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law: see *Dunsmuir*, at paras. 27-28 and 48; *Catalyst Paper Corp. v. North Cowichan (District)*, *2012 SCC 2*, *[2012] 1 S.C.R. 5*, at para. 10; *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, *[1997] 3 S.C.R. 3*, at para. 10.

83 It follows that the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The role of courts in these circumstances is to *review*, and they are, at least as a general rule, to refrain from deciding the issue themselves. Accordingly, a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the "correct" solution to the problem. The Federal Court of Appeal noted in *Delios v. Canada (Attorney General)*, *2015 FCA 117*, *472 N.R. 171*, that, "as reviewing judges, we do not make our own yardstick and then use that yardstick to measure what the administrator did": at para. 28; see also *Ryan*, at paras. 50-51. Instead, the reviewing court must consider only whether the decision made by the administrative decision maker -- including both the rationale for the decision and the outcome to which it led -- was unreasonable.

84 As explained above, where the administrative decision maker has provided written reasons, those reasons are the means by which the decision maker communicates the rationale for its decision. A principled approach to reasonableness review is one which puts those reasons first. A reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with "respectful attention" and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion: see *Dunsmuir*, at para. 48, quoting D. Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in M. Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 286.

85 Developing an understanding of the reasoning that led to the administrative decision enables a reviewing court

to assess whether the decision as a whole is reasonable. As we will explain in greater detail below, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision.

86 Attention to the decision maker's reasons is part of how courts demonstrate respect for the decision-making process: see *Dunsmuir*, at paras. 47-49. In *Dunsmuir*, this Court explicitly stated that the court conducting a reasonableness review is concerned with "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes": para. 47. Reasonableness, according to *Dunsmuir*, "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process", as well as "with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *ibid.* In short, it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis.

87 This Court's jurisprudence since *Dunsmuir* should not be understood as having shifted the focus of reasonableness review away from a concern with the reasoning process and toward a nearly exclusive focus on the *outcome* of the administrative decision under review. Indeed, that a court conducting a reasonableness review properly considers both the outcome of the decision and the reasoning process that led to that outcome was recently reaffirmed in *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, [2018] 1 S.C.R. 6, at para. 12. In that case, although the outcome of the decision at issue may not have been unreasonable in the circumstances, the decision was set aside because the outcome had been arrived at on the basis of an unreasonable chain of analysis. This approach is consistent with the direction in *Dunsmuir* that judicial review is concerned with *both* outcome *and* process. To accept otherwise would undermine, rather than demonstrate respect toward, the institutional role of the administrative decision maker.

C. *Reasonableness Is a Single Standard That Accounts for Context*

88 In any attempt to develop a coherent and unified approach to judicial review, the sheer variety of decisions and decision makers that such an approach must account for poses an inescapable challenge. The administrative decision makers whose decisions may be subject to judicial review include specialized tribunals exercising adjudicative functions, independent regulatory bodies, ministers, front-line decision makers, and more. Their decisions vary in complexity and importance, ranging from the routine to the life-altering. These include matters of "high policy" on the one hand and "pure law" on the other. Such decisions will sometimes involve complex technical considerations. At other times, common sense and ordinary logic will suffice.

89 Despite this diversity, reasonableness remains a single standard, and elements of a decision's context do not modulate the standard or the degree of scrutiny by the reviewing court. Instead, the particular context of a decision constrains what will be reasonable for an administrative decision maker to decide in a given case. This is what it means to say that "[r]easonableness is a single standard that takes its colour from the context": *Khosa*, at para. 59; *Catalyst*, at para. 18; *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)*, 2012 SCC 10, **[2012] 1 S.C.R. 364**, at para. 44; *Wilson*, at para. 22, per Abella J.; *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38, [2016] 2 S.C.R. 80, at para. 57, per Côté J., dissenting but not on this point; *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, **[2018] 2 S.C.R. 293**, at para. 53.

90 The approach to reasonableness review that we articulate in these reasons accounts for the diversity of administrative decision making by recognizing that what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review. These contextual constraints dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt. The fact that the contextual constraints operating on an administrative decision maker may vary from one decision to another does not pose a problem for the reasonableness standard, because each

decision must be both justified by the administrative body and evaluated by reviewing courts in relation to its own particular context.

D. *Formal Reasons for a Decision Should Be Read in Light of the Record and With Due Sensitivity to the Administrative Setting in Which They Were Given*

91 A reviewing court must bear in mind that the written reasons given by an administrative body must not be assessed against a standard of perfection. That the reasons given for a decision do "not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" is not on its own a basis to set the decision aside: *Newfoundland Nurses*, at para. 16. The review of an administrative decision can be divorced neither from the institutional context in which the decision was made nor from the history of the proceedings.

92 Administrative decision makers cannot always be expected to deploy the same array of legal techniques that might be expected of a lawyer or judge -- nor will it always be necessary or even useful for them to do so. Instead, the concepts and language employed by administrative decision makers will often be highly specific to their fields of experience and expertise, and this may impact both the form and content of their reasons. These differences are not necessarily a sign of an unreasonable decision -- indeed, they may be indicative of a decision maker's strength within its particular and specialized domain. "Administrative justice" will not always look like "judicial justice", and reviewing courts must remain acutely aware of that fact.

93 An administrative decision maker may demonstrate through its reasons that a given decision was made by bringing that institutional expertise and experience to bear: see *Dunsmuir*, at para. 49. In conducting reasonableness review, judges should be attentive to the application by decision makers of specialized knowledge, as demonstrated by their reasons. Respectful attention to a decision maker's demonstrated expertise may reveal to a reviewing court that an outcome that might be puzzling or counterintuitive on its face nevertheless accords with the purposes and practical realities of the relevant administrative regime and represents a reasonable approach given the consequences and the operational impact of the decision. This demonstrated experience and expertise may also explain why a given issue is treated in less detail.

94 The reviewing court must also read the decision maker's reasons in light of the history and context of the proceedings in which they were rendered. For example, the reviewing court might consider the evidence before the decision maker, the submissions of the parties, publicly available policies or guidelines that informed the decision maker's work, and past decisions of the relevant administrative body. This may explain an aspect of the decision maker's reasoning process that is not apparent from the reasons themselves, or may reveal that an apparent shortcoming in the reasons is not, in fact, a failure of justification, intelligibility or transparency. Opposing parties may have made concessions that had obviated the need for the decision maker to adjudicate on a particular issue; the decision maker may have followed a well-established line of administrative case law that no party had challenged during the proceedings; or an individual decision maker may have adopted an interpretation set out in a public interpretive policy of the administrative body of which he or she is a member.

95 That being said, reviewing courts must keep in mind the principle that the exercise of public power must be justified, intelligible and transparent, not in the abstract, but to the individuals subject to it. It would therefore be unacceptable for an administrative decision maker to provide an affected party formal reasons that fail to justify its decision, but nevertheless expect that its decision would be upheld on the basis of internal records that were not available to that party.

96 Where, even if the reasons given by an administrative decision maker for a decision are read with sensitivity to the institutional setting and in light of the record, they contain a fundamental gap or reveal that the decision is based on an unreasonable chain of analysis, it is not ordinarily appropriate for the reviewing court to fashion its own reasons in order to buttress the administrative decision. Even if the outcome of the decision could be reasonable under different circumstances, it is not open to a reviewing court to disregard the flawed basis for a decision and substitute its own justification for the outcome: *Delta Air Lines*, at paras. 26-28. To allow a reviewing court to do so

would be to allow an administrative decision maker to abdicate its responsibility to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion. This would also amount to adopting an approach to reasonableness review focused solely on the outcome of a decision, to the exclusion of the rationale for that decision. To the extent that cases such as *Newfoundland Nurses* and *Alberta Teachers* have been taken as suggesting otherwise, such a view is mistaken.

97 Indeed, *Newfoundland Nurses* is far from holding that a decision maker's grounds or rationale for a decision is irrelevant. It instead tells us that close attention must be paid to a decision maker's written reasons and that they must be read holistically and contextually, for the very purpose of understanding the basis on which a decision was made. We agree with the observations of Rennie J. in *Komolafe v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 431, 16 Imm. L.R. (4th) 267, at para. 11:

> *Newfoundland Nurses* is not an open invitation to the Court to provide reasons that were not given, nor is it licence to guess what findings might have been made or to speculate as to what the tribunal might have been thinking. This is particularly so where the reasons are silent on a critical issue. It is ironic that *Newfoundland Nurses*, a case which at its core is about deference and standard of review, is urged as authority for the supervisory court to do the task that the decision maker did not do, to supply the reasons that might have been given and make findings of fact that were not made. This is to turn the jurisprudence on its head. *Newfoundland Nurses* allows reviewing courts to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn ... .

98 As for *Alberta Teachers*, it concerned a very specific and exceptional circumstance in which the reviewing court had exercised its discretion to consider a question of statutory interpretation on judicial review, even though that question had not been raised before the administrative decision maker and, as a result, no reasons had been given on that issue: paras. 22-26. Furthermore, it was agreed that the ultimate decision maker -- the Information and Privacy Commissioner's delegate -- had applied a well-established interpretation of the statutory provision in question and that, had she been asked for reasons to justify her interpretation, she would have adopted reasons the Commissioner had given in past decisions. In other words, the reasons of the Commissioner that this Court relied on to find that the administrative decision was reasonable were not merely reasons that *could* have been offered, in an abstract sense, but reasons that *would* have been offered had the issue been raised before the decision maker. Far from suggesting in *Alberta Teachers* that reasonableness review is concerned primarily with outcome, as opposed to rationale, this Court rejected the position that a reviewing court is entitled to "reformulate a tribunal's decision in a way that casts aside an unreasonable chain of analysis in favour of the court's own rationale for the result": para. 54, quoting *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396, 276 B.C.A.C. 135, at paras. 53 and 56. In *Alberta Teachers*, this Court also reaffirmed the importance of giving proper reasons and reiterated that "deference under the reasonableness standard is best given effect when administrative decision makers provide intelligible and transparent justification for their decisions, and when courts ground their review of the decision in the reasons provided": para. 54. Where a decision maker's rationale for an essential element of the decision is not addressed in the reasons and cannot be inferred from the record, the decision will generally fail to meet the requisite standard of justification, transparency and intelligibility.

E. *A Reasonable Decision Is One That Is Both Based on an Internally Coherent Reasoning and Justified in Light of the Legal and Factual Constraints That Bear on the Decision*

99 A reviewing court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness -- justification, transparency and intelligibility -- and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision: *Dunsmuir*, at paras. 47 and 74; *Catalyst*, at para. 13.

100 The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It

would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.

101 What makes a decision unreasonable? We find it conceptually useful here to consider two types of fundamental flaws. The first is a failure of rationality internal to the reasoning process. The second arises when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it. There is however, no need for reviewing courts to categorize failures of reasonableness as belonging to one type or the other. Rather, we use these descriptions simply as a convenient way to discuss the types of issues that may show a decision to be unreasonable.

(1) A Reasonable Decision Is Based on an Internally Coherent Reasoning

102 To be reasonable, a decision must be based on reasoning that is both rational and logical. It follows that a failure in this respect may lead a reviewing court to conclude that a decision must be set aside. Reasonableness review is not a "line-by-line treasure hunt for error": *Irving Pulp & Paper*, at para. 54, citing *Newfoundland Nurses*, at para. 14. However, the reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it 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": *Ryan*, at para. 55; *Southam*, at para. 56. Reasons that "simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion" will rarely assist a reviewing court in understanding the rationale underlying a decision and "are no substitute for statements of fact, analysis, inference and judgment": R. A. Macdonald and D. Lametti, "Reasons for Decision in Administrative Law" (1990), 3 *C.J.A.L.P.* 123, at p. 139; see also *Gonzalez v. Canada (Minister of Citizenship and Immigration)*, *2014 FC 750*, *27 Imm. L.R. (4th) 151*, at paras. 57-59.

103 While, as we indicated earlier (at paras. 89-96), formal reasons should be read in light of the record and with due sensitivity to the administrative regime in which they were given, a decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis: see *Wright v. Nova Scotia (Human Rights Commission),* *2017 NSSC 11*, *23 Admin. L.R. (6th) 110*; *Southam*, at para. 56. A decision will also be unreasonable where the conclusion reached cannot follow from the analysis undertaken (see *Sangmo v. Canada (Citizenship and Immigration)*, *2016 FC 17*, at para. 21 (CanLII)) or if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point (see *Blas v. Canada (Citizenship and Immigration)*, *2014 FC 629*, *26 Imm. L.R. (4th) 92*, at paras. 54-66; *Reid v. Criminal Injuries Compensation Board*, *2015 ONSC 6578*; *Lloyd v. Canada (Attorney General)*, *2016 FCA 115*, *2016 D.T.C. 5051*; *Taman v. Canada (Attorney General)*, *2017 FCA 1*, *[2017] 3 F.C.R. 520*, at para. 47).

104 Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up".

(2) A Reasonable Decision Is Justified in Light of the Legal and Factual Constraints That Bear on the Decision

105 In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: *Dunsmuir*, at para. 47; *Catalyst*, at para. 13; *Nor-Man Regional Health Authority*, at para. 6. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers.

106 It is unnecessary to catalogue all of the legal or factual considerations that could constrain an administrative decision maker in a particular case. However, in the sections that follow, we discuss a number of elements that will generally be relevant in evaluating whether a given decision is reasonable, namely the governing statutory scheme;

other relevant statutory or common law; the principles of statutory interpretation; the evidence before the decision maker and facts of which the decision maker may take notice; the submissions of the parties; the past practices and decisions of the administrative body; and the potential impact of the decision on the individual to whom it applies. These elements are not a checklist for conducting reasonableness review, and they may vary in significance depending on the context. They are offered merely to highlight some elements of the surrounding context that can cause a reviewing court to lose confidence in the outcome reached.

107 A reviewing court may find that a decision is unreasonable when examined against these contextual considerations. These elements necessarily interact with one another: for example, a reasonable penalty for professional misconduct in a given case must be justified *both* with respect to the types of penalties prescribed by the relevant legislation and with respect to the nature of the underlying misconduct.

(a) *Governing Statutory Scheme*

108 Because administrative decision makers receive their powers by statute, the governing statutory scheme is likely to be the most salient aspect of the legal context relevant to a particular decision. That administrative decision makers play a role, along with courts, in elaborating the precise content of the administrative schemes they administer should not be taken to mean that administrative decision makers are permitted to disregard or rewrite the law as enacted by Parliament and the provincial legislatures. Thus, for example, while an administrative body may have considerable discretion in making a particular decision, that decision must ultimately comply "with the rationale and purview of the statutory scheme under which it is adopted": *Catalyst*, at paras. 15 and 25-28; see also *Green*, at para. 44. As Rand J. noted in *Roncarelli v. Duplessis*, [*[1959] S.C.R. 121*], at p. 140, "there is no such thing as absolute and untrammelled 'discretion'", and any exercise of discretion must accord with the purposes for which it was given: see also *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine*, at para. 7; *Montréal (City) v. Montreal Port Authority*, [*2010 SCC 14*], [*[2010] 1 S.C.R. 427*], at paras. 32-33; *Nor-Man Regional Health Authority*, at para. 6. Likewise, a decision must comport with any more specific constraints imposed by the governing legislative scheme, such as the statutory definitions, principles or formulas that prescribe the exercise of a discretion: see *Montréal (City)*, at paras. 33 and 40-41; *Canada (Attorney General) v. Almon Equipment Limited*, [*2010 FCA 193*], [*[2011] 4 F.C.R. 203*], at paras. 38-40. The statutory scheme also informs the acceptable approaches to decision making: for example, where a decision maker is given wide discretion, it would be unreasonable for it to fetter that discretion: see *Delta Air Lines*, at para. 18.

109 As stated above, a proper application of the reasonableness standard is capable of allaying the concern that an administrative decision maker might interpret the scope of its own authority beyond what the legislature intended. As a result, there is no need to maintain a category of "truly" jurisdictional questions that are subject to correctness review. Although a decision maker's interpretation of its statutory grant of authority is generally entitled to deference, the decision maker must nonetheless properly justify that interpretation. Reasonableness review does not allow administrative decision makers to arrogate powers to themselves that they were never intended to have, and an administrative body cannot exercise authority which was not delegated to it. Contrary to our colleagues' concern (at para. 285), this does not reintroduce the concept of "jurisdictional error" into judicial review, but merely identifies one of the obvious and necessary constraints imposed on administrative decision makers.

110 Whether an interpretation is justified will depend on the context, including the language chosen by the legislature in describing the limits and contours of the decision maker's authority. If a legislature wishes to precisely circumscribe an administrative decision maker's power in some respect, it can do so by using precise and narrow language and delineating the power in detail, thereby tightly constraining the decision maker's ability to interpret the provision. Conversely, where the legislature chooses to use broad, open-ended or highly qualitative language -- for example, "in the public interest" -- it clearly contemplates that the decision maker is to have greater flexibility in interpreting the meaning of such language. Other language will fall in the middle of this spectrum. All of this is to say that certain questions relating to the scope of a decision maker's authority may support more than one interpretation, while other questions may support only one, depending upon the text by which the statutory grant of authority is made. What matters is whether, in the eyes of the reviewing court, the decision maker has properly justified its interpretation of the statute in light of the surrounding context. It will, of course, be impossible for an

administrative decision maker to justify a decision that strays beyond the limits set by the statutory language it is interpreting.

(b) *Other Statutory or Common Law*

111 It is evident that both statutory and common law will impose constraints on how and what an administrative decision maker can lawfully decide: see *Dunsmuir*, at paras. 47 and 74. For example, an administrative decision maker interpreting the scope of its regulation-making authority in order to exercise that authority cannot adopt an interpretation that is inconsistent with applicable common law principles regarding the nature of statutory powers: see *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810, at paras. 45-48. Neither can a body instructed by legislation to determine what tax rate is applicable in accordance with an existing tax system ignore that system and base its determination on a "fictitious" system it has arbitrarily created: *Montréal (City)*, at para. 40. Where a relationship is governed by private law, it would be unreasonable for a decision maker to ignore that law in adjudicating parties' rights within that relationship: *Dunsmuir*, at para. 74. Similarly, where the governing statute specifies a standard that is well known in law and in the jurisprudence, a reasonable decision will generally be one that is consistent with the established understanding of that standard: see, e.g., the discussion of "reasonable grounds to suspect" in *Canada (Minister of Transport, Infrastructure and Communities) v. Farwaha*, 2014 FCA 56, [2015] 2 F.C.R. 1006, at paras. 93-98.

112 Any precedents on the issue before the administrative decision maker or on a similar issue will act as a constraint on what the decision maker can reasonably decide. An administrative body's decision may be unreasonable on the basis that the body failed to explain or justify a departure from a binding precedent in which the same provision had been interpreted. Where, for example, there is a relevant case in which a court considered a statutory provision, it would be unreasonable for an administrative decision maker to interpret or apply the provision without regard to that precedent. The decision maker would have to be able to explain why a different interpretation is preferable by, for example, explaining why the court's interpretation does not work in the administrative context: M. Biddulph, "Rethinking the Ramification of Reasonableness Review: *Stare Decisis* and Reasonableness Review on Questions of Law" (2018), 56 Alta. L.R. 119, at p. 146. There may be circumstances in which it is quite simply unreasonable for an administrative decision maker to fail to apply or interpret a statutory provision in accordance with a binding precedent. For instance, where an immigration tribunal is required to determine whether an applicant's act would constitute a criminal offence under Canadian law (see, e.g., *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, ss. 35-37), it would clearly not be reasonable for the tribunal to adopt an interpretation of a criminal law provision that is inconsistent with how Canadian criminal courts have interpreted it.

113 That being said, administrative decision makers will not necessarily be required to apply equitable and common law principles in the same manner as courts in order for their decisions to be reasonable. For example, it may be reasonable for a decision maker to adapt a common law or equitable doctrine to its administrative context: see *Nor-Man Regional Health Authority*, at paras. 5-6, 44-45, 52, 54 and 60. Conversely, a decision maker that rigidly applies a common law doctrine without adapting it to the relevant administrative context may be acting unreasonably: see *Delta Air Lines*, at paras. 16-17 and 30. In short, whether an administrative decision maker has acted reasonably in adapting a legal or equitable doctrine involves a highly context-specific determination.

114 We would also note that in some administrative decision making contexts, international law will operate as an important constraint on an administrative decision maker. It is well established that legislation is presumed to operate in conformity with Canada's international obligations, and the legislature is "presumed to comply with ... the values and principles of customary and conventional international law": *R. v. Hape*, 2007 SCC 26, [2007] 2 S.C.R. 292, at para. 53; *R. v. Appulonappa*, 2015 SCC 59, [2015] 3 S.C.R. 754, at para. 40. Since *Baker*, it has also been clear that international treaties and conventions, even where they have not been implemented domestically by statute, can help to inform whether a decision was a reasonable exercise of administrative power: *Baker*, at paras. 69-71.

(c) *Principles of Statutory Interpretation*

115 Matters of statutory interpretation are not treated uniquely and, as with other questions of law, may be evaluated on a reasonableness standard. Although the general approach to reasonableness review described above applies in such cases, we recognize that it is necessary to provide additional guidance to reviewing courts on this point. This is because reviewing courts are accustomed to resolving questions of statutory interpretation in a context in which the issue is before them at first instance or on appeal, and where they are expected to perform their own independent analysis and come to their own conclusions.

116 Reasonableness review functions differently. Where reasonableness is the applicable standard on a question of statutory interpretation, the reviewing court does not undertake a *de novo* analysis of the question or "ask itself what the correct decision would have been": *Ryan*, at para. 50. Instead, just as it does when applying the reasonableness standard in reviewing questions of fact, discretion or policy, the court must examine the administrative decision as a whole, including the reasons provided by the decision maker and the outcome that was reached.

117 A court interpreting a statutory provision does so by applying the "modern principle" of statutory interpretation, that is, that the words of a statute must be read "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21, and *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26, both quoting E. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87. Parliament and the provincial legislatures have also provided guidance by way of statutory rules that explicitly govern the interpretation of statutes and regulations: see, e.g., *Interpretation Act*, R.S.C. 1985, c. I-21.

118 This Court has adopted the "modern principle" as the proper approach to statutory interpretation, because legislative intent can be understood only by reading the language chosen by the legislature in light of the purpose of the provision and the entire relevant context: Sullivan, at pp. 7-8. Those who draft and enact statutes expect that questions about their meaning will be resolved by an analysis that has regard to the text, context and purpose, regardless of whether the entity tasked with interpreting the law is a court or an administrative decision maker. An approach to reasonableness review that respects legislative intent must therefore assume that those who interpret the law -- whether courts or administrative decision makers -- will do so in a manner consistent with this principle of interpretation.

119 Administrative decision makers are not required to engage in a formalistic statutory interpretation exercise in every case. As discussed above, formal reasons for a decision will not always be necessary and may, where required, take different forms. And even where the interpretive exercise conducted by the administrative decision maker is set out in written reasons, it may look quite different from that of a court. The specialized expertise and experience of administrative decision makers may sometimes lead them to rely, in interpreting a provision, on considerations that a court would not have thought to employ but that actually enrich and elevate the interpretive exercise.

120 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. In this sense, the usual principles of statutory interpretation apply equally when an administrative decision maker interprets a provision. Where, for example, the words used are "precise and unequivocal", their ordinary meaning will usually play a more significant role in the interpretive exercise: *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10. Where the meaning of a statutory provision is disputed in administrative proceedings, the decision maker must demonstrate in its reasons that it was alive to these essential elements.

121 The administrative decision maker's task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue. It cannot adopt an interpretation it knows to be inferior -- albeit plausible -- merely because the interpretation in question appears to be available and is expedient. The decision maker's responsibility is to discern meaning and legislative intent, not to "reverse-engineer" a desired outcome.

122 It can happen that an administrative decision maker, in interpreting a statutory provision, fails entirely to consider a pertinent aspect of its text, context or purpose. Where such an omission is a minor aspect of the interpretive context, it is not likely to undermine the decision as a whole. It is well established that decision makers are not required "to explicitly address all possible shades of meaning" of a given provision: *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65, [2012] 3 S.C.R. 405, at para. 3. Just like judges, administrative decision makers may find it unnecessary to dwell on each and every signal of statutory intent in their reasons. In many cases, it may be necessary to touch upon only the most salient aspects of the text, context or purpose. If, however, it is clear that the administrative decision maker may well, had it considered a key element of a statutory provision's text, context or purpose, have arrived at a different result, its failure to consider that element would be indefensible, and unreasonable in the circumstances. Like other aspects of reasonableness review, omissions are not stand-alone grounds for judicial intervention: the key question is whether the omitted aspect of the analysis causes the reviewing court to lose confidence in the outcome reached by the decision maker.

123 There may be other cases in which the administrative decision maker has not explicitly considered the meaning of a relevant provision in its reasons, but the reviewing court is able to discern the interpretation adopted by the decision maker from the record and determine whether that interpretation is reasonable.

124 Finally, even though the task of a court conducting a reasonableness review is *not* to perform a *de novo* analysis or to determine the "correct" interpretation of a disputed provision, it may sometimes become clear in the course of reviewing a decision that the interplay of text, context and purpose leaves room for a single reasonable interpretation of the statutory provision, or aspect of the statutory provision, that is at issue: *Dunsmuir*, at paras. 72-76. One case in which this conclusion was reached was *Nova Tube Inc./Nova Steel Inc. v. Conares Metal Supply Ltd.*, 2019 FCA 52., in which Laskin J.A., after analyzing the reasoning of the administrative decision maker (at paras. 26-61 (CanLII)), held that the decision maker's interpretation had been unreasonable, and, furthermore, that the factors he had considered in his analysis weighed so overwhelmingly in favour of the opposite interpretation that that was the only reasonable interpretation of the provision: para. 61. As discussed below, it would serve no useful purpose in such a case to remit the interpretative question to the original decision maker. Even so, a court should generally pause before definitively pronouncing upon the interpretation of a provision entrusted to an administrative decision maker.

(d) *Evidence Before the Decision Maker*

125 It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.

126 That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it. In *Baker*, for example, the decision maker had relied on irrelevant stereotypes and failed to consider relevant evidence, which led to a conclusion that there was a reasonable apprehension of bias: para. 48. Moreover, the decision maker's approach would *also* have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his conclusions were not based on the evidence that was actually before him: para. 48.

(e) *Submissions of the Parties*

127 The principles of justification and transparency require that an administrative decision maker's reasons

meaningfully account for the central issues and concerns raised by the parties. The principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard: *Baker*, at para. 28. The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually *listened* to the parties.

128 Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.

(f) *Past Practices and Past Decisions*

129 Administrative decision makers are not bound by their previous decisions in the same sense that courts are bound by *stare decisis*. As this Court noted in *Domtar*, "a lack of unanimity is the price to pay for the decision-making freedom and independence" given to administrative decision makers, and the mere fact that some conflict exists among an administrative body's decisions does not threaten the rule of law: p. 800. Nevertheless, administrative decision makers and reviewing courts alike must be concerned with the general consistency of administrative decisions. Those affected by administrative decisions are entitled to expect that like cases will generally be treated alike and that outcomes will not depend merely on the identity of the individual decision maker -- expectations that do not evaporate simply because the parties are not before a judge.

130 Fortunately, administrative bodies generally have a range of resources at their disposal to address these types of concerns. Access to past reasons and summaries of past reasons enables multiple individual decision makers within a single organization (such as administrative tribunal members) to learn from each other's work, and contributes to a harmonized decision-making culture. Institutions also routinely rely on standards, policy directives and internal legal opinions to encourage greater uniformity and guide the work of frontline decision makers. This Court has also held that plenary meetings of a tribunal's members can be an effective tool to "foster coherence" and "avoid ... conflicting results": *IWA v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282, at pp. 324-28. Where disagreement arises within an administrative body about how to appropriately resolve a given issue, that institution may also develop strategies to address that divergence internally and on its own initiative. Of course, consistency can also be encouraged through less formal methods, such as the development of training materials, checklists and templates for the purpose of streamlining and strengthening institutional best practices, provided that these methods do not operate to fetter decision making.

131 Whether a particular decision is consistent with the administrative body's past decisions is also a constraint that the reviewing court should consider when determining whether an administrative decision is reasonable. Where a decision maker *does* depart from longstanding practices or established internal authority, it bears the justificatory burden of explaining that departure in its reasons. If the decision maker does not satisfy this burden, the decision will be unreasonable. In this sense, the legitimate expectations of the parties help to determine both whether reasons are required and what those reasons must explain: *Baker*, at para. 26. We repeat that this does not mean administrative decision makers are bound by internal precedent in the same manner as courts. Rather, it means that a decision that departs from longstanding practices or established internal decisions will be reasonable if that departure is justified, thereby reducing the risk of arbitrariness, which would undermine public confidence in administrative decision makers and in the justice system as a whole.

132 As discussed above, it has been argued that correctness review would be required where there is "persistent discord" on questions on law in an administrative body's decisions. While we are not of the view that such a

correctness category is required, we would note that reviewing courts have a role to play in managing the risk of persistently discordant or contradictory legal interpretations within an administrative body's decisions. When evidence of internal disagreement on legal issues has been put before a reviewing court, the court may find it appropriate to telegraph the existence of an issue in its reasons and encourage the use of internal administrative structures to resolve the disagreement. And if internal disagreement continues, it may become increasingly difficult for the administrative body to justify decisions that serve only to preserve the discord.

(g) *Impact of the Decision on the Affected Individual*

133 It is well established that individuals are entitled to greater procedural protection when the decision in question involves the potential for significant personal impact or harm: *Baker*, at para. 25. However, this principle also has implications for how a court conducts reasonableness review. Central to the necessity of adequate justification is the perspective of the individual or party over whom authority is being exercised. Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes. The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention. This includes decisions with consequences that threaten an individual's life, liberty, dignity or livelihood.

134 Moreover, concerns regarding arbitrariness will generally be more acute in cases where the consequences of the decision for the affected party are particularly severe or harsh, and a failure to grapple with such consequences may well be unreasonable. For example, this Court has held that the Immigration Appeal Division should, when exercising its equitable jurisdiction to stay a removal order under the *Immigration and Refugee Protection Act*, consider the potential foreign hardship a deported person would face: *Chieu v. Canada (Minister of Citizenship and Immigration)*, *2002 SCC 3*, *[2002] 1 S.C.R. 84*.

135 Many administrative decision makers are entrusted with an extraordinary degree of power over the lives of ordinary people, including the most vulnerable among us. The corollary to that power is a heightened responsibility on the part of administrative decision makers to ensure that their reasons demonstrate that they have considered the consequences of a decision and that those consequences are justified in light of the facts and law.

F. *Review in the Absence of Reasons*

136 Where the duty of procedural fairness or the legislative scheme mandates that reasons be given to the affected party but none have been given, this failure will generally require the decision to be set aside and the matter remitted to the decision maker: see, e.g., *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine*, at para. 35. Also, where reasons are provided but they fail to provide a transparent and intelligible justification as explained above, the decision will be unreasonable. In many cases, however, neither the duty of procedural fairness nor the statutory scheme will require that formal reasons be given at all: *Baker*, at para. 43.

137 Admittedly, applying an approach to judicial review that prioritizes the decision maker's justification for its decisions can be challenging in cases in which formal reasons have not been provided. This will often occur where the decision-making process does not easily lend itself to producing a single set of reasons, for example, where a municipality passes a bylaw or a law society renders a decision by holding a vote: see, e.g., *Catalyst*; *Green*; *Trinity Western University*. However, even in such circumstances, the reasoning process that underlies the decision will not usually be opaque. It is important to recall that a reviewing court must look to the record as a whole to understand the decision, and that in doing so, the court will often uncover a clear rationale for the decision: *Baker*, at para. 44. For example, as McLachlin C.J. noted in *Catalyst*, "[t]he reasons for a municipal bylaw are traditionally deduced from the debate, deliberations, and the statements of policy that give rise to the bylaw": para. 29. In that case, not only were "the reasons [in the sense of rationale] for the bylaw ... clear to everyone", they had also been laid out in a five-year plan: para. 33. Conversely, even without reasons, it is possible for the record and the context to reveal that a decision was made on the basis of an improper motive or for another impermissible reason, as, for example, in *Roncarelli*.

138 There will nonetheless be situations in which no reasons have been provided and neither the record nor the

larger context sheds light on the basis for the decision. In such a case, the reviewing court must still examine the decision in light of the relevant constraints on the decision maker in order to determine whether the decision is reasonable. But it is perhaps inevitable that without reasons, the analysis will then focus on the outcome rather than on the decision maker's reasoning process. This does not mean that reasonableness review is less robust in such circumstances, only that it takes a different shape.

G. *A Note on Remedial Discretion*

139 Where a court reviews an administrative decision, the question of the appropriate remedy is multi-faceted. It engages considerations that include the reviewing court's common law or statutory jurisdiction and the great diversity of elements that may influence a court's decision to exercise its discretion in respect of available remedies. While we do not aim to comprehensively address here the issue of remedies on judicial review, we do wish to briefly address the question of whether a court that quashes an unreasonable decision should exercise its discretion to remit the matter to the decision maker for reconsideration with the benefit of the court's reasons.

140 Where the reasonableness standard is applied in conducting a judicial review, the choice of remedy must be guided by the rationale for applying that standard to begin with, including the recognition by the reviewing court that the legislature has entrusted the matter to the administrative decision maker, and not to the court, to decide: see *Delta Air Lines*, at para. 31. However, the question of remedy must also be guided by concerns related to the proper administration of the justice system, the need to ensure access to justice and "the goal of expedient and cost-efficient decision making, which often motivates the creation of specialized administrative tribunals in the first place": *Alberta Teachers*, at para. 55.

141 Giving effect to these principles in the remedial context means that where a decision reviewed by applying the reasonableness standard cannot be upheld, it will most often be appropriate to remit the matter to the decision maker to have it reconsider the decision, this time with the benefit of the court's reasons. In reconsidering its decision, the decision maker may arrive at the same, or a different, outcome: see *Delta Air Lines*, at paras. 30-31.

142 However, while courts should, as a general rule, respect the legislature's intention to entrust the matter to the administrative decision maker, there are limited scenarios in which remitting the matter would stymie the timely and effective resolution of matters in a manner that no legislature could have intended: *D'Errico v. Canada (Attorney General)*, *2014 FCA 95*, at paras. 18-19 (CanLII). An intention that the administrative decision maker decide the matter at first instance cannot give rise to an endless merry-go-round of judicial reviews and subsequent reconsiderations. Declining to remit a matter to the decision maker may be appropriate where it becomes evident to the court, in the course of its review, that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose: see *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, *[1994] 1 S.C.R. 202*, at pp. 228-30; *Renaud v. Quebec (Commission des affaires sociales)*, *[1999] 3 S.C.R. 855*; *Groia v. Law Society of Upper Canada*, *2018 SCC 27*, *[2018] 1 S.C.R. 772*, at para. 161; *Sharif v. Canada (Attorney General)*, *2018 FCA 205*, *50 C.R. (7th) 1*, at paras. 53-54; *Maple Lodge Farms Ltd. v. Canadian Food Inspection Agency*, *2017 FCA 45*, *411 D.L.R. (4th) 175*, at paras. 51-56 and 84; *Gehl v. Canada (Attorney General)*, *2017 ONCA 319*, at paras. 54 and 88 (CanLII). Elements like concern for delay, fairness to the parties, urgency of providing a resolution to the dispute, the nature of the particular regulatory regime, whether the administrative decision maker had a genuine opportunity to weigh in on the issue in question, costs to the parties, and the efficient use of public resources may also influence the exercise of a court's discretion to remit a matter, just as they may influence the exercise of its discretion to quash a decision that is flawed: see *MiningWatch Canada v. Canada (Fisheries and Oceans)*, *2010 SCC 2*, *[2010] 1 S.C.R. 6*, at paras. 45-51; *Alberta Teachers*, at para. 55.

IV. Role of Prior Jurisprudence

143 Given that this appeal and its companion cases involve a recalibration of the governing approach to the choice of standard of review analysis and a clarification of the proper application of the reasonableness standard, it will be necessary to briefly address how the existing administrative law jurisprudence should be treated going forward. These reasons set out a holistic revision of the framework for determining the applicable standard of review. A court seeking to determine what standard is appropriate in a case before it should look to these reasons first in order to

determine how this general framework applies to that case. Doing so may require the court to resolve subsidiary questions on which past precedents will often continue to provide helpful guidance. Indeed, much of the Court's jurisprudence, such as cases concerning general questions of law of central importance to the legal system as a whole or those relating to jurisdictional boundaries between two or more administrative bodies, will continue to apply essentially without modification. On other issues, certain cases -- including those on the effect of statutory appeal mechanisms, "true" questions of jurisdiction or the former contextual analysis -- will necessarily have less precedential force. As for cases that dictated how to conduct reasonableness review, they will often continue to provide insight, but should be used carefully to ensure that their application is aligned in principle with these reasons.

144 This approach strives for future doctrinal stability under the new framework while clarifying the continued relevance of the existing jurisprudence. Where a reviewing court is not certain how these reasons relate to the case before it, it may find it prudent to request submissions from the parties on both the appropriate standard and the application of that standard.

145 Before turning to Mr. Vavilov's case, we pause to note that our colleagues mischaracterize the framework developed in these reasons as being an "encomium" for correctness, and a turn away from the Court's deferential approach to the point of being a "eulogy" for deference (at paras. 199 and 201). With respect, this is a gross exaggeration. Assertions that these reasons adopt a formalistic, court-centric view of administrative law (at paras. 229 and 240), enable an unconstrained expansion of correctness review (at para. 253) or function as a sort of checklist for "line-by-line" reasonableness review (at para. 284), are counter to the clear wording we use and do not take into consideration the delicate balance that we have accounted for in setting out this framework.

V. Mr. Vavilov's Application for Judicial Review

146 The case at bar involves an application for judicial review of a decision made by the Canadian Registrar of Citizenship on August 15, 2014. The Registrar's decision concerned Mr. Vavilov, who was born in Canada and whose parents were later revealed to be undercover Russian spies. The Registrar determined that Mr. Vavilov was not a Canadian citizen on the basis of an interpretation of s. 3(2)(a) of the *Citizenship Act* and cancelled his certificate of citizenship under s. 26(3) of the *Citizenship Regulations*. We conclude that the standard of review applicable to the Registrar's decision is reasonableness, and that the Registrar's decision was unreasonable. We would uphold the decision of the Federal Court of Appeal to quash the Registrar's decision and would not remit the matter to the Registrar for redetermination.

A. *Facts*

147 Mr. Vavilov was born in Toronto as Alexander Foley on June 3, 1994. At the time of his birth, his parents were posing as Canadians under the assumed names of Tracey Lee Ann Foley and Donald Howard Heathfield. In reality, they were Elena Vavilova and Andrey Bezrukov, two foreign nationals working on a long-term assignment for the Russian foreign intelligence service, the SVR. Their false Canadian identities had been assumed prior to the birth of Mr. Vavilov and of his older brother, Timothy, for purposes of a "deep cover" espionage network under the direction of the SVR. The United States Department of Justice refers to it as the "illegals" program.

148 Ms. Vavilova and Mr. Bezrukov were deployed to Canada to establish false personal histories as Western citizens. They worked, ran a business, pursued higher education and, as noted, had two children here. After their second son was born, the family moved to France, and later to the United States. In the United States, Mr. Bezrukov obtained a Masters of Public Administration at Harvard University and worked as a consultant, all while working to collect information on a variety of sensitive national security issues for the SVR. The nature of the undercover work of Ms. Vavilova and Mr. Bezrukov meant that there was no point at which either of them had any publicly acknowledged affiliation with the Russian state, held any official diplomatic or consular status, or had been granted any diplomatic privilege or immunity.

149 Until he was about 16 years old, Mr. Vavilov did not know that his parents were not who they claimed to be. He believed that he was a Canadian citizen by birth, lived and identified as a Canadian, held a Canadian passport,

learned both official languages and was proud of his heritage. His parents' true identities became known to him on June 27, 2010, when they were arrested in the United States and charged (along with several other individuals) with conspiracy to act as unregistered agents of a foreign government. On July 8, 2010, they pled guilty, admitted their status as Russian citizens acting on behalf of the Russian state, and were returned to Russia in a "spy swap" the following day. Mr. Vavilov has described the revelation as a traumatic event characterized by disbelief and a crisis of identity.

150 Just prior to his parents' deportation, Mr. Vavilov left the United States with his brother on a trip that had been planned before their parents' arrest, going first to Paris, and then to Russia on a tourist visa. In October 2010, Mr. Vavilov unsuccessfully attempted to renew his Canadian passport through the Canadian Embassy in Moscow. Although he submitted to DNA testing and changed his surname from Foley to Vavilov at the behest of passport authorities, his second attempt to obtain a Canadian passport in December 2011 was also unsuccessful. He was then informed that despite his Canadian birth certificate, he would also need to obtain and provide a certificate of Canadian citizenship before he would be issued a passport. Mr. Vavilov applied for that certificate in October 2012, and it was issued to him on January 15, 2013. At that point, he made another passport application through the Canadian Embassy in Buenos Aires, Argentina, and, after a delay, applied for mandamus, a process that was settled out of court in June 2013. The Minister of Citizenship and Immigration undertook to issue a new travel document to Mr. Vavilov by July 19, 2013.

151 However, Mr. Vavilov never received a passport. Instead, he received a "procedural fairness letter" from the Canadian Registrar of Citizenship dated July 18, 2013 in which the Registrar stated that Mr. Vavilov had not been entitled to a certificate of citizenship, that his certificate of citizenship had been issued in error and that, pursuant to s. 3(2)(a) of the *Citizenship Act*, he was not a citizen of Canada. Mr. Vavilov was invited to make submissions in response, and he did so. On August 15, 2014, the Registrar formally cancelled Mr. Vavilov's Canadian citizenship certificate pursuant to s. 26(3) of the *Citizenship Regulations*.

B. *Procedural History*

(1) Registrar's Decision

152 In a brief letter sent to Mr. Vavilov on August 15, 2014, the Registrar informed him that she was cancelling his certificate of citizenship pursuant to s. 26(3) of the *Citizenship Regulations* on the basis that he was not entitled to it. The Registrar summarized her position as follows:

> a)Although Mr. Vavilov was born in Toronto, neither of his parents was a citizen of Canada, and neither of them had been lawfully admitted to Canada for permanent residence at the time of his birth.
>
> b)In 2010, Mr. Vavilov's parents were convicted of "conspiracy to act in the United States as a foreign agent of a foreign government", and recognized as unofficial agents working as "illegals" for the SVR.
>
> c)As a result, the Registrar believed that, at the time of Mr. Vavilov's birth, his parents were "employees or representatives of a foreign government".
>
> d)Accordingly, pursuant to s. 3(2)(a) of the *Citizenship Act*, Mr. Vavilov had never been a Canadian citizen and had not been entitled to receive the certificate of Canadian citizenship that had been issued to him in 2013. Section 3(2)(a) provides that s. 3(1)(a) of the *Citizenship Act* (which grants citizenship by birth to persons born in Canada after February 14, 1977) does not apply to an individual if, at the time of the individual's birth, neither of their parents was a citizen or lawfully admitted to Canada for permanent residence and either parent was "a diplomatic or consular officer or other representative or employee in Canada of a foreign government."

153 For these reasons, the Registrar cancelled the certificate and indicated that Mr. Vavilov would no longer be recognized as a Canadian citizen. The Registrar's letter did not offer any analysis or interpretation of s. 3(2)(a) of the *Citizenship Act*. However, it appears that in coming to her decision, the Registrar relied on a 12-page report prepared by a junior analyst, which included an interpretation of this key statutory provision.

154 In that report, the analyst provided a timeline of the procedural history of Mr. Vavilov's file, a summary of the

investigation into and charges against his parents in the United States, and background information on the SVR's "illegals" program. The analyst also discussed several provisions of the *Citizenship Act*, including s. 3(2)(a), and it is this aspect of her report that is most relevant to Mr. Vavilov's application for judicial review. The analyst's ultimate conclusion was that the certificate of citizenship issued to Mr. Vavilov in January 2013 was issued in error, as his parents had been "working as employees or representatives of a foreign government (the Russian Federation) during the time they resided in Canada, including at the time of Mr. Vavilov's birth", and that "[a]s such, Mr. Vavilov was not entitled to receive a citizenship certificate pursuant to paragraph 3(2)(a) of the *Citizenship Act*": A.R., Vol. I, at p. 3. The report was dated June 24, 2014.

155 In discussing the relevant legislation, the analyst cited s. 3(1)(a) of the *Citizenship Act*, which establishes the general rule that persons born in Canada after February 14, 1977 are Canadian citizens. The analyst also referred to an exception to that general rule set out in s. 3(2) of the *Citizenship Act*, which reads as follows:

> (2) Paragraph (1)(a) does not apply to a person if, at the time of his birth, neither of his parents was a citizen or lawfully admitted to Canada for permanent residence and either of his parents was
>
> (a) a diplomatic or consular officer or other representative or employee in Canada of a foreign government;
>
> (b) an employee in the service of a person referred to in paragraph (a); or
>
> (c) an officer or employee in Canada of a specialized agency of the United Nations or an officer or employee in Canada of any other international organization to whom there are granted, by or under any Act of Parliament, diplomatic privileges and immunities certified by the Minister of Foreign Affairs to be equivalent to those granted to a person or persons referred to in paragraph (a).

156 The analyst noted that s. 3(2)(a) refers both to diplomatic and consular officers and to *other* representatives or employees of a foreign government. She acknowledged that the term "diplomatic or consular officer" is defined in s. 35(1) of the *Interpretation Act* and that the definition lists a large number of posts within a foreign mission or consulate. However, the analyst observed that no statutory definition exists for the phrase "other representative or employee in Canada of a foreign government."

157 The analyst compared the wording of s. 3(2)(a) with that of a similar provision in predecessor legislation. That provision, s. 5(3)(b) of the *Canadian Citizenship Act,* R.S.C. 1970, c. C-19, excluded from citizenship children whose "responsible parent" at the time of birth was:

> (i) a foreign diplomatic or consular officer or a representative of a foreign
>
> government accredited to Her Majesty,
>
> (ii) an employee of a foreign government attached to or in the service of a foreign diplomatic mission or consulate in Canada, or
>
> (iii) an employee in the service of a person referred to in subparagraph (i).

158 The analyst reasoned that because s. 3(2)(a) "makes reference to 'representatives or employees of a foreign government,' but does not link the representatives or employees to 'attached to or in the service of a foreign diplomatic mission or consulate in Canada' (as did the earlier version of the provision), it is reasonable to maintain that this provision intends to encompass individuals not included in the definition of 'diplomatic and consular staff'": A.R., vol. I, at p. 7.

159 Although the analyst acknowledged that "Ms. Vavilova and Mr. Bezrukov, were employed in Canada by a foreign government without the benefits or protections (i.e.: immunity) that accompany diplomatic, consular, or official status positions", she concluded that they were nonetheless "unofficial employees or representatives" of Russia at the time of Mr. Vavilov's birth: A.R., vol. I, at p. 13. The exception in s. 3(2)(a) of the *Citizenship Act*, as she interpreted it, therefore applied to Mr. Vavilov. As a result, the analyst recommended that the Canadian

Registrar of Citizenship "recall" Mr. Vavilov's certificate on the basis that he was not, and had never been, entitled to citizenship.

(2) Federal Court (Bell J.), *2015 FC 960*, *[2016] 2 F.C.R. 39*

160 Mr. Vavilov sought and was granted leave to bring an application for judicial review of the Registrar's decision in the Federal Court pursuant to s. 22.1 of the *Citizenship Act*. His application was dismissed.

161 The Federal Court rejected Mr. Vavilov's argument that the Registrar had breached her duty of procedural fairness by failing to disclose the documentation that had prompted the procedural fairness letter. In the Federal Court's view, the Registrar had provided Mr. Vavilov sufficient information to allow him to meaningfully respond, and had thereby satisfied the requirements of procedural fairness in the circumstances.

162 The Federal Court also rejected Mr. Vavilov's challenge to the Registrar's interpretation of s. 3(2)(a) of the *Citizenship Act*. Applying the correctness standard, the Federal Court agreed with the Registrar that undercover foreign operatives living in Canada fall within the meaning of the phrase "diplomatic or consular officer or other representative or employee in Canada of a foreign government" in s. 3(2)(a). In the Federal Court's view, to interpret s. 3(2)(a) in any other way would render the phrase "other representative or employee in Canada of a foreign government" meaningless and would lead to the "absurd result" that "children of a foreign diplomat, registered at an embassy, who conducts spy operations, cannot claim Canadian citizenship by birth in Canada but children of those who enter unlawfully for the very same purpose, become Canadian citizens by birth": para. 25.

163 Finally, the Federal Court was satisfied, given the evidence, that the Registrar's conclusion that Mr. Vavilov's parents had at the time of his birth been in Canada as part of an undercover operation for the Russian government was reasonable.

(3) Federal Court of Appeal (Stratas J.A. with Webb J.A. Concurring; Gleason J.A. Dissenting), *2017 FCA 132*, *[2018] 3 F.C.R. 75*

164 A majority of the Federal Court of Appeal allowed Mr. Vavilov's appeal from the Federal Court's judgment and quashed the Registrar's decision.

165 The Court of Appeal unanimously rejected Mr. Vavilov's argument that he had been denied procedural fairness by the Registrar. In the Court of Appeal's view, the Registrar had provided Mr. Vavilov sufficient information in the procedural fairness letter to enable him to know the case to meet. Even if Mr. Vavilov had been entitled to more information at the time of that letter, the court indicated that his procedural fairness challenge would nevertheless have failed because he had subsequently obtained that additional information through his own efforts and was able to make meaningful submissions.

166 The Court of Appeal was also unanimously of the view that the appropriate standard of review for the Registrar's interpretation and application of s. 3(2)(a) of the *Citizenship Act* was reasonableness. It split, however, on the application of that standard to the Registrar's decision.

167 The majority of the Court of Appeal concluded that the analyst's interpretation of s. 3(2)(a), which the Registrar had adopted, was unreasonable and that the Registrar's decision should be quashed. The analysis relied on by the Registrar on the statutory interpretation issue was confined to a consideration of the text of s. 3(2)(a) and an abbreviated review of its legislative history, which totally disregarded its purpose or context. In the majority's view, such a "cursory and incomplete approach to statutory interpretation" in a case such as this was indefensible: para. 44. Moreover, when the provision's purpose and its context were taken into account, the only reasonable conclusion was that the phrase "employee in Canada of a foreign government" in s. 3(2)(a) was meant to apply only to individuals who have been granted diplomatic privileges and immunities under international law. Because it was common ground that neither of Mr. Vavilov's parents had been granted such privileges or immunities, s. 3(2)(a) did not apply to him. The cancellation of his citizenship certificate on the basis of s. 3(2)(a) therefore could not stand, and Mr. Vavilov was entitled to Canadian citizenship under the *Citizenship Act*.

168 The dissenting judge disagreed, finding that the Registrar's interpretation of s. 3(2)(a) was reasonable. According to the dissenting judge, the text of that provision admits of at least two rational interpretations: one that includes all employees of a foreign government and one that is restricted to those who have been granted diplomatic privileges and immunities. In the dissenting judge's view, the former interpretation is not foreclosed by the context or the purpose of the provision. It was thus open to the Registrar to conclude that Mr. Vavilov's parents fell within the scope of s. 3(2)(a). The dissenting judge would have upheld the Registrar's decision.

C. *Analysis*

(1) Standard of Review

169 Applying the standard of review analysis set out above leads to the conclusion that the standard to be applied in reviewing the merits of the Registrar's decision is reasonableness.

170 When a court reviews the merits of an administrative decision, reasonableness is presumed to be the applicable standard of review, and there is no basis for departing from that presumption in this case. The Registrar's decision has come before the courts by way of judicial review, not by way of a statutory appeal. On this point, we note that ss. 22.1 through 22.4 of the *Citizenship Act* lay down rules that govern applications for judicial review of decisions made under that Act, one of which, in s. 22.1(1), is that such an application may be made only with leave of the Federal Court. However, none of these provisions allow for a party to bring an appeal from a decision under the *Citizenship Act*. Given this fact, and given that Parliament has not prescribed the standard to be applied on judicial review of the decision at issue, there is no indication that the legislature intended a standard of review other than reasonableness to apply. The Registrar's decision does not give rise to any constitutional questions, general questions of law of central importance to the legal system as a whole or questions regarding the jurisdictional boundaries between two or more administrative bodies. As a result, the standard to be applied in reviewing the decision is reasonableness.

(2) Review for Reasonableness

171 The principal issue before this Court is whether it was reasonable for the Registrar to find that Mr. Vavilov's parents had been "other representative[s] or employee[s] in Canada of a foreign government" within the meaning of s. 3(2)(a) of the *Citizenship Act*.

172 In our view, it was not. The Registrar failed to justify her interpretation of s. 3(2)(a) of the *Citizenship Act* in light of the constraints imposed by the text of s. 3 of the *Citizenship Act* considered as a whole, by other legislation and international treaties that inform the purpose of s. 3, by the jurisprudence on the interpretation of s. 3(2)(a), and by the potential consequences of her interpretation. Each of these elements -- viewed individually and cumulatively -- strongly supports the conclusion that s. 3(2)(a) was not intended to apply to children of foreign government representatives or employees who have not been granted diplomatic privileges and immunities. Though Mr. Vavilov raised many of these considerations in his submissions in response to the procedural fairness letter (A.R., vol. IV, at pp. 448-52), the Registrar failed to address those submissions in her reasons and did not, to justify her interpretation of s. 3(2)(a), do more than conduct a cursory review of the legislative history and conclude that her interpretation was not explicitly precluded by the text of s. 3(2)(a).

173 Our review of the Registrar's decision leads us to conclude that it was unreasonable for her to find that the phrase "diplomatic or consular officer or other representative or employee in Canada of a foreign government" applies to individuals who have not been granted diplomatic privileges and immunities in Canada. It is undisputed that Mr. Vavilov's parents had not been granted such privileges and immunities. No purpose would therefore be served by remitting this matter to the Registrar.

(a) *Section 3(2) of the Citizenship Act*

174 The analyst justified her conclusion that Mr. Vavilov is not a citizen of Canada by reasoning that his parents were "other representative[s] or employee[s] in Canada of a foreign government" within the meaning of s. 3(2)(a) of

the *Citizenship Act.* Section 3(2)(a) provides that children of "a diplomatic or consular officer or other representative or employee in Canada of a foreign government" are exempt from the general rule in s. 3(1)(a) that individuals born in Canada after February 14, 1977 acquire Canadian citizenship by birth. The analyst observed that although the term "diplomatic or consular officer" is defined in the *Interpretation Act* and does not apply to individuals like Mr. Vavilov's parents, the phrase "other representative or employee in Canada of a foreign government" is not so defined, and may apply to them.

175 The analyst's attempt to give the words "other representative or employee in Canada of a foreign government" a meaning distinct from that of "diplomatic or consular officer" is sensible. It is generally consistent with the principle of statutory interpretation that Parliament intends each word in a statute to have meaning: Sullivan, at p. 211. We accept that if the phrase "other representative or employee in Canada of a foreign government" were considered in isolation, it could apply to a spy working in the service of a foreign government in Canada. However, the analyst failed to address the immediate statutory context of s. 3(2)(a), including the closely related text in s. 3(2)(c):

> (2) Paragraph (1)(a) does not apply to a person if, at the time of his birth, neither of his parents was a citizen or lawfully admitted to Canada for permanent residence and either of his parents was
>
> (a) a diplomatic or consular officer or other representative or employee in Canada of a foreign government;
>
> (b) an employee in the service of a person referred to in paragraph (a); or
>
> (c) an officer or employee in Canada of a specialized agency of the United Nations or an officer or employee in Canada of any other international organization to whom there are granted, by or under any Act of Parliament, diplomatic privileges and immunities certified by the Minister of Foreign Affairs to be equivalent to those granted to a person or persons referred to in paragraph (a).

176 As the majority of the Court of Appeal noted (at paras. 61-62), the wording of s. 3(2)(c) provides clear support for the conclusion that *all* of the persons contemplated by s. 3(2)(a) -- including those who are "employee[s] in Canada of a foreign government" -- must have been granted diplomatic privileges and immunities in some form. If, as the Registrar concluded, s. 3(2)(a) includes persons who do not benefit from these privileges or immunities, it is difficult to understand how effect could be given to the explicit equivalency requirement articulated in s. 3(2)(c). However, the analyst did not account for this tension in the immediate statutory context of s. 3(2)(a).

(b) *The Foreign Missions and International Organizations Act and the Treaties It Implements*

177 Before the Registrar, Mr. Vavilov argued that s. 3(2) of the *Citizenship Act* must be read in conjunction with both the *Foreign Missions and International Organizations Act*, S.C. 1991, c. 41 ("*FMIOA*"), and the *Vienna Convention on Diplomatic Relations*, Can. T.S. 1966 No. 29 ("*VCDR*"). The *VCDR* and the *Vienna Convention on Consular Relations*, Can. T.S. 1974 No. 25, are the two leading treaties that extend diplomatic and/or consular privileges and immunities to employees and representatives of foreign governments in diplomatic missions and consular posts. Parliament has implemented the relevant provisions of both conventions by means of s. 3(1) of the *FMIOA*.

178 To begin, we note that Canada affords citizenship in accordance both with the principle of *jus soli*, the acquisition of citizenship through birth regardless of the parents' nationality, and with that of *jus sanguinis*, the acquisition of citizenship by descent, that is through a parent: *Citizenship Act*, s. 3(1)(a) and (b); see I. Brownlie, *Principles of Public International Law* (5th ed. 1998), at pp. 391-93. These two principles operate as a backdrop to s. 3 of the *Citizenship Act* as a whole. It is undisputed that s. 3(2)(a) operates as an exception to these general rules. However, Mr. Vavilov took a narrower view of that exception than did the Registrar. In his submissions to the Registrar, he argued that Parliament intended s. 3(2) of the *Citizenship Act* to simply mirror the *FMIOA* and the *VCDR*, as well as Article II of the *Optional Protocol to the Vienna Convention on Diplomatic Relations, concerning Acquisition of Nationality*, 500 U.N.T.S. 223, which provides that "[m]embers of the mission not being nationals of the receiving State, and members of their families forming part of their household, shall not, solely by the operation

of the law of the receiving State, acquire the nationality of that State". Mr. Vavilov made the following submission to the Registrar:

> The purpose in excluding diplomats and their families, including newborn children, from acquiring citizenship in the receiving state relates to the immunities which extend to this group of people. Diplomats and their family members are immune from criminal prosecution and civil liability in the receiving state. As such, they cannot acquire citizenship in the receiving state and also benefit from these immunities. A citizen has duties and responsibilities to its country. Immunity is inconsistent with this principle and so does not apply to citizens. See Article 37 of the *Convention*.
>
> Section 3(2) legislates into Canadian domestic law the above principles and should be narrowly interpreted with these purposes in mind. The term "employee in Canada of a foreign government" must be interpreted to mean an employee of a diplomatic mission, or connected to it, who benefits from the immunities of the *Convention*. Any other interpretation would lead to absurd results. There is no purpose served in excluding any child born of a person not having a connection to a diplomatic mission in Canada while sojourning here from the principle of *Jus soli*.

(A.R., vol. IV, at pp. 449-50)

179 In *Al-Ghamdi v. Canada (Minister of Foreign Affairs & International Trade)*, 2007 FC 559, 64 Imm. L. R. (3d) 67, a case which was referred to in the analyst's report and which we will discuss in greater detail below, the Federal Court, at para. 53, quoted a passage by Professor Brownlie on this point:

> Of particular interest are the special rules relating to the jus soli, appearing as exceptions to that principle, the effect of the exceptions being to remove the cases where its application is clearly unjustifiable. A rule which has very considerable authority stipulated that children born to persons having diplomatic immunity shall not be nationals by birth of the state to which the diplomatic agent concerned is accredited. Thirteen governments stated the exception in the preliminaries of the Hague Codification Conference. In a comment on the relevant article of the Harvard draft on diplomatic privileges and immunities it is stated: 'This article is believed to be declaratory of an established rule of international law'. The rule receives ample support from legislation of states and expert opinion. The Convention on Certain Questions relating to the Conflict of Nationality Laws of 1930 provides in Article 12: 'Rules of law which confer nationality by reasons of birth on the territory of a State shall not apply automatically to children born to persons enjoying diplomatic immunities in the country where the birth occurs.'
>
> In 1961 the United Nations Conference on Diplomatic Intercourse and Immunities adopted an Optional Protocol concerning Acquisition of Nationality, which provided in Article II: 'Members of the mission not being nationals of the receiving State, and members of their families forming part of their household, shall not, solely by the operation of the law of the receiving State, acquire the nationality of that State'. Some states extend the rule to the children of consuls, and there is some support for this from expert opinion. [Emphasis deleted.]
>
> (Brownlie, at pp. 392-93).

180 Mr. Vavilov included relevant excerpts from the parliamentary debate that had preceded the enactment of the *Citizenship Act* in support of his argument that the very purpose of s. 3(2) of the *Citizenship Act* was to align Canada's citizenship rules with these principles of international law. These excerpts describe s. 3(2) as "conform[ing] to international custom" and as having been drafted with the intention of "exclud[ing] children born in Canada to diplomats from becoming Canadian citizens": Hon. J. Hugh Faulkner, Secretary of State of Canada, House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Broadcasting, Films and Assistance to the Arts, respecting Bill C-20*, *An Act respecting citizenship*, No. 34, 1st Sess., 30th Parl., February 24, 1976, at 34:23. The record of that debate also reveals that Parliament took care to avoid the danger that because of how some provisions were written, "a number of other people would be affected such as those working for large foreign corporations": *ibid*. Although the analyst discussed the textual difference between s. 3(2) and a similar provision in the former *Canadian Citizenship Act*, she did not grapple with these other elements of the legislative history, despite the fact that they cast considerable doubt on her conclusions, indicating that s. 3(2) was

not intended to affect the status of individuals whose parents have not been granted diplomatic privileges and immunities.

181 In attempting to distinguish the meaning of the phrase "other representative or employee in Canada of a foreign government" from that of the term "diplomatic or consular officer", the analyst also appeared to overlook the possibility that some individuals who fall into the former category might be granted privileges or immunities despite not being considered "diplomatic or consular officer[s]" under the *Interpretation Act*. Yet, as the majority of the Federal Court of Appeal pointed out, such individuals do in fact exist: paras. 53-55, citing *FMIOA*, at ss. 3 and 4 and Sched. II, Articles 1, 41, 43, 49, and 53. In light of Mr. Vavilov's submissions regarding the purpose of s. 3(2), the failure to consider this possibility is a noticeable omission.

182 It is well established that domestic legislation is presumed to comply with Canada's international obligations, and that it must be interpreted in a manner that reflects the principles of customary and conventional international law: *Appulonappa*, at para. 40; see also *Pushpanathan*, at para. 51; *Baker*, at para. 70; *GreCon Dimter inc. v. J.R. Normand inc.*, 2005 SCC 46, [2005] 2 S.C.R. 401, at para. 39; *Hape*, at paras. 53- 54; *B010 v. Canada (Citizenship and Immigration)*, 2015 SCC 58, [2015] 3 S.C.R. 704, at para. 48; *India v. Badesha*, 2017 SCC 44, [2017] 2 S.C.R. 127, at para. 38; *Office of the Children's Lawyer v. Balev*, 2018 SCC 16, [2018] 1 S.C.R. 398, at paras. 31-32. Yet the analyst did not refer to the relevant international law, did not inquire into Parliament's purpose in enacting s. 3(2) and did not respond to Mr. Vavilov's submissions on this issue. Nor did she advance any alternate explanation for why Parliament would craft such a provision in the first place. In the face of compelling submissions that the underlying rationale of s. 3(2) was to implement a narrow exception to a general rule in a manner that was consistent with established principles of international law, the analyst and the Registrar chose a different interpretation without offering any reasoned explanation for doing so.

(c) *Jurisprudence Interpreting Section 3(2) of the Citizenship Act*

183 Although the analyst cited three Federal Court decisions on s. 3(2)(a) of the *Citizenship Act* in a footnote, she dismissed them as being irrelevant on the basis that they related only to "individuals whose parents maintained diplomatic status in Canada at the time of their birth". But this distinction, while true, does not explain why the *reasoning* employed in those decisions, which directly concerned the scope, the meaning and the legislative purpose of s. 3(2)(a), was inapplicable in Mr. Vavilov's case. Had the analyst considered just the three cases cited in her report -- *Al-Ghamdi*; *Lee v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 614, [2009] 1 F.C.R. 204; and *Hitti v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 294, 310 F.T.R. 169 -- it would have been evident to her that she needed to grapple with and justify her interpretation in light of the persuasive and comprehensive legal reasoning that supports the position that s. 3(2)(a) was intended to apply only to those individuals whose parents have been granted diplomatic privileges and immunities.

184 In *Al-Ghamdi*, the Federal Court considered the constitutionality of paras. (a) and (c) of s. 3(2) of the *Citizenship Act* in reviewing a decision in which Passport Canada had refused to issue a passport to a child of a Saudi Arabian diplomat. In its reasons, the court came to a number of conclusions regarding the purpose and scope of s. 3(2), including, at para. 5, that:

> The only individuals covered in paragraphs 3(2)(a) and (c) of the *Citizenship Act* are children of individuals with diplomatic status. These are individuals who enter Canada under special circumstances and without undergoing any of the normal procedures. Most importantly, while in Canada, they are granted all of the immunities and privileges of diplomats ... .

185 The court went on to extensively document the link between the exception to the rule of citizenship by birth set out in s. 3(2) of the *Citizenship Act* and the rules of international law, the *FMIOA* and the *VCDR*: *Al-Ghamdi*, at paras. 52 et. seq. It noted that there is an established rule of international law that children born to parents who enjoy diplomatic immunities are not entitled to automatic citizenship by birth, and that their status in this respect is an exception to the principle of *jus soli*: *Al-Ghamdi*, at para. 53, quoting Brownlie, at pp. 391-93. In finding that the exceptions under s. 3(2) to citizenship on the basis of *jus soli* do not infringe the rights of children of diplomats under s. 15 of the *Charter*, the court emphasized that *all* children to whom s. 3(2) applies are entitled to an

"extraordinary array of privileges under the *Foreign Missions and International Organizations Act*": *Al-Ghamdi*, at para. 62. Citing the *VCDR*, it added that "[i]t is precisely because of the vast array of privileges accorded to diplomats and their families, which are by their very nature inconsistent with the obligations of citizenship, that a person who enjoys diplomatic status cannot acquire citizenship": para. 63. In its analysis under s. 1 of the *Charter*, the court found that the choice to deny citizenship to individuals provided for in s. 3(2) is "tightly connected" to a pressing government objective of ensuring "that no citizen is immune from the obligations of citizenship", such as the obligations to pay taxes and comply with the criminal law: *Al-Ghamdi*, at paras. 74-75. In the case at bar, the analyst failed entirely to engage with the arguments endorsed by the Federal Court in *Al-Ghamdi* despite the court's key finding that s. 3(2)(a) applies only to "children born of foreign diplomats or an equivalent", a conclusion upon which the very constitutionality of the provision turned: *Al-Ghamdi*, at paras. 3, 9, 27, 28, 56 and 59.

186 In *Lee*, another case cited by the analyst, the Federal Court confirmed the finding in *Al-Ghamdi* that "[t]he only individuals covered in paragraphs 3(2)(a) and (c) of the *Citizenship Act* are children of individuals with diplomatic status": *Lee*, at para. 77. The court found in *Lee* that the "functional duties of the applicant's father" were not relevant to whether or not the applicant was excluded from citizenship pursuant to s. 3(2)(a) of the *Citizenship Act*: para. 58. Rather, what mattered was only that at the time of the applicant's birth, his father had been a registered consular official and had held a diplomatic passport and the title of Vice-Consul: paras. 44, 58, 61 and 63.

187 *Hitti*, the third case cited in the analyst's report, concerned a decision to confiscate two citizenship certificates on the basis that, under s. 3(2) of the *Citizenship Act*, their holders had never been entitled to them. In that case, the applicants' father, a Lebanese citizen, had been employed as an information officer of the League of Arab States in Ottawa. Although the League did not have diplomatic standing at that time, Canada had agreed as a matter of courtesy to extend diplomatic status to officials of the League's information centre, treating them as "attachés" of their home countries' embassies: *Hitti*, at paras. 6 and 9; see also *Interpretation Act*, s. 35(1). Mr. Hitti argued he did not, in practice, fulfill diplomatic tasks or act as a representative of Lebanon, but there was nonetheless a record of his being an accredited diplomat, enjoying the benefits of that status and being covered by the *VCDR* when his children were born: paras. 5 and 8. The Federal Court rejected a submission that Mr. Hitti would have had to perform duties in the service of Lebanon in order for his children to fall within the meaning of s. 3(2)(a), and concluded that "what Mr. Hitti did when he was in the country is not relevant": para. 32.

188 What can be seen from both *Lee* and *Hitti* is that what matters, for the purposes of s. 3(2)(a), is not whether an individual carries out activities in the service of a foreign state while in Canada, but whether, at the relevant time, the individual has been granted diplomatic privileges and immunities. Thus, in addition to the Federal Court's decision in *Al-Ghamdi*, the analyst was faced with two cases in which the application of s. 3(2) had turned on the existence of diplomatic status rather than on the "functional duties" or activities of the child's parents. In these circumstances, it was a significant omission for her to ignore the Federal Court's reasoning when determining whether the espionage activities of Ms. Vavilova and Mr. Bezrukov were sufficient to ground the application of s. 3(2)(a).

(d) *Possible Consequences of the Registrar's Interpretation*

189 When asked why the children of individuals referred to in s. 3(2)(a) would be excluded from acquiring citizenship by birth, another analyst involved in Mr. Vavilov's file (who had also been involved in Mr. Vavilov's brother's file) responded as follows:

> Well, usually the way we use section 3(2)(a) is for - you're right, for diplomats and that they don't -- because they are not -- they are not obliged ... to the law of Canada and everything, so that's why their children do not obtain citizenship if they were born in Canada while the person was in Canada under that status. But then there is also this other part of the Act that says other representatives or employees of a foreign government in Canada, that may open the door for other person than diplomats and that's how we interpreted in this specific case 3(2)(a) but there is no jurisprudence on that.
>
> (R.R. transcript, at pp. 87-88)

190 In other words, the officials responsible for these files were aware that s. 3(2)(a) was informed by the principle

that individuals subject to the exception are "not obliged ... to the law of Canada". They were also aware that the interpretation they had adopted in the case of the Vavilov brothers was a novel one. Although the Registrar knew this, she failed to provide a rationale for this expanded interpretation.

191 Additionally, there is no evidence that the Registrar considered the potential consequences of expanding her interpretation of s. 3(2)(a) to include individuals who have not been granted diplomatic privileges and immunities. Citizenship has been described as "the right to have rights": U.S. Supreme Court Chief Justice Earl Warren, as quoted in A. Brouwer, *Statelessness in Canadian Context: A Discussion Paper* (July 2003) (online), at p. 2. The importance of citizenship was recognized in *Benner v. Canada (Secretary of State)*, *[1997] 1 S.C.R. 358*, in which Iacobucci J., writing for this Court, stated: "I cannot imagine an interest more fundamental to full membership in Canadian society than Canadian citizenship": para. 68. This was reiterated in *Canada (Minister of Citizenship and Immigration) v. Tobiass*, *[1997] 3 S.C.R. 391*, in which this Court unanimously held that "[f]or some, such as those who might become stateless if deprived of their citizenship, it may be valued as highly as liberty": para. 108.

192 It perhaps goes without saying that rules concerning citizenship require a high degree of interpretive consistency in order to shield against a perception of arbitrariness and to ensure conformity with Canada's international obligations. We can therefore only assume that the Registrar intended that this new interpretation of s. 3(2)(a) would apply to any other individual whose parent is employed by or represents a foreign government at the time of the individual's birth in Canada but has not been granted diplomatic privileges and immunities. The Registrar's interpretation would not, after all, limit the application of s. 3(2)(a) to the children of spies -- its logic would be equally applicable to a number of other scenarios, including that of a child of a non-citizen worker employed by an embassy as a gardener or cook, or of a child of a business traveller who represents a foreign government-owned corporation. Mr. Vavilov had raised the fact that provisions such as s. 3(2)(a) must be given a narrow interpretation because they deny or potentially take away rights -- that of citizenship under s. 3(1) in this case -- which otherwise benefit from a liberal and broad interpretation: *Brossard (Town) v. Québec (Commission des droits de la personne)*, *[1988] 2 S.C.R. 279*, at p. 307. Yet there is no indication that the Registrar considered the potential harsh consequences of her interpretation for such a large class of individuals, which included Mr. Vavilov, or the question whether, in light of those possible consequences, Parliament would have intended s. 3(2)(a) to apply in this manner.

193 Moreover, we would note that despite following a different legal process, the Registrar's decision in this case had the same effect as a revocation of citizenship -- a process which has been described by scholars as "a kind of 'political death'" -- depriving Mr. Vavilov of his right to vote and the right to enter and remain in Canada: see A. Macklin, "Citizenship Revocation, the Privilege to Have Rights and the Production of the Alien" *(2014), 40 Queen's L.J. 1*, at pp. 7-8. While we question whether the Registrar was empowered to unilaterally alter Canada's position with respect to Mr. Vavilov's citizenship and recognize that the relationship between the cancellation of a citizenship certificate under s. 26 of the *Citizenship Regulations* and the revocation of an individual's citizenship (as set out in s. 10 of the *Citizenship Act*) is not clear, we leave this issue for another day because it was neither raised nor argued by the parties.

D. *Conclusion*

194 Multiple legal and factual constraints may bear on a given administrative decision, and these constraints may interact with one another. In some cases, a failure to justify the decision against any one relevant constraint may be sufficient to cause the reviewing court to lose confidence in the reasonableness of the decision. Section 3 of the *Citizenship Act* considered as a whole, other legislation and international treaties that inform the purpose of s. 3, the jurisprudence cited in the analyst's report, and the potential consequences of the Registrar's decision point overwhelmingly to the conclusion that Parliament did not intend s. 3(2)(a) to apply to children of individuals who have not been granted diplomatic privileges and immunities. The Registrar's failure to justify her decision with respect to these constraints renders her interpretation unreasonable, and we would therefore uphold the Federal Court of Appeal's decision to quash the Registrar's decision.

195 As noted above, we would exercise our discretion not to remit the matter to the Registrar for redetermination.

Crucial to our decision is the fact that Mr. Vavilov explicitly raised all of these issues before the Registrar and that the Registrar had an opportunity to consider them but failed to do so. She offered no justification for the interpretation she adopted except for a superficial reading of the provision in question and a comment on part of its legislative history. On the other hand, there is overwhelming support -- including in the parliamentary debate, established principles of international law, an established line of jurisprudence and the text of the provision itself -- for the conclusion that Parliament did not intend s. 3(2)(a) of the *Citizenship Act* to apply to children of individuals who have not been granted diplomatic privileges and immunities. That being said, we would stress that it is not our intention to offer a definitive interpretation of s. 3(2)(a) in all respects, nor to foreclose the possibility that multiple reasonable interpretations of other aspects might be available to administrative decision makers. In short, we do not suggest that there is necessarily "one reasonable interpretation" of the provision as a whole. But we agree with the majority of the Court of Appeal that it was *not* reasonable for the Registrar to interpret s. 3(2)(a) as applying to children of individuals who have not been granted diplomatic privileges and immunities at the time of the children's birth.

196 Given that it is undisputed that Ms. Vavilova and Mr. Bezrukov, as undercover spies, were granted no such privileges, it would serve no purpose to remit the matter in this case to the Registrar. Given that Mr. Vavilov is a person who was born in Canada after February 14, 1977, his status is governed only by the general rule set out in s. 3(1)(a) of the *Citizenship Act*. He is a Canadian citizen.

E. *Disposition*

197 The appeal is dismissed with costs throughout to Mr. Vavilov.

The following are the reasons delivered by

R.S. ABELLA AND A. KARAKATSANIS JJ. (concurring)

198 Forty years ago, in *C.U.P.E., Local 963 v. New Brunswick Liquor Corporation*, [1979] 2 S.C.R. 227, this Court embarked on a course to recognize the unique and valuable role of administrative decision-makers within the Canadian legal order. Breaking away from the court-centric theories of years past, the Court encouraged judges to show deference when specialized administrative decision-makers provided reasonable answers to legal questions within their mandates. Building on this more mature understanding of administrative law, subsequent decisions of this Court sought to operationalize deference and explain its relationship to core democratic principles. These appeals offered a platform to clarify and refine our administrative law jurisprudence, while remaining faithful to the deferential path it has travelled for four decades.

199 Regrettably, the majority shows our precedents no such fidelity. Presented with an opportunity to steady the ship, the majority instead dramatically reverses course -- away from this generation's deferential approach and back towards a prior generation's more intrusive one. Rather than confirming a meaningful presumption of deference for administrative decision-makers, as our common law has increasingly done for decades, the majority's reasons strip away deference from hundreds of administrative actors subject to statutory rights of appeal; rather than following the consistent path of this Court's jurisprudence in understanding legislative intent as being the intention to leave legal questions within their mandate to specialized decision-makers with expertise, the majority removes expertise from the equation entirely and reformulates legislative intent as an overriding intention to provide -- or not provide -- appeal routes; and rather than clarifying the role of reasons and how to review them, the majority revives the kind of search for errors that dominated the pre-*C.U.P.E.* era. In other words, instead of *reforming* this generation's evolutionary approach to administrative law, the majority *reverses* it, taking it back to the formalistic judge-centred approach this Court has spent decades dismantling.

200 We support the majority's decision to eliminate the vexing contextual factors analysis from the standard of review framework and to abolish the shibboleth category of "true questions of jurisdiction". These improvements, accompanied by a meaningful presumption of deference for administrative decision-makers, would have simplified our judicial review framework and addressed many of the criticisms levied against our jurisprudence since *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190.

201 But the majority goes much further and fundamentally reorients the decades-old relationship between administrative actors and the judiciary, by dramatically expanding the circumstances in which generalist judges will be entitled to substitute their own views for those of specialized decision-makers who apply their mandates on a daily basis. In so doing, the majority advocates a profoundly different philosophy of administrative law than the one which has guided our Court's jurisprudence for the last four decades. The majority's reasons are an encomium for correctness and a eulogy for deference.

The Evolution of Canadian Administrative Law

202 The modern Canadian state "could not function without the many and varied administrative tribunals that people the legal landscape" (The Rt. Hon. Beverley McLachlin, *Administrative Tribunals and the Courts: An Evolutionary Relationship*, May 27, 2013 (online)). Parliament and the provincial legislatures have entrusted a broad array of complex social and economic challenges to administrative actors, including regulation of labour relations, welfare programs, food and drug safety, agriculture, property assessments, liquor service and production, infrastructure, the financial markets, foreign investment, professional discipline, insurance, broadcasting, transportation and environmental protection, among many others. Without these administrative decision-makers, "government would be paralyzed, and so would the courts" (Guy Régimbald, *Canadian Administrative Law* (2nd ed. 2015), at p. 3).

203 In exercising their mandates, administrative decision-makers often resolve claims and disputes within their areas of specialization (Gus Van Harten et al., *Administrative Law: Cases, Text, and Materials* (7th ed. 2015), at p. 13). These claims and disputes vary greatly in scope and subject-matter. Corporate merger requests, professional discipline complaints by dissatisfied clients, requests for property reassessments and applications for welfare benefits, among many other matters, all fall within the purview of the administrative justice system.

204 The administrative decision-makers tasked to resolve these issues come from many different walks of life (Van Harten et al., at p. 15). Some have legal backgrounds, some do not. The diverse pool of decision-makers in the administrative system responds to the diversity of issues that it must resolve. To address this broad range of issues, administrative dispute-resolution processes are generally "[d]esigned to be less cumbersome, less expensive, less formal and less delayed" than their judicial counterparts -- but "no less effectiv[e] or credibl[e]" (*Rasanen v. Rosemount Instruments Ltd.* *(1994), 17 O.R. (3d) 267* (C.A.), at p. 279). In the field of labour relations, for example, Parliament explicitly rejected a court-based system to resolve workplace disputes in favour of a Labour Board, staffed with representatives from management and labour alongside an independent member (Bora Laskin, "Collective Bargaining in Ontario: A New Legislative Approach" (1943), 21 *Can. Bar Rev.* 684; John A. Willes, *The Ontario Labour Court: 1943-1944* (1979); Katherine Munro, "A 'Unique Experiment': The Ontario Labour Court, 1943-1944" (2014), 74 *Labour/Le Travail* 199). Other administrative processes -- license renewals, zoning permit issuances and tax reassessments, for example -- bear even less resemblance to the traditional judicial model.

205 Courts, through judicial review, monitor the boundaries of administrative decision making. Questions about the standards of judicial review have been an enduring feature of Canadian administrative law. The debate, in recent times, has revolved around "reasonableness" and "correctness", and determining when each standard applies. On the one hand, "reasonableness" review expects courts to defer to decisions by specialized decision-makers that "are defensible in respect of the facts and law"; on the other, "correctness" review allows courts to substitute their own opinions for those of the initial decision-maker (*Dunsmuir*, at paras. 47-50). This standard of review debate has profound implications for the extent to which reviewing courts may substitute their views for those of administrative decision-makers. At its core, it is a debate over two distinct philosophies of administrative law.

206 The story of modern Canadian administrative law is the story of a shift away from the court-centric philosophy which denied administrative bodies the authority to interpret or shape the law. This approach found forceful expression in the work of Albert Venn Dicey. For Dicey, the rule of law meant the rule of courts. Dicey developed his philosophy at the end of the 19th century to encourage the House of Lords to restrain the government from implementing ameliorative social and welfare reforms administered by new regulatory agencies. Famously, Dicey

asserted that administrative law was anathema to the English legal system (Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution* (10th ed. 1959), at pp. 334-35). Because, in his view, only the judiciary had the authority to interpret law, there was no reason for a court to defer to legal interpretations proffered by administrative bodies, since their decisions did not constitute "law" (Kevin M. Stack, "Overcoming Dicey in Administrative Law" *(2018), 68 U.T.L.J. 293*, at p. 294).

207 The canonical example of Dicey's approach at work is the House of Lords' decision in *Anisminic Ltd. v. Foreign Compensation Commission*, [1969] 2 A.C. 147, the judicial progenitor of "jurisdictional error". *Anisminic* entrenched non-deferential judicial review by endorsing a lengthy checklist of "jurisdictional errors" capable of undermining administrative decisions. Lord Reid noted that there were two scenarios in which an administrative decision-maker would lose jurisdiction. The first was narrow and asked whether the legislature had empowered the administrative decision-maker to "enter on the inquiry in question" (p. 171). The second was wider:

> [T]here are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. *It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account.Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive.* [Emphasis added; p. 171.]

208 The broad "jurisdictional error" approach in *Anisminic* initially found favour with this Court in cases like *Metropolitan Life Insurance Company v. International Union of Operating Engineers, Local 796*, *[1970] S.C.R. 425*, and *Bell v. Ontario Human Rights Commission*, *[1971] S.C.R. 756*. These cases "took the position that a definition of jurisdictional error should include any question pertaining to the interpretation of a statute made by an administrative tribunal", and in each case, "th[e] Court substituted what was, in its opinion, the correct interpretation of the enabling provision of the tribunal's statute for that of the tribunal" (*Canada (Attorney General) v. Public Service Alliance of Canada*, *[1991] 1 S.C.R. 614*, at p. 650, per Cory J., dissenting, but not on this point). In *Metropolitan Life*, for example, this Court quashed a labour board's decision to certify a union, concluding that the Board had "ask[ed] itself the wrong question" and "decided a question which was not remitted to it" (p. 435). In *Bell*, this Court held that a human rights commission had strayed beyond its jurisdiction by deciding to investigate a complaint of racial discrimination filed against a landlord. The Court held that the Commission had incorrectly interpreted the term "self-contained dwelling uni[t]" found in s. 3 of the *Ontario Human Rights Code*, *1961-62*, S.O. 1961-62, c. 93, and by so doing, had lost jurisdiction to inquire into the complaint of discrimination (pp. 767 and 775).

209 As these cases illustrate, the *Anisminic* approach proved easy to manipulate, allowing courts to characterize any question as "jurisdictional" and thereby give themselves latitude to substitute their own view of the appropriate answer without regard for the original decision-maker's decision or reasoning. The *Anisminic* era and the "jurisdictional error" approach were and continue to be subject to significant judicial and academic criticism (*Public Service Alliance*, at p. 650; *National Corn Growers Assn. v. Canada (Import Tribunal)*, *[1990] 2 S.C.R. 1324*, at p. 1335, per Wilson J., concurring; Beverley McLachlin, P.C., "'Administrative Law is Not for Sissies': Finding a Path Through the Thicket" (2016), 29 *C.J.A.L.P.* 127, at pp. 129-30; Jocelyn Stacey and Alice Woolley, "Can Pragmatism Function in Administrative Law?" *(2016), 74 S.C.L.R. (2d) 211*, at pp. 215-16; R.A. MacDonald, "Absence of Jurisdiction: A Perspective" (1983), 43 *R. du B.* 307).

210 In 1979, the Court signaled a turn to a more deferential approach to judicial review with its watershed decision in *C.U.P.E.* There, the Court challenged the "jurisdictional error" model and planted the seeds of a home-grown approach to administrative law in Canada. In a frequently-cited passage, Dickson J., writing for a unanimous Court, cautioned that courts "should not be alert to brand as jurisdictional, and therefore subject to broader curial review, that which may be doubtfully so" (p. 233; cited in nearly 20 decisions of this Court, including *Dunsmuir*, at para. 35; *Canada (Citizenship and Immigration) v. Khosa*, *[2009] 1 S.C.R. 339*, at para. 45; *Alberta (Information and Privacy*

Commissioner) v. Alberta Teachers' Association, [2011] 3 S.C.R. 654, at para. 33; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, [2018] 2 S.C.R. 230, at para. 31). The Court instead endorsed an approach that respected the legislature's decision to assign legal policy issues in some areas to specialized, non-judicial decision-makers. The Court recognized that legislative language could "bristl[e] with ambiguities" and that the interpretive choices made by administrative tribunals deserved respect from courts, particularly when, as in *C.U.P.E.*, the decision was protected by a privative clause (pp. 230 and 234-36).

211 By championing "curial deference" to administrative bodies, *C.U.P.E.* embraced "a more sophisticated understanding of the role of administrative tribunals in the modern Canadian state" (*National Corn Growers*, at p. 1336, per Wilson J., concurring; *Domtar Inc. v. Quebec (Commission d'appel en matière de lésions professionnelles)*, [1993] 2 S.C.R. 756, at p. 800). As one scholar has observed:

> ... legislatures and courts in ... Canada have come to settle on the idea that the functional capacities of administrative agencies - their expertise, investment in understanding the practical circumstances at issue, openness to participation, and level of responsiveness to political change - justify not only their law-making powers but also judicial deference to their interpretations and decisions. *Law-making and legal interpretation are shared enterprises in the administrative state*. [Emphasis added.]
>
> (Stack, at p. 310)

212 In explaining why courts must sometimes defer to administrative actors, *C.U.P.E.* embraced two related foundational justifications for Canada's approach to administrative law -- one based on the legislature's express choice to have an administrative body decide the issues arising from its mandate; and one animated by the recognition that an administrative justice system could offer institutional advantages in relation to proximity, efficiency, and specialized expertise (David Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy" in Michael Taggart, ed., *The Province of Administrative Law* (1997), 279 at p. 304).

213 A new institutional relationship between the courts and administrative actors was thus being forged, based on "an understanding of the role of expertise in the modern administrative state" which "acknowledge[d] that judges are not always in the best position to interpret the law" (The Hon. Frank Iacobucci, "Articulating a Rational Standard of Review Doctrine: A Tribute to John Willis" (2002), 27 Queen's L.J. 859, at p. 866).

214 In subsequent decades, the Court attempted to reconcile the deference urged by *C.U.P.E.* with the lingering concept of "jurisdictional error". In *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048, the Court introduced the "pragmatic and functional" approach for deciding when a matter was within the jurisdiction of an administrative body. Instead of describing jurisdiction as a preliminary or collateral matter, the *Bibeault* test directed reviewing courts to consider the wording of the enactment conferring jurisdiction on the administrative body, the purpose of the statute creating the tribunal, the reason for the tribunal's existence, the area of expertise of its members, and the nature of the question the tribunal had to decide **--** all to determine whether the legislator "intend[ed] the question to be within the jurisdiction conferred on the tribunal" (p. 1087; see also p. 1088). If so, the tribunal's decision could only be set aside if it was "patently unreasonable" (p. 1086).

215 Although still rooted in a formalistic search for jurisdictional errors, the pragmatic and functional approach recognized that legislatures had assigned courts and administrative decision-makers distinct roles, and that the specialization and expertise of administrative decision-makers deserved deference. In her concurring reasons in *National Corn Growers*, Wilson J. noted that part of the process of moving away from Dicey's framework and towards a more sophisticated understanding of the role of administrative tribunals:

> ... has involved a growing recognition on the part of courts that they may simply not be as well equipped as administrative tribunals or agencies to deal with issues which Parliament has chosen to regulate through bodies exercising delegated power, e.g., labour relations, telecommunications, financial markets and international economic relations. Careful management of these sectors often requires the use of experts who have accumulated years of experience and a specialized understanding of the activities they supervise. [p. 1336]

216 By the mid-1990s, the Court had accepted that specialization and the legislative intent to leave issues to administrative decision-makers were inextricable and essential factors in the standard of review analysis. It stressed that "the expertise of the tribunal is of the utmost importance in determining the intention of the legislator with respect to the degree of deference to be shown to a tribunal's decision ... [e]ven where the tribunal's enabling statute provides explicitly for appellate review" (*United Brotherhood of Carpenters and Joiners of America, Local 579 v. Bradco Construction Ltd.*, [1993] 2 S.C.R. 316, at p. 335). Of the factors relevant to setting the standard of review, expertise was held to be "the most important" (*Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748, at para. 50).

217 Consistent with these judgments, this Court invoked the specialized expertise of a securities commission to explain why its decisions were entitled to deference on judicial review even when there was a statutory right of appeal. Writing for a unanimous Court, Iacobucci J. explained that "the concept of the specialization of duties requires that deference be shown to decisions of specialized tribunals on matters which fall squarely within the tribunal's expertise" (*Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557, at p. 591; see also *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [1989] 1 S.C.R. 1722, at pp. 1745-46). Critically, the Court's willingness to show deference demonstrated that specialization outweighed a statutory appeal as the most significant indicator of legislative intent.

218 In *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982, the Court reformulated the pragmatic and functional approach, engaging four slightly different factors from those in *Bibeault*, namely: (1) whether there was a privative clause, or conversely, a right of appeal; (2) the expertise of the decision-maker on the matter in question relative to the reviewing court; (3) the purpose of the statute as a whole, and of the provision in particular; and (4) the nature of the problem, i.e., whether it was a question of law, fact, or mixed law and fact (paras. 29-37). Instead of using these factors to answer whether a question was jurisdictional, *Pushpanathan* deployed them to discern how much deference the legislature intended an administrative decision to receive on judicial review. *Pushpanathan* confirmed three standards of review: patent unreasonableness, reasonableness *simpliciter*, and correctness (para. 27; see also *Southam*, at paras. 55-56).

219 Significantly, *Pushpanathan* did not disturb the finding reaffirmed in *Southam* that specialized expertise was the most important factor in determining whether a deferential standard applied. Specialized expertise thus remained integral to the calibration of legislative intent, even in the face of statutory rights of appeal (see *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247, at paras. 21 and 29-34; *Cartaway Resources Corp. (Re)*, [2004] 1 S.C.R. 672, at para. 45; *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, [2007] 1 S.C.R. 650, at paras. 88-92 and 100).

220 Next came *Dunsmuir*, which sought to simplify the pragmatic and functional analysis while maintaining respect for the specialized expertise of administrative decision-makers. The Court merged the three standards of review into two: reasonableness and correctness. *Dunsmuir* also wove together the deferential threads running through the Court's administrative law jurisprudence, setting out a presumption of deferential review for certain categories of questions, including those where the decision-maker had expertise or was interpreting its "home" statute (paras. 53-54, per Bastarache and LeBel JJ., and para. 124, per Binnie J., concurring). Certain categories of issues remained subject to correctness review, including constitutional questions regarding the division of powers, true questions of jurisdiction, questions of law that were both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise, and questions about jurisdictional lines between tribunals (paras. 58-61). Where the standard of review had not been satisfactorily determined in the jurisprudence, four contextual factors -- the presence or absence of a privative clause, the purpose of the tribunal, the nature of the question at issue and the expertise of the tribunal -- remained relevant to the standard of review analysis (para. 64).

221 Notably, *Dunsmuir* did not mention statutory rights of appeal as one of the contextual factors, and left undisturbed their marginal role in the standard of review analysis. Instead, the Court explicitly affirmed the links between deference, the specialized expertise of administrative decision-makers and legislative intent. Justices LeBel and Bastarache held that "deference requires respect for the legislative choices to leave some matters in the

hands of administrative decision makers, for the processes and determinations that draw on particular expertise and experiences, and for the different roles of the courts and administrative bodies within the Canadian constitutional system" (para. 49). They noted that "in many instances, those working day to day in the implementation of frequently complex administrative schemes have or will develop a considerable degree of expertise or field sensitivity to the imperatives and nuances of the legislative regime" (para. 49, citing David J. Mullan, "Establishing the Standard of Review: The Struggle for Complexity?" (2004), 17 *C.J.A.L.P.* 59, at p. 93).

222 Post-*Dunsmuir*, this Court continued to stress that specialized expertise is the basis for making administrative decision-makers, rather than the courts, the appropriate forum to decide issues falling within their mandates (see *Khosa*, at para. 25; *R. v. Conway*, [2010] 1 S.C.R. 765, at para. 53; *McLean v. British Columbia (Securities Commission)*, [2013] 3 S.C.R. 895, at paras. 30-33). Drawing on the concept of specialized expertise, the Court's post-*Dunsmuir* cases expressly confirmed a presumption of reasonableness review for an administrative decision-maker's interpretation of its home or closely-related statutes (see *Alberta Teachers' Association*, at paras. 39-41). As Gascon J. explained in *Mouvement laïque québécois v. Saguenay (City)*, [2015] 2 S.C.R. 3, at para. 46:

> Deference is in order where the Tribunal acts within its specialized area of expertise ... (*Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11, [2013] 1 S.C.R. 467, at paras. 166-68; *Mowat*, at para. 24). In *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at paras. 30, 34 and 39, the Court noted that, on judicial review of a decision of a specialized administrative tribunal interpreting and applying its enabling statute, it should be presumed that the standard of review is reasonableness (*Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40, [2014] 2 S.C.R. 135, at para. 55; *Canadian Artists' Representation v. National Gallery of Canada*, 2014 SCC 42, [2014] 2 S.C.R. 197 ("*NGC*"), at para. 13; *Khosa*, at para. 25; *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160, at paras. 26 and 28; *Dunsmuir*, at para. 54).

223 And in *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, [2016] 2 S.C.R. 293, the majority recognized:

> The presumption of reasonableness is grounded in the legislature's choice to give a specialized tribunal responsibility for administering the statutory provisions, and the expertise of the tribunal in so doing. Expertise arises from the specialization of functions of administrative tribunals like the Board which have a habitual familiarity with the legislative scheme they administer ... . [E]xpertise is something that inheres in a tribunal itself as an institution: "... at an institutional level, adjudicators ... can be presumed to hold relative expertise in the interpretation of the legislation that gives them their mandate, as well as related legislation that they might often encounter in the course of their functions". [Citation omitted; para. 33.]

224 The presumption of deference, therefore, operationalized the Court's longstanding jurisprudential acceptance of the "specialized expertise" principle in a workable manner, continuing the deferential path Dickson J. first laid out in *C.U.P.E.*

225 As for statutory rights of appeal, they continued to be seen as either an irrelevant factor in the standard of review analysis or one that yielded to specialized expertise. So firmly entrenched was this principle that in cases like *Bell Canada v. Bell Aliant Regional Communications*, [2009] 2 S.C.R. 764, *Smith v. Alliance Pipeline Ltd.*, [2011] 1 S.C.R. 160, *ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission)*, [2015] 3 S.C.R. 219, and *Canada (Attorney General) v. Igloo Vikski Inc.*, [2016] 2 S.C.R. 80, the Court applied the reasonableness standard without even *referring* to the presence of an appeal clause. When appeal clauses *were* discussed, the Court consistently confirmed that they did not oust the application of judicial review principles.

226 In *Khosa*, Binnie J. explicitly endorsed *Pezim* and rejected "the idea that in the absence of express statutory language ... a reviewing court is 'to apply a correctness standard as it does in the regular appellate context'" (para. 26). This reasoning was followed in *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, [2011] 3 S.C.R. 471 ("*Mowat*"), where the Court confirmed that "care should be taken not to conflate" judicial and appellate review (para. 30; see also para. 31). In *McLean*, decided two years after *Mowat*, the majority cited *Pezim*

and other cases for the proposition that "general administrative law principles still apply" on a statutory appeal (see para. 21, fn. 2). Similarly, in *Mouvement laïque*, Gascon J. affirmed that

> [w]here a court reviews a decision of a specialized administrative tribunal, the standard of review must be determined on the basis of administrative law principles. This is true regardless of whether the review is conducted in the context of an application for judicial review or of a statutory appeal ... . [para. 38]

227 In *Edmonton East*, the Court considered -- and again rejected -- the argument that statutory appeals should form a new category of correctness review. As the majority noted, "recognizing issues arising on statutory appeals as a new category to which the correctness standard applies -- as the Court of Appeal did in this case -- would go against strong jurisprudence from this Court" (para. 28). Even the dissenting judges in *Edmonton East*, although of the view that the wording of the relevant statutory appeal clause and legislative scheme pointed to the correctness standard, nonetheless unequivocally stated that "a statutory right of appeal is not a new 'category' of correctness review" (para. 70).

228 By the time these appeals were heard, contextual factors had practically disappeared from the standard of review analysis, replaced by a presumption of deference subject only to the correctness exceptions set out in *Dunsmuir* -- which explicitly did *not* include statutory rights of appeal. In other words, the Court was well on its way to realizing *Dunsmuir*'s promise of a simplified analysis. Justice Gascon recognized as much last year in *Canadian Human Rights Commission*:

> *This contextual approach should be applied sparingly*. As held by the majority of this Court in *Alberta Teachers*, it is inappropriate to "retreat to the application of a full standard of review analysis where it can be determined summarily" ... . After all, the "contextual approach can generate uncertainty and endless litigation concerning the standard of review" (*Capilano* [*Edmonton East*], at para. 35). The presumption of reasonableness review and the identified categories will generally be sufficient to determine the applicable standard. In the exceptional cases where such a contextual analysis may be justified to rebut the presumption, it need not be a long and detailed one (*Capilano* [*Edmonton East*], at para. 34). Where it has been done or referred to in the past, the analysis has been limited to determinative factors that showed a clear legislative intent justifying the rebuttal of the presumption (see, e.g., *Rogers*, at para. 15; *Tervita*, at paras. 35-36; see also, *Saguenay*, at paras. 50-51). [Emphasis added; para. 46.]

229 In sum, for four decades, our standard of review jurisprudence has been clear and unwavering about the foundational role of specialized expertise and the limited role of statutory rights of appeal. Where confusion persists, it concerns the relevance of the contextual factors in *Dunsmuir*, the meaning of "true questions of jurisdiction" and how best to conduct reasonableness review. That was the backdrop against which these appeals were heard and argued. But rather than ushering in a simplified next act, these appeals have been used to rewrite the whole script, reassigning to the courts the starring role Dicey ordained a century ago.

The Majority's Reasons

230 The majority's framework rests on a flawed and incomplete conceptual account of judicial review, one that unjustifiably ignores the specialized expertise of administrative decision-makers. Although the majority uses language endorsing a "presumption of reasonableness review", this presumption now rests on a totally new understanding of legislative intent and the rule of law. By prohibiting any consideration of well-established foundations for deference, such as "expertise ... institutional experience ... proximity and responsiveness to stakeholders ... prompt[ness], flexib[ility], and efficien[cy]; and ... access to justice", the majority reads out the foundations of the modern understanding of legislative intent in administrative law.

231 In particular, such an approach ignores the possibility that specialization and other advantages are embedded into the legislative choice to delegate particular subject matters to administrative decision-makers. Giving proper effect to the legislature's choice to "delegate authority" to an administrative decision-maker requires understanding

the *advantages* that the decision-maker may enjoy in exercising its mandate (*Dunsmuir*, at para. 49). As Iacobucci J. observed in *Southam*:

> Presumably if Parliament entrusts a certain matter to a tribunal and not (initially at least) to the courts, *it is because the tribunal enjoys some advantage that judges do not*. For that reason alone, review of the decision of a tribunal should often be on a standard more deferential than correctness. [Emphasis added; para. 55.]

232 Chief among those advantages are the institutional expertise and specialization inherent to administering a particular mandate on a daily basis. Those appointed to administrative tribunals are often chosen precisely because their backgrounds and experience align with their mandate (Van Harten et al., at p. 15; Régimbald, at p. 463). Some administrative schemes explicitly require a degree of expertise from new members as a condition of appointment (*Edmonton East*, at para. 33; *Dr. Q v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226, at para. 29; Régimbald, at p. 462). As institutions, administrative bodies also benefit from specialization as they develop "habitual familiarity with the legislative scheme they administer" (*Edmonton East*, at para. 33) and "grappl[e] with issues on a repeated basis" (*Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, [2003] 2 S.C.R. 157, at para. 53). Specialization and expertise are further enhanced by continuing education and through meetings of the membership of an administrative body to discuss policies and best practices (Finn Makela, "Acquired Expertise of Administrative Tribunals and the Standard of Judicial Review: The Case of Grievance Arbitrators and Human Rights Law" (2013), 17 *C.L.E.L.J.* 345, at p. 349). In addition, the blended membership of some tribunals fosters special institutional competence in resolving "polycentric" disputes (*Pushpanathan*, at para. 36; *Dr. Q* at paras. 29-30; *Pezim*, at pp. 591-92 and 596).

233 All this equips administrative decision-makers to tackle questions of law arising from their mandates. In interpreting their enabling statutes, for example, administrative actors may have a particularly astute appreciation for the on-the-ground consequences of particular legal interpretations; of statutory context; of the purposes that a provision or legislative scheme are meant to serve; and of specialized terminology used in their administrative setting. Coupled with this Court's acknowledgment that legislative provisions often admit of multiple reasonable interpretations, the advantages stemming from specialization and expertise provide a robust foundation for deference to administrative decision-makers on legal questions within their mandate (*C.U.P.E.*, at p. 236; *McLean*, at para. 37). As Professor H.W. Arthurs said:

> There is no reason to believe that a judge who reads a particular regulatory statute once in his life, perhaps in worst-case circumstances, can read it with greater fidelity to legislative purpose than an administrator who is sworn to uphold that purpose, who strives to do so daily, and is well-aware of the effect upon the purpose of the various alternate interpretations. There is no reason to believe that a legally-trained judge is better qualified to determine the existence or sufficiency or appropriateness of evidence on a given point than a trained economist or engineer, an arbitrator selected by the parties, or simply an experienced tribunal member who decides such cases day in and day out. There is no reason to believe that a judge whose entire professional life has been spent dealing with disputes one by one should possess an aptitude for issues which arise often because an administrative system dealing with cases in volume has been designed to strike an appropriate balance between efficiency and effective rights of participation.
>
> ("Protection against Judicial Review" (1983), 43 *R. du B.* 277, at p. 289)

234 Judges of this Court have endorsed both this passage and the broader proposition that specialization and expertise justify the deference owed to administrative decision-makers (*National Corn Growers*, at p. 1343, per Wilson J., concurring). As early as *C.U.P.E.*, Dickson J. fused expertise and legislative intent by explaining that an administrative body's specialized expertise can be essential to achieving the purposes of a statutory scheme:

> The Act calls for a delicate balance between the need to maintain public services, and the need to maintain collective bargaining. Considerable sensitivity and unique expertise on the part of Board members is all the more required if the twin purposes of the legislation are to be met. [p. 236]

235 Over time, specialized expertise would become the core rationale for deferring to administrative decision-

makers (*Bradco Construction*, at p. 335; *Southam*, at para. 50; Audrey Macklin, "Standard of Review: Back to the Future?", in Colleen M. Flood and Lorne Sossin, eds., *Administrative Law in Context* (3rd ed. 2018), 381 at pp. 397-98). Post-*Dunsmuir*, the Court has been steadfast in confirming the central role of specialization and expertise, affirming their connection to legislative intent, and recognizing that they give administrative decision-makers the "interpretative upper hand" on questions of law (*McLean*, at para. 40; see also *Conway*, at para. 53; *Mowat*, at para. 30; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, [2011] 3 S.C.R. 708, at para. 13; *Doré v. Barreau du Québec*, [2012] 1 S.C.R. 395, at para. 35; *Mouvement laïque*, at para. 46; *Khosa*, at para. 25; *Edmonton East*, at para. 33).

236 Although the majority's approach extolls respect for the legislature's "institutional design choices", it accords no weight to the institutional advantages of specialization and expertise that administrative decision-makers possess in resolving questions of law. In so doing, the majority disregards the historically accepted reason *why* the legislature intended to delegate authority to an administrative actor.

237 Nor are we persuaded by the majority's claim that "if administrative decision makers are understood to possess specialized expertise on all questions that come before them, the concept of expertise ceases to assist a reviewing court in attempting to distinguish questions for which applying the reasonableness standard is appropriate from those for which it is not". Here, the majority sets up a false choice: expertise must either be assessed on a case-by-case basis or play no role at all in a theory of judicial review.

238 We disagree. While not every decision-maker necessarily has expertise on every issue raised in an administrative proceeding, reviewing courts do not engage in an individualized, case-by-case assessment of specialization and expertise. The theory of deference is based not only on the legislative choice to delegate decisions, but also on institutional expertise and on "the reality that ... those working day to day in the implementation of frequently complex administrative schemes have or will develop a considerable degree of expertise or field sensitivity to the imperatives and nuances of the legislative regime" (*Khosa*, at para. 25; see also *Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals*, [2011] 3 S.C.R. 616, at para. 53; *Edmonton East*, at para. 33).

239 The exclusion of expertise, specialization and other institutional advantages from the majority's standard of review framework is not merely a theoretical concern. The removal of the current "conceptual basis" for deference opens the gates to expanded correctness review. The majority's "presumption" of deference will yield all too easily to justifications for a correctness-oriented framework.

240 In the majority's framework, deference gives way whenever the "rule of law" demands it. The majority's approach to the rule of law, however, flows from a court-centric conception of the rule of law rooted in Dicey's 19th century philosophy.

241 The rule of law is not the rule of courts. A pluralist conception of the rule of law recognizes that courts are not the exclusive guardians of law, and that others in the justice arena have shared responsibility for its development, including administrative decision-makers. *Dunsmuir* embraced this more inclusive view of the rule of law by acknowledging that the "court-centric conception of the rule of law" had to be "reined in by acknowledging that the courts do not have a monopoly on deciding all questions of law" (para. 30). As discussed in *Dunsmuir*, the rule of law is understood as meaning that administrative decision-makers make legal determinations within their mandate, and not that only judges decide questions of law with an unrestricted license to substitute their opinions for those of administrative actors through correctness review (see McLachlin, *Administrative Tribunals and the Courts: An Evolutionary Relationship*; The Hon. Thomas A. Cromwell, "What I Think I've Learned About Administrative Law" (2017), 30 *C.J.A.L.P.* 307, at p. 308; *Wilson v. Atomic Energy of Canada Ltd.*, [2016] 1 S.C.R. 770, at para. 31, per Abella J.).

242 Moreover, central to any definition of the rule of law is access to a fair and efficient dispute resolution process, capable of dispensing timely justice (*Hryniak v. Mauldin*, [2014] 1 S.C.R. 87, at para. 1). This is an important objective for all litigants, from the sophisticated consumers of administrative justice, to, most significantly, the

particularly vulnerable ones (Angus Grant and Lorne Sossin, "Fairness in Context: Achieving Fairness Through Access to Administrative Justice", in Colleen M. Flood and Lorne Sossin, eds., *Administrative Law in Context* (3rd ed. 2018), 341, at p. 342). For this reason, access to justice is at the heart of the legislative choice to establish a robust system of administrative law (Grant and Sossin, at pp. 342 and 369-70; Van Harten, et al., at p. 17; Régimbald, at pp. 2-3; McLachlin, *Administrative Tribunals and the Courts: An Evolutionary Relationship*). As Morissette J.A. has observed:

> ... the aims of administrative law ... generally gravitate towards promoting access to justice. The means contemplated are costless or inexpensive, simple and expeditious procedures, expertise of the decision-makers, coherence of reasons, consistency of results and finality of decisions.
>
> (Yves-Marie Morissette, "What is a 'reasonable decision'?" (2018), 31 *C.J.A.L.P.* 225, at p. 236)

243 These goals are compromised when a narrow conception of the "rule of law" is invoked to impose judicial hegemony over administrative decision-makers. Doing so perverts the purpose of establishing a parallel system of administrative justice, and adds unnecessary expense and complexity for the public.

244 The majority even calls for a reformulation of the "questions of central importance" category from *Dunsmuir* and permits courts to substitute their opinions for administrative decision-makers on "questions of central importance to the legal system as a whole", even if those questions fall squarely within the mandate and expertise of the administrative decision-maker. As noted in *Canadian Human Rights Commission*, correctness review was permitted only for questions "of central importance to the legal system *and* outside the specialized expertise of the adjudicator" (para. 28 (emphasis in original)). Broadening this category from its original characterization unduly expands the issues available for judicial substitution. Issues of discrimination, labour rights, and economic regulation of the securities markets (among many others) theoretically raise questions of vital importance for Canada and its legal system. But by ignoring administrative decision-makers' expertise on these matters, this category will inevitably provide more "room ... for both mistakes and manipulation" (Andrew Green, "Can There Be Too Much Context in Administrative Law? Setting the Standard of Review in Canadian Administrative Law" *(2014), 47 U.B.C. L. Rev. 443*, at p. 483). We would leave *Dunsmuir*'s description of this category undisturbed.[1]

245 We also disagree with the majority's reformulation of "legislative intent" to include, for the first time, an invitation for courts to apply correctness review to legal questions whenever an administrative scheme includes a right of appeal. We do not see how appeal rights represent a "different institutional structure" that requires a more searching form of review. The mere fact that a statute contemplates a reviewing role for a court says nothing about the *degree of deference* required in the review process. Rights of appeal reflect different choices by different legislatures to permit review for different reasons, on issues of fact, law, mixed fact and law, and discretion, among others. Providing parties with a right of appeal can serve several purposes entirely unrelated to the standard of review, including outlining: where the appeal will take place (sometimes, at a different reviewing court than in the routes provided for judicial review); who is eligible to take part; when materials must be filed; how materials must be presented; the reviewing court's powers on appeal; any leave requirements; and the grounds on which the parties may appeal (among other things). By providing this type of structure and guidance, statutory appeal provisions may allow legislatures to promote efficiency and access to justice, in a way that exclusive reliance on the judicial review procedure would not have.

246 In reality, the majority's position on statutory appeal rights, although couched in language about "giv[ing] effect to the legislature's institutional design choices", hinges almost entirely on a textualist argument: the presence of the word "appeal" indicates a legislative intent that courts apply the same standards of review found in civil appellate jurisprudence.

247 The majority's reliance on the "presumption of consistent expression" in relation to the single word "appeal" is misplaced and disregards long-accepted institutional distinctions between how courts and administrative decision-makers function. The language in each setting is different; the mandates are different; the policy bases are different. The idea that *Housen v. Nikolaisen*, *[2002] 2 S.C.R. 235*, must be inflexibly applied to every right of "appeal" within

a statute -- with no regard for the broader purposes of the statutory scheme or the practical implications of greater judicial involvement within it -- is entirely unsupported by our jurisprudence.

248 In addition, the majority's claim that legislatures "d[o] not speak in vain" is irreconcilable with its treatment of privative clauses, which play no role in its standard of review framework. If, as the majority claims, Parliament's decision to provide appeal routes must influence the standard of review analysis, there is no principled reason why Parliament's decision via privative clauses to *prohibit* appeals should not be given comparable effect.[2]

249 In any event, legislatures in this country have known for at least 25 years since *Pezim* that this Court has not treated statutory rights of appeal as a determinative reflection of legislative intent regarding the standard of review (*Pezim*, at p. 590). Against this reality, the continued use by legislatures of the term "appeal" cannot be imbued with the intent that the majority retroactively ascribes to it; doing so is inconsistent with the principle that legislatures are presumed to enact legislation in compliance with existing common law rules (Ruth Sullivan, *Statutory Interpretation* (3rd ed. 2016), at p. 315).

250 Those legislatures, moreover, understood from our jurisprudence that this Court was committed to respecting *standards* of review that were statutorily prescribed, as British Columbia alone has done.[3] We agree with the Attorney General of Canada's position in the companion appeals of *Bell Canada v. Canada (Attorney General)*, *2019 SCC 66*, that, absent exceptional circumstances, the existence of a statutory right of appeal does not displace the presumption that the standard of reasonableness applies.[4] The majority, however, has inexplicably chosen the template proposed by the *amici*,[5] recommending a sweeping overhaul of our approach to legislative intent and to the determination of the standard of review.

251 The result reached by the majority means that hundreds of administrative decision-makers subject to different kinds of statutory rights of appeal -- some in highly specialized fields, such as broadcasting, securities regulation and international trade -- will now be subject to an irrebuttable presumption of correctness review. This has the potential to cause a stampede of litigation. Reviewing courts will have license to freely revisit legal questions on matters squarely within the expertise of administrative decision-makers, even if they are of no broader consequence outside of their administrative regimes. Even if specialized decision-makers provide reasonable interpretations of highly technical statutes with which they work daily, even if they provide internally consistent interpretations responsive to the parties' submissions and consistent with the text, context and purpose of the governing scheme, the administrative body's past practices and decisions, the common law, prior judicial rulings and international law, those interpretations can still be set aside by a reviewing court that simply takes a different view of the relevant statute. This risks undermining the integrity of administrative proceedings whenever there is a statutory right of appeal, rendering them little more than rehearsals for a judicial appeal -- the inverse of the legislative intent to establish a specialized regime and entrust certain legal and policy questions to non-judicial actors.

252 Ironically, the majority's approach will be a roadblock to its promise of simplicity. Elevating appeal clauses to indicators of correctness review creates a two-tier system of administrative law: one tier that defers to the expertise of administrative decision-makers where there is no appeal clause; and another tier where such clauses permit judges to substitute their own views of the legal issues at the core of those decision-makers' mandates. Within the second tier, the application of appellate law principles will inevitably create confusion by encouraging segmentation in judicial review (*Mouvement laïque*, at para. 173, per Abella J., concurring in part; see also Paul Daly, "Struggling Towards Coherence in Canadian Administrative Law? Recent Cases on Standard of Review and Reasonableness" *(2016), 62 McGill L.J. 527*, at pp. 542-43; The Hon. Joseph T. Robertson, "Identifying the Review Standard: Administrative Deference in a Nutshell" *(2017), 68 U.N.B.L.J. 145*, at p. 162). Courts will be left with the task of identifying palpable and overriding errors for factual questions, extricating legal issues from questions of mixed fact and law, reviewing questions of law *de novo*, and potentially having to apply judicial review and appellate standards interchangeably if an applicant challenges in one proceeding multiple aspects of an administrative decision, some falling within an appeal clause and others not. It is an invitation to complexity and a barrier to access to justice.

253 The majority's reasons "roll back the *Dunsmuir* clock to an era where some courts asserted a level of skill and knowledge in administrative matters which further experience showed they did not possess" (*Khosa*, at para. 26).

The reasons elevate statutory rights of appeal to a determinative factor based on a formalistic approach that ignores the legislature's intention to leave certain legal and policy questions to specialized administrative decision-makers. This unravelling of Canada's carefully developed, deferential approach to administrative law returns us to the "black letter law" approach found in *Anisminic* and cases like *Metropolitan Life* whereby specialized decision-makers were subject to the pre-eminent determinations of a judge. Rather than building on *Dunsmuir*, which recognized that specialization is fundamentally intertwined with the legislative choice to delegate particular subject matters to administrative decision-makers, the majority's reasons banish expertise from the standard of review analysis entirely, opening the door to a host of new correctness categories which remain open to further expansion. The majority's approach not only erodes the presumption of deference; it erodes confidence in the existence -- and desirability -- of the "shared enterprises in the administrative state" of "[l]aw-making and legal interpretation" between courts and administrative decision-makers (Stack, at p. 310).

254 But the aspect of the majority's decision with the greatest potential to undermine both the integrity of this Court's decisions, and public confidence in the stability of the law, is its disregard for precedent and *stare decisis*.

255 *Stare decisis* places significant limits on this Court's ability to overturn its precedents. Justice Rothstein described some of these limits in *Canada v. Craig*, [2012] 2 S.C.R. 489, the case about horizontal *stare decisis* on which the majority relies:

> The question of whether this Court should overrule one of its own prior decisions was addressed recently in *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, [2011] 2 S.C.R. 3. At paragraph 56, Chief Justice McLachlin and LeBel J., in joint majority reasons, noted that overturning a precedent of this Court is a step not to be lightly undertaken. *This is especially so when the precedent represents the considered views of firm majorities* (para. 57).
>
> Nonetheless, this Court has overruled its own decisions on a number of occasions. (See *R. v. Chaulk*, [1990] 3 S.C.R. 1303, at p. 1353, *per* Lamer C.J., for the majority; *R. v. B. (K.G.)*, [1993] 1 S.C.R. 740; *R. v. Robinson*, [1996] 1 S.C.R. 683.) *However, the Court must be satisfied based on compelling reasons that the precedent was wrongly decided and should be overruled ... .*
>
> Courts must proceed with caution when deciding to overrule a prior decision. In *Queensland v. Commonwealth* (1977), 139 C.L.R. 585 (H.C.A.), at p. 599, Justice Gibbs articulated the required approach succinctly:
>
> No Justice is entitled to ignore the decisions and reasoning of his predecessors, and to arrive at his own judgment as though the pages of the law reports were blank, or as though the authority of a decision did not survive beyond the rising of the Court. A Justice, unlike a legislator, cannot introduce a programme of reform which sets at nought decisions formerly made and principles formerly established. It is only after the most careful and respectful consideration of the earlier decision, and after giving due weight to all the circumstances, that a Justice may give effect to his own opinions in preference to an earlier decision of the Court. [Emphasis added; paras. 24-26.]

256 Apex courts in several jurisdictions outside Canada have similarly stressed the need for caution and compelling justification before departing from precedent. The United States Supreme Court refrains from overruling its past decisions absent a "special justification", which must be over and above the belief that a prior case was wrongly decided (*Kimble v. Marvel Entertainment, LLC.*, 135 S. Ct. 2401 (2015), at p. 2409; see also *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258 (2014), at p. 266; *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), at pp. 2418 and 2422; Bryan A. Garner et al., *The Law of Judicial Precedent* (2016), at pp. 35-36).

257 Similarly, the House of Lords "require[d] much more than doubts as to the correctness of [a past decision] to justify departing from it" (*Fitzleet Estates Ltd. v. Cherry* (1977), 51 T.C. 708, at p. 718), an approach that the United Kingdom Supreme Court continues to endorse (*R. v. Taylor*, [2016] UKSC 5, [2016] 4 All E.R. 617, at para. 19; *Willers v. Joyce (No. 2)*, [2016] UKSC 44, [2017] 2 All E.R. 383, at para. 7; *Knauer v. Ministry of Justice*, [2016] UKSC 9, [2016] 4 All E.R. 897, at paras. 22-23).

258 New Zealand's Supreme Court views "caution, often considerable caution" as the "touchstone" of its approach

to horizontal *stare decisis*, and has emphasized that it will not depart from precedent "merely because, if the matter were being decided afresh, the Court might take a different view" (*Couch v. Attorney-General (No. 2)*, [2010] NZSC 27, [2010] 3 N.Z.L.R. 149, at paras. 105, per Tipping J., and 209, per McGrath J.).

259 Restraint and respect for precedent also guide the High Court of Australia and South Africa's Constitutional Court when applying *stare decisis* (*Lee v. New South Wales Crime Commission*, [2013] HCA 39, 302 A.L.R. 363, at paras. 62-66 and 70; *Camps Bay Ratepayers' and Residents' Association v. Harrison*, [2010] ZACC 19, 2011 (4) S.A. 42, at pp. 55-56; *Buffalo City Metropolitan Municipality v. Asla Construction Ltd.*, [2019] ZACC 15, 2019 (4) S.A. 331, at para. 65).

260 The virtues of horizontal *stare decisis* are widely recognized. The doctrine "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process" (*Kimble*, at p. 2409, citing *Payne v. Tennessee*, 501 U.S. 808 (1991), at p. 827). This Court has stressed the importance of *stare decisis* for "[c]ertainty in the law" (*Canada (Attorney General) v. Bedford*, [2013] 3 S.C.R. 1101, at para. 38; *R. v. Bernard*, [1988] 2 S.C.R. 833, at p. 849; *Minister of Indian Affairs and Northern Development v. Ranville*, [1982] 2 S.C.R. 518, at p. 527). Other courts have described *stare decisis* as a "foundation stone of the rule of law" (*Michigan v. Bay Mills Indian Community*, 572 U.S. 782 (2014), at p. 798; *Kimble*, at p. 2409; *Kisor*, at p. 2422; see also *Camps Bay*, at pp. 55-56; Jeremy Waldron, "Stare Decisis and the Rule of Law: A Layered Approach" (2012), 111 *Mich. L. Rev.* 1, at p. 28; Lewis F. Powell, Jr., "Stare Decisis and Judicial Restraint" (1990), 47 *Wash. & Lee L. Rev.* 281, at p. 288).

261 Respect for precedent also safeguards this Court's institutional legitimacy. The precedential value of a judgment of this Court does not "expire with the tenure of the particular panel of judges that decided it" (*Plourde v. Wal-Mart Canada Corp.*, [2009] 3 S.C.R. 465, at para. 13). American cases have stressed similar themes:

> There is ... a point beyond which frequent overruling would overtax the country's belief in the Court's good faith. Despite the variety of reasons that may inform and justify a decision to overrule, we cannot forget that such a decision is usually perceived (and perceived correctly) as, at the least, a statement that a prior decision was wrong. There is a limit to the amount of error that can plausibly be imputed to prior Courts. If that limit should be exceeded, disturbance of prior rulings would be taken as evidence that justifiable reexamination of principle had given way to drives for particular results in the short term. The legitimacy of the Court would fade with the frequency of its vacillation.
>
> (*Planned Parenthood of Southeastern Pennsylvania v. Casey, Governor of Pennsylvania*, 505 U.S. 833 (1992), at p. 866; see also *Florida Department of Health and Rehabilitative Services v. Florida Nursing Home Association*, 450 U.S. 147 (1981), at p. 153, per Stevens J., concurring.)

262 Several scholars have made this point as well (see e.g., Michael J. Gerhardt, *The Power of Precedent* (2008), at p. 18; Garner et al., at p. 391). Aharon Barak has warned that

> overruling precedent damages the public's conception of the judicial role, and undermines the respect in which the public holds the courts and its faith in them. Precedent should not resemble a ticket valid only for the day of purchase.
>
> ("Overruling Precedent" (1986), 21 *Is.L.R.* 269, at p. 275)

263 The majority's reasons, in our view, disregard the high threshold required to overturn one of this Court's decisions. The justification for the majority abandoning this Court's long-standing view of how statutory appeal clauses impact the standard of review analysis is that this Court's approach was "unsound in principle" and criticized by judges and academics. The majority also suggests that the Court's decisions set up an "unworkable and unnecessarily complex" system of judicial review. Abandoning them, the majority argues, would promote the values underlying *stare decisis*, namely "clarity and certainty in the law". In doing so, the majority discards several of this Court's bedrock administrative law principles.

264 The majority leaves unaddressed the most significant rejection of this Court's jurisprudence in its reasons -- its decision to change the entire "conceptual basis" for judicial review by excluding specialization, expertise and other

institutional advantages from the analysis. The lack of any justification for this foundational shift -- repeatedly invoked by the majority to sanitize further overturning of precedent -- undercuts the majority's stated respect for *stare decisis* principles.

265 The majority explains its decision to overrule the Court's prior decisions about appeal clauses by asserting that these precedents had "no satisfactory justification". It does not point, however, to any arguments different from those heard and rejected by other panels of this Court over the decades whose decisions are being discarded. Instead, the majority substitutes its own preferred approach to interpreting statutory rights of appeal -- an approach rejected by several prior panels of this Court in a line of decisions stretching back three decades. The rejection of such an approach was explicitly reaffirmed *no fewer than four times in the past ten years* (*Khosa*, at para. 26; *Mowat*, at paras. 30-31; *Mouvement laïque*, at para. 38; *Edmonton East*, at paras. 27-31; see also *McLean*, at para. 21).

266 Overruling these judgments flouts *stare decisis* principles, which prohibit courts from overturning past decisions which "simply represen[t] a preferred choice with which the current Bench does not agree" (*Couch*, at para. 105; see also *Knauer*, at para. 22; *Casey*, at p. 864). "[T]he entire idea of *stare decisis* is that judges do not get to reverse a decision just because they never liked it in the first instance" (*Knick v. Township of Scott, Pennsylvania*, 139 S. Ct. 2162 (2019), at p. 2190, per Kagan J., dissenting). As the United States Supreme Court noted in *Kimble*:

> ... an argument that we got something wrong -- even a good argument to that effect -- cannot by itself justify scrapping settled precedent. Or otherwise said, it is not alone sufficient that we would decide a case differently now than we did then. To reverse course, we require as well what we have termed a "special justification" -- over and above the belief "that the precedent was wrongly decided." [Citation omitted; p. 2409.]

267 But it is the unprecedented wholesale rejection of an entire body of jurisprudence that is particularly unsettling. The affected cases are too numerous to list in full here. It includes many decisions conducting deferential review even in the face of a statutory right of appeal (*Pezim*; *Southam*; *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132; *Dr. Q*; *Ryan*; *Cartaway*; *VIA Rail*; *Association des courtiers et agents immobiliers du Québec v. Proprio Direct inc.*, [2008] 2 S.C.R. 195; *Nolan v. Kerry (Canada) Inc.*, [2009] 2 S.C.R. 678; *McLean*; *Bell Canada (2009)*; *ATCO Gas*; *Mouvement laïque*; *Igloo Vikski*; *Edmonton East*) and bedrock judgments affirming the relevance of administrative expertise to the standard of review analysis and to "home statute" deference (*C.U.P.E.*; *National Corn Growers*; *Domtar Inc.*; *Bradco Construction*; *Southam*; *Pushpanathan*; *Alberta Teachers' Association*; *Canadian Human Rights Commission*, among many others).

268 Most of those decisions were decided unanimously or by strong majorities. At no point, however, does the majority acknowledge this Court's strong reluctance to overturn precedents that "represen[t] the considered views of firm majorities" (*Craig*, at para. 24; *Ontario (Attorney General) v. Fraser*, [2011] 2 S.C.R. 3, at para. 57; see also *Nishi v. Rascal Trucking Ltd.*, [2013] 2 S.C.R. 438, at paras. 23-24), or to overrule decisions of a "recent vintage" (*Fraser*, at para. 57; see also *Nishi*, at para. 23). The decisions the majority *does* rely on, by contrast, involved overturning usually only one precedent and almost always an older one: *Craig* overruled a 34-year-old precedent; *R. v. Henry*, [2005] 3 S.C.R. 609, overruled a 19-year-old precedent (and another 15-year-old precedent, in part); and the dissenting judges in *Bernard* would have overruled a 10-year-old precedent.

269 The majority's decision to overturn precedent also has the potential to disturb settled interpretations of many statutes that contain a right of appeal. Under the majority's approach, every existing interpretation of such statutes by an administrative body that has been affirmed under a reasonableness standard of review will be open to fresh challenge. In *McLean*, for example, this Court acknowledged that a limitations period in British Columbia's *Securities Act*[6] had two reasonable interpretations, but deferred to the one the Commission preferred based on deferential review. We see no reason why an individual in the same situation as Ms. McLean could not now revisit our Court's decision through the statutory right of appeal in the *Securities Act*, and insist that a new reviewing court

offer *its* definitive view of the relevant limitations period now that appeal clauses are interpreted to permit judicial substitution rather than deference.

270 The majority does not address the chaos that such legal uncertainty will generate for those who rely on settled interpretations of administrative statutes to structure their affairs, despite the fact that protecting these reliance interests is a well-recognized and especially powerful reason for respecting precedent (Garner et al., at pp. 404-11; Neil Duxbury, *The Nature and Authority of Precedent* (2008), at pp. 118-19; *Kimble*, at pp. 2410-11). By changing the entire status quo, the majority's approach will undermine legal certainty -- "the foundational principle upon which the common law relies" (*Bedford*, at para. 38; see also Cromwell, at p. 315).

271 Moreover, if this Court had for over 30 years significantly misconstrued the purpose of statutory appeal routes by failing to recognize what *this* majority has ultimately discerned -- that in enacting such routes, legislatures were unequivocally directing courts to review *de novo* every question of law that an administrative body addresses, regardless of that body's expertise -- legislatures across Canada were free to clarify this interpretation and endorse the majority's favoured approach through legislative amendment. Given the possibility -- and continued absence -- of legislative correction, the case for overturning our past decisions is even less compelling (*Binus v. The Queen*, *[1967] S.C.R. 594*, at p. 601; see also *Kimble*, at p. 2409; *Kisor*, at pp. 2422-23; *Bilski v. Kappos*, *Under Secretary of Commerce for Intellectual Property and Director, Patent and Trademark Office*, 561 U.S. 593 (2010), at pp. 601-2).

272 Each of these rationales for adhering to precedent -- consistent affirmation, reliance interests and the possibility of legislative correction -- was recently endorsed by the United States Supreme Court in *Kisor*. There, the Court invoked *stare decisis* to uphold two administrative law precedents which urged deference to administrative agencies when they interpreted ambiguous provisions in their regulations (*Bowles, Price Administrator v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945); *Auer v. Robbins*, 519 U.S. 452 (1997)). Writing for the majority on the issue of *stare decisis*, Justice Kagan explained at length why the doctrine barred the Court from overturning *Auer* or *Seminole Rock*. To begin, Justice Kagan reiterated the importance of *stare decisis* and the need for special justification to overcome its demands. She then explained that *stare decisis* carried even greater force than usual when applied to two decisions that had been affirmed by a "long line of precedents" going back 75 years or more and cited by lower courts thousands of times (p. 2422). She noted that overturning the challenged precedents would cast doubt on many settled statutory interpretations and invite relitigation of cases (p. 2422). Finally, Justice Kagan reasoned that Congress remained free to overturn the cases if the Court had misconstrued legislative intent:

> ... even if we are wrong about *Auer*, "Congress remains free to alter what we have done." In a constitutional case, only we can correct our error. But that is not so here. Our deference decisions are "balls tossed into Congress's court, for acceptance or not as that branch elects." And so far, at least, Congress has chosen acceptance. It could amend the APA or any specific statute to require the sort of *de novo* review of regulatory interpretations that Kisor favors. Instead, for approaching a century, it has let our deference regime work side-by-side with both the APA and the many statutes delegating rulemaking power to agencies. It has done so even after we made clear that our deference decisions reflect a presumption about congressional intent. And it has done so even after Members of this Court began to raise questions about the doctrine. Given that history -- and Congress's continuing ability to take up Kisor's arguments -- we would need a particularly "special justification" to now reverse *Auer*. [Citations omitted; pp. 2422-23]

273 In the face of these compelling reasons for adhering to precedent, many of which have found resonance in this Court's jurisprudence, the majority's reliance on "judicial and academic criticism" falls far short of overcoming the demands of *stare decisis*. It is hard to see why the *obiter* views of the handful of Canadian judges referred to by the majority should be determinative or even persuasive. The majority omits the views of any academics or judges who *have* voiced support for a strong presumption of deference without identifying our approach to statutory rights of appeal as cause for concern (Dyzenhaus, "Dignity in Administrative Law: Judicial Deference in a Culture of Justification", at p. 109; Green, at pp. 489-90; Matthew Lewans, *Administrative Law and Judicial Deference* (2016); Jonathan M. Coady, "The Time Has Come: Standard of Review in Canadian Administrative Law" *(2017), 68 U.N.B.L.J. 87*; The Hon. John M. Evans, "Standards of Review in Administrative Law" (2013), 26 *C.J.A.L.P.* 67, at

p. 79; The Hon. John M. Evans, "Triumph of Reasonableness: But How Much Does It Really Matter?" (2014), 27 *C.J.A.L.P.* 101; Jerry V. DeMarco, "Seeking Simplicity in Canada's Complex World of Judicial Review" (2019), 32 *C.J.A.L.P.* 67).

274 A selective assortment of criticism is not evidence of generalized criticism or unworkability. This Court frequently tackles contentious, high-profile cases that engender strong and persisting divisions of opinion. The public looks to us to definitively resolve those cases, regardless of the composition of the Court. As Hayne J. noted in *Lee*:

> To regard the judgments of this Court as open to reconsideration whenever a new argument is found more attractive than the principle expressed in a standing decision is to overlook the function which a final court of appeal must perform in defining the law. In difficult areas of the law, differences of legal opinion are inevitable; before a final court of appeal, the choice between competing legal solutions oftentimes turns on the emphasis or weight given by each of the judges to one factor against a countervailing factor ... *In such cases, the decision itself determines which solution is, for the purposes of the current law, correct*. It is not to the point to argue in the next case that, leaving the particular decision out of account, another solution is better supported by legal theory. *Such an approach would diminish the authority and finality of the judgments of this Court.* As the function of defining the law is vested in the Court rather than in the justices who compose it, a decision of the Court will be followed in subsequent cases by the Court, however composed, subject to the exceptional power which resides in the Court to permit reconsideration.
>
> Accordingly, as one commentator has put the point: "the previous decision is to be treated as the primary premise from which other arguments follow, and not just as one potential premise among an aggregate of competing premises". [Emphasis in original; footnote omitted.]
>
> (paras. 65-66, citing *Baker v. Campbell*, [1983] HCA 39, 153 C.L.R. 52, at pp. 102-3)

275 This Court, in fact, has been clear that "criticism of a judgment is not sufficient to justify overruling it" (*Fraser*, at para. 86). Differences of legal and public opinion are a natural by-product of contentious cases like *R. v. Jordan*, [2016] 1 S.C.R. 631, or even *Housen*, which, as this Court acknowledged, was initially applied by appeal courts with "varying degrees of enthusiasm" (*H.L. v. Canada (Attorney General)*, [2005] 1 S.C.R. 401, at para. 76; see also Paul M. Perell, "The Standard of Appellate Review and The Ironies of Housen v. Nikolaisen" (2004), 28 *Adv. Q.* 40, at p. 53; Mike Madden, "Conquering the Common Law Hydra: A Probably Correct and Reasonable Overview of Current Standards of Appellate and Judicial Review" (2010), 36 *Adv. Q.* 269, at pp. 278-79 and 293; Paul J. Pape and John J. Adair, "Unreasonable review: The losing party and the palpable and overriding error standard" (2008), 27 *Adv. J.* 6, at p. 8; Geoff R. Hall, "Two Unsettled Questions in the Law of Contractual Interpretation: A Call to the Supreme Court of Canada" (2011), 50 *Can. Bus. L.J.* 434, at p. 436).

276 To justify circumventing this Court's jurisprudence, the majority claims that the precedents being overturned *themselves* departed from the approach to statutory rights of appeal under the pragmatic and functional test. That, with respect, is wrong. Ever since *Bell Canada (1989)* and in several subsequent decisions outlined earlier in these reasons, statutory rights of appeal have played little or no role in the standard of review analysis. Moreover, in pre-*Dunsmuir* cases, statutory rights of appeal were still seen as only one factor among others -- and *not* as unequivocal indicators of correctness review (see, for example, *Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc.*, [2001] 2 S.C.R. 100, at paras. 27-33; *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84, at paras. 23-24; *Harvard College v. Canada (Commissioner of Patents)*, [2002] 4 S.C.R. 45, at paras. 149-51). Our pre- and post-*Dunsmuir* cases on statutory rights of appeal shared in common an unwavering commitment to determining the standard of review in administrative proceedings using administrative law principles, even when appeal rights were involved.

277 For the majority, the elimination of the contextual factors appears to have justified the reconstruction of the whole judicial review framework. Yet the elimination of the contextual analysis was all but complete in our post-*Dunsmuir* jurisprudence, and does not support the foundational changes to judicial review in the majority's decision. Neither that development, nor the majority's assertion that our precedents have proven "unclear and unduly

complex", justifies the conclusion that *all* of our administrative law precedents -- even those unconnected to the practical difficulties in applying *Dunsmuir* -- are suddenly fair game.

278 This Court is overturning a long line of well-established and recently-affirmed precedents in a whole area of law, including several unanimous or strong majority judgments. There is no principled justification for such a dramatic departure from this Court's existing jurisprudence.

Going Forward

279 In our view, a more modest approach to modifying our past decisions, one that goes no further than necessary to clarify the law and its application, is justified. "[W]hen a court does choose to overrule its own precedents, it should do so carefully, with moderation, and with due regard for all the important considerations that undergird the doctrine" (Garner et al., at pp. 41-42). Such an approach to changing precedent preserves the integrity of the judicial process and, at a more conceptual level, of the law itself as a social construct. Michael J. Gerhardt summarized this approach eloquently:

> Judicial modesty is ... . a disposition to respect precedents (as embodying the opinions of others), to learn from their and others' experiences, and to decide cases incrementally to minimize conflicts with either earlier opinions of the Court or other constitutional actors. [p. 7]

280 Judicial modesty promotes the responsible development of the common law. Lord Tom Bingham described that process in his seminal work, *The Rule of Law* (2010):

> ... it is one thing to move the law a little further along a line on which it is already moving, or to adapt it to accord with modern views and practices; it is quite another to seek to recast the law in a radically innovative or adventurous way, because that is to make it uncertain and unpredictable, features which are the antithesis of the rule of law. [pp. 45-46]
>
> (See also Robert J. Sharpe, *Good Judgment: Making Judicial Decisions* (2018), at p. 93; Beverley McLachlin, "The Role of the Supreme Court of Canada in Shaping the Common Law", in Paul Daly, ed., *Apex Courts and the Common Law* (2019), 25, at p. 35; *R. v. Salituro*, [1991] 3 S.C.R. 654, at p. 670; *Friedmann Equity Developments Inc. v. Final Note Ltd.*, [2000] 1 S.C.R. 842, at para. 42; *R. v. Kang-Brown*, [2008] 1 S.C.R. 456, at paras. 14-16, per Lebel J., and 73-74, per Binnie J., concurring.)

281 Lord Bingham's comments highlight that a nuanced balance must be struck between maintaining the stability of the common law and ensuring that the law is flexible and responsive enough to adapt to new circumstances and shifts in societal norms. *Stare decisis* plays a critical role in maintaining that balance and upholding the rule of law. When *stare decisis* is respected, precedent acts as a stabilizing force: providing certainty as to what the law is, consistency that allows those subject to the law to order their affairs accordingly, and continuity that protects reliance on those legal consequences. *Stare decisis* is at the heart of the iterative development of the common law, fostering progressive, incremental and responsible change.

282 So what do we suggest? We support a standard of review framework with a meaningful rule of deference, based on *both* the legislative choice to delegate decision-making authority to an administrative actor *and* on the specialized expertise that these decision-makers possess and develop in applying their mandates. Outside of the three remaining correctness categories from *Dunsmuir* -- and absent clear and explicit legislative direction on the *standard* of review -- administrative decisions should be reviewed for reasonableness. Like the majority, we support eliminating the category of "true questions of jurisdiction" and foreclosing the use of the contextual factors identified in *Dunsmuir.* These developments introduce incremental changes to our judicial review framework, while respecting its underlying principles and placing the ball in the legislatures' court to modify the standards of review if they wish.

283 To the extent that concerns were expressed about the quality of administrative decision making by some interveners who represented particularly vulnerable groups, we agree that they must be taken seriously. But the solution does not lie in authorizing more incursions into the administrative system by generalist judges who lack the expertise necessary to implement these sensitive mandates. Any perceived shortcomings in administrative decision

making are not solved by permitting *de novo* review of every legal decision by a court and, as a result, adding to the delay and cost of obtaining a final decision. The solution lies instead in ensuring the proper qualifications and training of administrative decision-makers. Like courts, administrative actors are fully capable of, and responsible for, improving the quality of their own decision-making processes, thereby strengthening access to justice in the administrative justice system.

284 We also acknowledge that this Court should offer additional direction on conducting reasonableness review.[7] We fear, however, that the majority's multi-factored, open-ended list of "constraints" on administrative decision making will encourage reviewing courts to dissect administrative reasons in a "line-by-line treasure hunt for error" (*Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, [2013] 2 S.C.R. 458, at para. 54). These "constraints" may function in practice as a wide-ranging catalogue of hypothetical errors to justify quashing an administrative decision -- a checklist with unsettling similarities to the series of "jurisdictional errors" spelled out in *Anisminic* itself.

285 Structuring reasonableness review in this fashion effectively imposes on administrative decision-makers a higher standard of justification than that applied to trial judges. Such an approach undercuts deference and revives a long-abandoned posture of suspicion towards administrative decision making. We are also concerned by the majority's warning that administrative decision-makers cannot "arrogate powers to themselves that they were never intended to have", an unhelpful truism that risks reintroducing the tortured concept of "jurisdictional error" by another name.

286 We would advocate a continued approach to reasonableness review which focuses on the concept of *deference* and what it requires of reviewing courts. Curial deference, after all, is *the* hallmark of reasonableness review, setting it apart from the substitution of opinion permitted under the correctness standard. The choice of a particular standard of review -- whether described as "correctness", "reasonableness" or in other terms -- is fundamentally about "whether or not a reviewing court should defer"[8] to an administrative decision (see *Dunsmuir*, at para. 141, per Binnie J., concurring; Régimbald, at pp. 539-40). If courts, therefore, are to properly conduct "reasonableness" review, they must properly understand what deference means.

287 In our view, deference imposes three requirements on courts conducting reasonableness review. It informs the attitude a reviewing court must adopt towards an administrative decision-maker; it affects how a court frames the question it must answer on judicial review; and it affects how a reviewing court evaluates challenges to an administrative decision.

288 First and foremost, deference is an "attitude of the court" conducting reasonableness review (*Dunsmuir*, at para. 48). Deference mandates respect for the legislative choice to entrust a decision to administrative actors rather than to the courts, and for the important role that administrative decision-makers play in upholding and applying the rule of law (*Toronto (City) v. C.U.P.E., Local 79*, [2003] 3 S.C.R. 77, at para. 131, per LeBel J., concurring). Deference also requires respect for administrative decision-makers, their specialized expertise and the institutional setting in which they operate (*Dunsmuir*, at paras. 48-49). Reviewing courts must pay "respectful attention" to the reasons offered for an administrative decision, make a genuine effort to understand why the decision was made, and give the decision a fair and generous construction in light of the entire record (*Newfoundland Nurses*, at paras. 11-14 and 17).

289 Second, deference affects how a court frames the question it must answer when conducting judicial review. A reviewing court does not ask how it would have resolved an issue, but rather, whether the answer provided by the administrative decision-maker has been shown to be unreasonable (*Khosa*, at paras. 59 and 61-62; *Dunsmuir*, at para. 47). Framing the inquiry in this way ensures that the administrative decision under review is the focus of the analysis.

290 This Court has often endorsed this approach to conducting reasonableness review. In *Ryan*, for example, Iacobucci J. explained:

> ... When deciding whether an administrative action was unreasonable, a court should not at any point ask itself what the correct decision would have been ... . The standard of reasonableness does not imply that a decision-maker is merely afforded a "margin of error" around what the court believes is the correct result.
>
> ... Unlike a review for correctness, there will often be no single right answer to the questions that are under review against the standard of reasonableness ... . Even if there could be, notionally, a single best answer, it is not the court's role to seek this out when deciding if the decision was unreasonable. [paras. 50-51]
>
> (See also *Volvo Canada Ltd. v. U.A.W., Local 720*, [1980] 1 S.C.R. 178, at p. 214; *Toronto (City)*, at paras. 94-95, per LeBel J., concurring; *VIA Rail*, at para. 101; *Mason v. Minister of Citizenship and Immigration*, 2019 FC 1251, at para. 22 (CanLII), per Grammond J.; Régimbald, at p. 539; Sharpe, at pp. 204 and 208; Paul Daly, "The Signal and the Noise in Administrative Law" (2017), 68 U.N.B.L.J. 68, at p. 85; Evans, "Triumph of Reasonableness: But How Much Does It Really Matter?", at p. 107.)

291 Third, deferential review impacts how a reviewing court evaluates challenges to an administrative decision. Deference requires the applicant seeking judicial review to bear the onus of showing that the decision was unreasonable (*Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development)*, [2018] 1 S.C.R. 83, at para. 108; *Mission Institution v. Khela*, [2014] 1 S.C.R. 502, at para. 64; *May v. Ferndale Institution*, *[2005] 3 S.C.R. 809*, at para. 71; *Ryan*, at para. 48; *Southam*, at para. 61; *Northern Telecom Ltd. v. Communications Workers of Canada*, [1980] 1 S.C.R. 115, at p. 130). Focusing on whether the applicant has demonstrated that the decision is unreasonable reinforces the central role that administrative decisions play in a properly deferential review process, and confirms that the decision-maker does not have to persuade the court that its decision is reasonable.

292 Assessing whether a decision is reasonable also requires a qualitative assessment. Reasonableness is a concept that pervades the law but is difficult to define with precision (*Dunsmuir*, at para. 46). It requires, by its very nature, a fact-specific inquiry that involves a certain understanding of common experience. Reasonableness cannot be reduced to a formula or a checklist of factors, many of which will not be relevant to a particular decision. Ultimately, whether an administrative decision is reasonable will depend on the context (*Catalyst Paper Corp. v. North Cowichan (District)*, [2012] 1 S.C.R. 5, at para. 18). Administrative law covers an infinite variety of decisions and decision-making contexts, as LeBel J. colourfully explained in *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307, at para. 158 (dissenting in part, but not on this point):

> ... not all administrative bodies are the same. Indeed, this is an understatement. At first glance, labour boards, police commissions, and milk control boards may seem to have about as much in common as assembly lines, cops, and cows! Administrative bodies do, of course, have some common features, but the diversity of their powers, mandate and structure is such that to apply particular standards from one context to another might well be entirely inappropriate ... .

293 Deference, in our view, requires approaching each administrative decision on its own terms and in its own context. But we emphasize that the inherently contextual nature of reasonableness review does not mean that the degree of scrutiny applied by a reviewing court varies (*Alberta Teachers' Association*, at para. 47; *Wilson*, at para. 18). It merely means that when assessing a challenge to an administrative decision, a reviewing court must be attentive to all relevant circumstances, including the reasons offered to support the decision, the record, the statutory scheme and the particular issues raised by the applicant, among other factors (see, for example, *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, at para. 40; *Newfoundland Nurses*, at para. 18; Van Harten et al., at p. 794). Without this context, it is impossible to determine what constitutes a sufficiently compelling justification to quash a decision under reasonableness review. Context may make a challenge to an administrative decision more or less persuasive -- but it does not alter the deferential posture of the reviewing court (*Suresh*, at para. 40).

294 Deference, however, does not require reviewing courts to shirk their obligation to review the decision. So long as they maintain a respectful attitude, frame the judicial review inquiry properly and demand compelling justification

for quashing a decision, reviewing courts are entitled to meaningfully probe an administrative decision. A thorough evaluation by a reviewing court is not "disguised correctness review", as some have used the phrase. Deference, after all, stems from respect, not inattention to detail.

295 Bearing this in mind, we offer the following suggestions for conducting reasonableness review. We begin with situations where reasons are required.[9]

296 The administrative decision is the focal point of the review exercise. Where reasons are provided, they serve as the natural starting point to determine whether the decision-maker acted reasonably (*Williams Lake*, at para. 36). By beginning with the reasons offered for the decision, read in light of the surrounding context and the grounds raised to challenge the decision, reviewing courts provide meaningful oversight while respecting the legitimacy of specialized administrative decision making.

297 Reviewing courts should approach the reasons with respect for the specialized decision-makers, the significant role they have been assigned and the institutional context chosen by the legislator. Reasons should be approached generously, on their own terms. Reviewing courts should be hesitant to second-guess operational implications, practical challenges and on-the-ground knowledge used to justify an administrative decision. Reviewing courts must also remain alert to specialized concepts or language used in an administrative decision that may be unfamiliar to a generalist judge (*Newfoundland Nurses*, at para. 13; *Igloo Vikski*, at paras. 17 and 30). When confronted with unfamiliar language or modes of reasoning, judges should acknowledge that such differences are an inevitable, intentional and invaluable by-product of the legislative choice to assign a matter to the administrative system. They may lend considerable force to an administrative decision and, by the same token, render an applicant's challenge to that decision less compelling. Reviewing courts scrutinizing an administrative body's decision under the reasonableness framework should therefore keep in mind that the administrative body holds the "interpretative upper hand" (*McLean*, at para. 40).

298 Throughout the review process, a court conducting deferential review must view claims of administrative error in context and with caution, cognizant of the need to avoid substituting its opinion for that of those empowered and better equipped to answer the questions at issue. Because judicial substitution is incompatible with deference, reviewing courts must carefully evaluate the challenges raised by an applicant to ensure they go to the *reasonableness* of the administrative decision.

299 Unsurprisingly, applicants rarely present challenges to an administrative decision as explicit invitations for courts to substitute their opinions for those of administrative actors. Courts, therefore, must carefully probe challenges to administrative decisions to assess whether they amount, in substance, to a mere difference of opinion with how the administrative decision-maker weighed or prioritized the various factors relevant to the decision-making process. Allegations of error may, on deeper examination, simply reflect a legitimate difference in approach by an administrative decision-maker. By rooting out and rejecting such challenges, courts respect the valuable and distinct perspective that administrative bodies bring to answering legal questions, flowing from the considerable expertise and field sensitivity they develop by administering their mandate and working within the intricacies of their statutory context on a daily basis. The understanding and insights of administrative actors enhance the decision-making process and may be more conducive to reaching a result "that promotes effective public policy and administration ... than the limited knowledge, detachment, and modes of reasoning typically associated with courts of law" (*National Corn Growers*, at pp. 1336-37 (emphasis deleted), per Wilson J., concurring, citing J. M. Evans et al., *Administrative Law: Cases, Text, and Materials* (3rd ed. 1989), at p. 414).

300 When resolving challenges to an administrative decision, courts must also consider the *materiality* of any alleged errors in the decision-maker's reasoning. Under reasonableness review, an error is not necessarily sufficient to justify quashing a decision. Inevitably, the weight of an error will depend on the extent to which it affects the decision. An error that is peripheral to the administrative decision-maker's reasoning process, or overcome by more compelling points advanced in support of the result, does not provide fertile ground for judicial review. Ultimately, the role of the reviewing court is to examine the decision as a whole to determine whether it is reasonable (*Dunsmuir*, at para. 47; *Khosa*, at para. 59). Considering the materiality of any impugned errors is a

natural part of this exercise, and of reading administrative reasons "together with the outcome" (*Newfoundland Nurses*, at para. 14).

301 Review of the decision as a whole is especially vital when an applicant alleges that an administrative decision contains material omissions. Significantly, and as this Court has frequently emphasized, administrative decision-makers are not required to consider and comment upon every issue raised by the parties in their reasons (*Construction Labour Relations v. Driver Iron Inc.*, [2012] 3 S.C.R. 405, at para. 3; *Newfoundland Nurses*, at para. 16, citing *Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Association*, [1975] 1 S.C.R. 382, at p. 391). Further, a reviewing court is not restricted to the four corners of the written reasons delivered by the decision-maker and should, if faced with a gap in the reasons, look to the record to see if it sheds light on the decision (*Williams Lake*, at para. 37; *Delta Air Lines Inc. v. Lukács*, [2018] 1 S.C.R. 6, at para. 23; *Newfoundland Nurses*, at para. 15; *Alberta Teachers' Association*, at paras. 53 and 56).

302 The use of the record and other context to supplement a decision-maker's reasons has been the subject of some academic discussion (see, for example, Mullan, at pp. 69-74). We support a flexible approach to supplementing reasons, which is consistent with the flexible approach used to determine whether administrative reasons must be provided to begin with and sensitive to the "day-to-day realities of administrative agencies" (*Baker*, at para. 44), which may not be conducive to the production of "archival" reasons associated with court judgments (para. 40, citing Roderick A. Macdonald and David Lametti, "Reasons for Decision in Administrative Law" (1990), 3 *C.J.A.L.P.* 123).

303 Some materials that may help bridge gaps in a reviewing court's understanding of an administrative decision include: the record of any formal proceedings as well as the materials before the decision-maker, past decisions of the administrative body, and policies or guidelines developed to guide the type of decision under review (see Matthew Lewans, "Renovating Judicial Review" (2017), 68 U.N.B.L.J. 109, at pp. 137-38). Reviewing these materials may assist a court in understanding, "by inference", why an administrative decision-maker reached a particular outcome (*Baker*, at para. 44; see also *Williams Lake*, at para. 37; *Mills v. Ontario (Workplace Safety and Insurance Appeals Tribunal (Ont.)*, 2008 ONCA 436, 237 O.A.C. 71, at paras. 38-39). It may reveal further confirmatory context for a line of reasoning employed by the decision-maker -- by showing, for example, that the decision-maker's understanding of the purpose of its statutory mandate finds support in the provision's legislative history (*Celgene Corp. v. Canada (Attorney General)*, [2011] 1 S.C.R. 3, at paras. 25-29). Reviewing the record can also yield responses to the specific challenges raised by an applicant on judicial review, responses that are "consistent with the process of reasoning" applied by the administrative decision-maker (*Igloo Vikski*, at para. 45). In these ways, reviewing courts may legitimately supplement written reasons without "supplant[ing] the analysis of the administrative body" (*Lukács*, at para. 24).

304 The "adequacy" of reasons, in other words, is not "a stand-alone basis for quashing a decision" (*Newfoundland Nurses*, at para. 14). As this Court has repeatedly confirmed, reasons must instead "be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" (*Newfoundland Nurses*, at para. 14; *Halifax (Regional Municipality) v. Canada (Public Works and Government Services)*, [2012] 2 S.C.R. 108, at para. 44; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, [2013] 2 S.C.R. 559, at para. 52; *Williams Lake*, at para. 141, per Rowe J., dissenting, but not on this point). This approach puts substance over form in situations where the basis for a decision by a specialized administrative actor is evident on the record, but not clearly expressed in written reasons. Quashing decisions in such circumstances defeats the purpose of deference and thwarts access to justice by wasting administrative and judicial resources.

305 In our view, therefore, if an applicant claims that an administrative decision-maker failed to address a relevant factor in reaching a decision, the reviewing court must consider the submissions and record before the decision-maker, and the materiality of any such omission to the decision rendered. An administrative decision-maker's failure, for example, to refer to a particular statutory provision or the full factual record before it does not automatically entitle a reviewing court to conduct a *de novo* assessment of the decision under review. The inquiry

must remain focussed on whether the applicant has satisfied the burden of showing that the omission renders the decision reached unreasonable.

306 We acknowledge that respecting the line between reasonableness and correctness review has posed a particular challenge for judges when reviewing interpretation by administrative decision-makers of their statutory mandates. Judges routinely interpret statutes and have developed a template for how to scrutinize words in that context. But the same deferential approach we have outlined above must apply with equal force to statutory interpretation cases. When reviewing an administrative decision involving statutory interpretation, a court should not assess the decision by determining what, in its own view, would be a reasonable interpretation. Such an approach "imperils deference" (Paul Daly, "Unreasonable Interpretations of Law" *(2014), 66 S.C.L.R. (2d) 233*, at p. 250).

307 We agree with Justice Evans that "once [a] court embarks on its own interpretation of the statute to determine the reasonableness of the tribunal's decision, there seems often to be little room for deference" (Evans, "Triumph of Reasonableness: But How Much Does It Really Matter?", at p. 109; see also *Mason*, at para. 34; Dyzenhaus, "Dignity in Administrative Law: Judicial Deference in a Culture of Justification", at p. 108; Daly, "Unreasonable Interpretations of Law", at pp. 254-55). We add that a *de novo* interpretation of a statute, conducted as a prelude to "deferential" review, necessarily omits a vital piece of the interpretive puzzle: the perspective of the front-line, specialized administrative body that routinely applies the statutory scheme in question (Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", at p. 304; Paul Daly, "Deference on Questions of Law" (2011), 74 *Mod. L. Rev.* 694). By placing that perspective at the heart of the judicial review inquiry, courts display respect for administrative specialization and expertise, and for the legislative choice to delegate certain questions to non-judicial bodies.

308 Conversely, by imposing their own interpretation of a statutory provision, courts *undermine* legislative intent to confide a mandate to the decision-maker. Applying a statute will almost always require some interpretation, making the interpretive mandate of administrative decision-makers inherent to their legislative mandate. The decision-maker who applies the statute has primary responsibility for interpreting the provisions in order to carry out their mandate effectively.

309 Administrative decision-makers performing statutory interpretation should therefore be permitted to be guided by their expertise and knowledge of the practical realities of their administrative regime. In many cases, the "ordinary meaning" of a word or term makes no sense in a specialized context. And in some settings, law and policy are so inextricably at play that they give the words of a statute a meaning unique to a particular specialized context (*National Corn Growers*, at p. 1336, per Wilson J., concurring; *Domtar Inc.*, at p. 800). Further, not only are statutory provisions sometimes capable of bearing more than one reasonable interpretation, they are sometimes drafted in general terms or with "purposeful ambiguity" in order to permit adaptation to future, unknown circumstances (see Felix Frankfurter, "Some Reflections on the Reading of Statutes" (1947), 47 *Colum. L. Rev.* 527, at p. 528). These considerations make it all the more compelling that reviewing courts avoid imposing judicial norms on administrative decision-makers or maintaining a dogmatic insistence on formalism. Where a decision-maker can explain its decision adequately, that decision should be upheld (Daly, "Unreasonable Interpretations of Law", at pp. 233-34, 250 and 254-55).

310 Justice Brown's reasons in *Igloo Vikski* provide a useful illustration of a properly deferential approach to statutory interpretation. That case involved an interpretation of the *Customs Tariff*, S.C. 1997, c. 36, as it applies to hockey goaltender gloves. The Canada Border Services Agency had classified the gloves as "[g]loves, mittens [or] mitts". Igloo Vikski argued they should have been classified as sporting equipment. The Canadian International Trade Tribunal ("CITT") confirmed the initial classification. The Federal Court of Appeal reversed the decision.

311 Acknowledging that the "specific expertise" of the CITT gave it the upper hand over a reviewing court with respect to certain questions of law, Justice Brown determined that the standard of review was reasonableness. Writing for seven other members of the Court, he carefully reviewed the reasons of the CITT and how it had engaged with Igloo Vikski's arguments before turning to the errors alleged by Igloo Vikski and the Federal Court of Appeal. Conceding that the CITT reasons lacked "perfect clarity", Justice Brown nevertheless concluded that the

Tribunal's interpretation was reasonable. While he agreed with Igloo Vikski that an alternate interpretation to that given by the CITT was available, the inclusive language of the applicable statute was broad enough to accommodate the CITT's reasonable interpretation. By beginning with the reasons offered for the interpretation and turning to the challenges mounted against it in light of the surrounding context, *Igloo Vikski* provides an excellent example of respectful and properly deferential judicial review.

312 We conclude our discussion of reasonableness review by addressing cases where reasons are neither required nor available for judicial review. In these circumstances, a reviewing court should remain focussed on whether the decision has been shown to be unreasonable. The reasonableness of the decision may be justified by past decisions of the administrative body (see *Edmonton East*, at paras. 38 and 44-46; *Alberta Teachers' Association*, at paras. 56-64). In other circumstances, reviewing courts may have to assess the reasonableness of the outcome in light of the procedural context surrounding the decision (see *Law Society of British Columbia v. Trinity Western University*, *[2018] 2 S.C.R. 293*, at paras. 51-56; *Edmonton East*, at paras. 48-60; *Catalyst Paper Corp.*, at paras. 32-36). In all cases, the question remains whether the challenging party has demonstrated that a decision is unreasonable.

313 In sum, reasonableness review is based on deference to administrative decision-makers and to the legislative intention to confide in them a mandate. Deference must inform the attitude of a reviewing court and the nature of its analysis: the court does not ask how it would have resolved the issue before the administrative decision-maker but instead evaluates whether the decision-maker acted reasonably. The reviewing court starts with the reasons offered for the administrative decision, read in light of the surrounding context and based on the grounds advanced to challenge the reasonableness of the decision. The reviewing court must remain focussed on the reasonableness of the decision viewed as a whole, in light of the record, and with attention to the materiality of any alleged errors to the decision-maker's reasoning process. By properly conducting reasonableness review, judges provide careful and meaningful oversight of the administrative justice system while respecting its legitimacy and the perspectives of its front-line, specialized decision-makers.

Application to Mr. Vavilov

314 Alexander Vavilov challenges the Registrar of Citizenship's decision to cancel his citizenship certificate. The Registrar concluded that Mr. Vavilov was not a Canadian citizen, and therefore not entitled to a certificate of Canadian citizenship because, although he was born in Canada, his parents were "other representative[s] or employee[s] in Canada of a foreign government" within the meaning of s. 3(2)(a) of the *Citizenship Act*, *R.S.C. 1985, c. C-29*.

315 The first issue is the applicable standard of review. We agree with the majority that reasonableness applies.

316 The second issue is whether the Registrar was reasonable in concluding that the exception to Canadian citizenship in s. 3(2)(a) applies not only to parents who enjoy diplomatic privileges and immunities, but also to intelligence agents of a foreign government. The onus is therefore on Mr. Vavilov to satisfy the reviewing court that the decision was unreasonable. In our view, he has met that onus.

317 Mr. Vavilov was born in Canada in 1994. His Russian parents, Elena Vavilova and Andrey Bezrukov, entered Canada at some point prior to his birth, assumed the identities of two deceased Canadians and fraudulently obtained Canadian passports. After leaving Canada to live in France, Mr. Vavilov and his family moved to the United States. While in the United States, Mr. Vavilov's parents became American citizens under their assumed Canadian identities. Mr. Vavilov and his older brother also obtained American citizenship.

318 In June 2010, agents of the United States Federal Bureau of Investigation arrested Mr. Vavilov's parents and charged them with conspiracy to act as unregistered agents of a foreign government and to commit money laundering. Mr. Vavilov's parents pleaded guilty to the conspiracy charges in July 2010 and were returned to Russia in a spy swap. Around the same time, Mr. Vavilov and his brother travelled to Russia. The American government

subsequently revoked Mr. Vavilov's passport and citizenship. In December 2010, he was issued a Russian passport and birth certificate.

319 From 2010 to 2013, Mr. Vavilov repeatedly sought a Canadian passport. In December 2011, he obtained an amended Ontario birth certificate, showing his parents' true names and places of birth. Using this birth certificate, Mr. Vavilov applied for and received a certificate of Canadian citizenship in January 2013. Relying on these certificates, Mr. Vavilov applied for an extension of his Canadian passport in early 2013. On July 18, 2013, the Registrar wrote to Mr. Vavilov, informing him that there was reason to believe the citizenship certificate had been erroneously issued and asking him for additional information.

320 On April 22, 2014, Mr. Vavilov provided extensive written submissions to the Registrar. He argued that the narrow exception set out in s. 3(2) of the Act does not apply to him. Because he was born in Canada, he is entitled to Canadian citizenship. Mr. Vavilov also argued that the Registrar had failed to respect the requirements of procedural fairness.

321 The Registrar wrote to Mr. Vavilov on August 15, 2014, cancelling his certificate of Canadian citizenship. In her view, because Mr. Vavilov met the two statutory restrictions in s. 3(2) of the Act, he was not a Canadian citizen. First, when Mr. Vavilov was born in Canada, neither of his parents were Canadian citizens or lawfully admitted to Canada for permanent residence. Second, as unofficial agents working for Russia's Foreign Intelligence Service, Mr. Vavilov's parents were "other representative[s] or employee[s] in Canada of a foreign government" within the meaning of s. 3(2)(a).

322 The Federal Court (*[2016] 2 F.C.R. 39*) dismissed Mr. Vavilov's application for judicial review. It found that the Registrar had satisfied the requirements of procedural fairness and, applying a correctness standard, determined that the Registrar's interpretation of s. 3(2)(a) was correct. The Federal Court then reviewed the application of s. 3(2)(a) on a reasonableness standard and concluded that the Registrar had reasonably determined that Mr. Vavilov's parents were working in Canada as undercover agents of the Russian government at the time of his birth.

323 The Federal Court of Appeal (*[2018] 3 F.C.R. 75*) allowed the appeal and quashed the Registrar's decision to cancel Mr. Vavilov's citizenship certificate. Writing for the majority, Stratas J.A. agreed that the requirements of procedural fairness were met but held that the Registrar's interpretation of s. 3(2)(a) was unreasonable. In his view, only those who enjoy diplomatic privileges and immunities fall within the exception to citizenship found in s. 3(2)(a). Justice Stratas reached this conclusion after considering the context and purpose of the provision, its legislative history and international law principles related to citizenship and diplomatic privileges and immunities.

324 As a general rule, administrative decisions are to be judicially reviewed for reasonableness. None of the correctness exceptions apply to the Registrar's interpretation of the Act in this case. As such, the standard of review is reasonableness.

325 The following provisions of the *Citizenship Act* are relevant to this appeal:

> **Persons who are citizens**
>
> **3 (1)** Subject to this Act, a person is a citizen if
>
> **(a)** the person was born in Canada after February 14, 1977;
>
> ...
>
> **Not applicable to children of foreign diplomats, etc.**
>
> **(2)** Paragraph (1)(a) does not apply to a person if, at the time of his birth, neither of his parents was a citizen or lawfully admitted to Canada for permanent residence and either of his parents was
>
> **(a)** a diplomatic or consular officer or other representative or employee in Canada of a foreign government;
>
> **(b)** an employee in the service of a person referred to in paragraph (a); or

> **(c)** an officer or employee in Canada of a specialized agency of the United Nations or an officer or employee in Canada of any other international organization to whom there are granted, by or under any Act of Parliament, diplomatic privileges and immunities certified by the Minister of Foreign Affairs to be equivalent to those granted to a person or persons referred to in paragraph (a).

The general rule embodied in s. 3(1)(a) of the Act is that persons born in Canada are Canadian citizens. Section 3(2) sets out an exception to this rule. As such, if s. 3(2) applies to Mr. Vavilov, he was never a Canadian citizen.

326 The specific issue in this case is whether the Registrar's interpretation of the statutory exception to citizenship was reasonable. Reasonableness review entails deference to the decision-maker, and we begin our analysis by examining the reasons offered by the Registrar in light of the context and the grounds argued.

327 In this case, the Registrar's letter to Mr. Vavilov summarized the key points underlying her decision. In concluding that Mr. Vavilov was not entitled to Canadian citizenship, the Registrar adopted the recommendations of an analyst employed by Citizenship and Immigration Canada. As such, the analyst's report properly forms part of the reasons supporting the Registrar's decision.

328 The analyst's report sought to answer the question of whether Mr. Vavilov was erroneously issued a certificate of Canadian citizenship. The report identifies the key question in this case as being whether either of Mr. Vavilov's parents was a "representative" or "employee" of a foreign government within the meaning of s. 3(2)(a). Much of the report relates to matters not disputed in this appeal, including the legal status of Mr. Vavilov's parents in Canada and their employment as Russian intelligence agents.

329 The analyst began her analysis with the text of s. 3(2)(a). In concluding that the provision operates to deny Mr. Vavilov Canadian citizenship, she set out two textual arguments. First, she compared the current version of s. 3(2)(a) to an earlier iteration of the exception found in s. 5(3) of the *Canadian Citizenship Act*, R.S.C. 1970, c. C-19:

> **Not applicable to children of foreign diplomats, etc.**
>
> (3) Subsection (1) does not apply to a person if, at the time of that person's birth, his responsible parent
>
> (*a*) is an alien who has not been lawfully admitted to Canada for permanent residence; and
>
> (*b*) is
>
> (i) a foreign diplomatic or consular officer or a representative of a foreign government accredited to Her Majesty,
>
> (ii) an employee of a foreign government attached to or in the service of a foreign diplomatic mission or consulate in Canada, or
>
> (iii) an employee in the service of a person referred to in subparagraph (i).

330 The analyst stated that the removal of references to official accreditation or a diplomatic mission indicate that the previous exception was narrower than s. 3(2)(a). She then pointed out that the definition of "diplomatic or consular officer" in s. 35(1) of the *Interpretation Act*, *R.S.C. 1985, c. I-21*, clearly associates these individuals with diplomatic positions. Because the current version of s. 3(2)(a) does not link "other representative or employee in Canada of a foreign government" to a diplomatic mission, the analyst determined "it is reasonable to maintain that this provision intends to encompass individuals not included in the definition of 'diplomatic and consular staff.'" Finally, the analyst stated that the phrase "other representative or employee in Canada of a foreign government" has not been previously interpreted by a court.

331 Beyond the analyst's report, there is little in the record to supplement the Registrar's reasons. There is no

evidence about whether the Registrar has previously applied this provision to individuals like Mr. Vavilov, whose parents did not enjoy diplomatic privileges and immunities. Neither does there appear to be any internal policy, guideline or legal opinion to guide the Registrar in making these types of decisions.

332 In challenging the Registrar's decision, Mr. Vavilov bears the onus of demonstrating why it is not reasonable. Before this Court, Mr. Vavilov submitted that the analyst focussed solely on the text of the exception to citizenship. In his view, had the broader objectives of s. 3(2)(a) been considered, the analyst would have concluded that "other representative" or "employee" only applies to individuals who benefit from diplomatic privileges and immunities.

333 In his submissions before the Registrar, Mr. Vavilov offered three reasons why the text of s. 3(2) must be read against the backdrop of Canadian and international law relating to the roles and functions of diplomats.

334 First, Mr. Vavilov explained that s. 3(2)(a) should be read in conjunction with the *Foreign Missions and International Organizations Act*, S.C. 1991, c. 41 ("*FMIOA*"). This statute incorporates into Canadian law aspects of the *Vienna Convention on Diplomatic Relations*, Can. T.S. 1966 No. 29, Sched. I to the *FMIOA*, and the *Vienna Convention on Consular Relations*, Can. T.S. 1974 No. 25, Sched. II to the *FMIOA*, which deal with diplomatic privileges and immunities. He submitted that s. 3(2) denies citizenship to children of diplomats because diplomatic privileges and immunities, including immunity from criminal prosecution and civil liability, are inconsistent with the duties and responsibilities of a citizen. Because Mr. Vavilov's parents did not enjoy such privileges and immunities, there would be no purpose in excluding their children born in Canada from becoming Canadian citizens.

335 Second, Mr. Vavilov provided the Registrar with Hansard committee meeting minutes such as the comments of the Honourable J. Hugh Faulkner, Secretary of State, when introducing the amendments to s. 3(2), who explained that the provision had been redrafted to narrow the exception to citizenship.

336 Third, Mr. Vavilov cited case law, arguing that: (i) the exception to citizenship should be narrowly construed because it takes away substantive rights (*Brossard (Town) v. Quebec Commission des droits de la personne*, [1988] 2 S.C.R. 279, at p. 307); (ii) s. 3(2)(a) must be interpreted functionally and purposively (*Medovarski v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 539, at para. 8); and (iii) because Mr. Vavilov's parents were not immune from criminal or civil proceedings, they fall outside the scope of s. 3(2) (*Greco v. Holy See (State of the Vatican City)*, [1999] O.J. No. 2467 (QL) (S.C.J.); *R. v. Bonadie* (1996), 109 C.C.C. (3d) 356 (Ont. C.J.); *Al-Ghamdi v. Canada (Minister of Foreign Affairs & International Trade)* (2007), 64 Imm. L.R. (3d) 67 (F.C.)).

337 The Federal Court's decision in *Al-Ghamdi*, a case which challenged the constitutionality of s. 3(2)(a), was particularly relevant. In that case, Shore J. wrote that s. 3(2)(a) only applies to the "children of individuals with diplomatic status" (paras. 5 and 65). Justice Shore also stated that "[i]t is precisely because of the vast array of privileges accorded to diplomats and their families, which are by their very nature inconsistent with the obligations of citizenship, that a person who enjoys diplomatic status cannot acquire citizenship" (para. 63).

338 The Registrar's reasons failed to respond to Mr. Vavilov's extensive and compelling submissions about the objectives of s. 3(2)(a). It appears that the analyst misunderstood Mr. Vavilov's arguments on this point. In discussing the scope of s. 3(2), she wrote, "[c]ounsel argues that CIC [Citizenship and Immigration Canada] cannot invoke subsection 3(2) because CIC has not requested or obtained verification with the Foreign Affairs Protocol to prove that [Mr. Vavilov's parents] held diplomatic or consular status with the Russian Federation while they resided in Canada." It thus appears that the analyst did not recognize that Mr. Vavilov's argument was more fundamental in nature -- namely, that the objectives of s. 3(2) require the terms "other representative" and "employee" to be read narrowly. During discovery, in fact, the analyst acknowledged that her research did not reveal a policy purpose behind s. 3(2)(a) or why the phrase "other representative or employee" was included in the Act. It also appears that the analyst did not understand the potential relevance of the *Al-Ghamdi* decision, since her report stated that "[t]he jurisprudence that does exist only relates to individuals whose parents maintained diplomatic status in Canada at the time of their birth."

339 The Registrar, in the end, interpreted s. 3(2)(a) broadly, based on the analyst's purely textual assessment of

the provision, including a comparison with the text of the previous version. This reading of "other representative or employee" was only reasonable if the text is read in isolation from its objective. Nothing in the history of this provision indicates that Parliament intended to widen its scope. Rather, as Mr. Vavilov points out, the modifications made to s. 3(2) in 1976 appear to mirror those embodied in the *Vienna Convention on Diplomatic Relations* and the *Vienna Convention on Consular Relations*, which were incorporated into Canadian law in 1977. The judicial treatment of this provision, in particular the statements in *Al-Ghamdi* about the narrow scope of s. 3(2)(a) and the inconsistency between diplomatic privileges and immunities and citizenship, also points to the need for a narrow interpretation of the exception to citizenship.

340 In addition, as noted by the majority of the Federal Court of Appeal, the text of s. 3(2)(c) can be seen as undermining the Registrar's interpretation. That provision denies citizenship to children born to individuals who enjoy "diplomatic privileges and immunities certified by the Minister of Foreign Affairs to be equivalent to those granted to a person or persons referred to in paragraph (a)". As Stratas J.A. noted, this language suggests that s. 3(2)(a) covers *only* those "employee[s] in Canada of a foreign government" who have diplomatic privileges and immunities.

341 By ignoring the objectives of the provision, the Registrar rendered an unreasonable decision. In particular, the arguments supporting a reading of s. 3(2) that is restricted to those who have diplomatic privileges and immunities, likely would have changed the outcome in this case.

342 Mr. Vavilov has satisfied us that the Registrar's decision is unreasonable. As a result, the Court of Appeal properly quashed the Registrar's decision to cancel Mr. Vavilov's citizenship certificate, and he is thus entitled to a certificate of Canadian citizenship.

343 We would therefore dismiss the appeal with costs to Mr. Vavilov throughout.

Appeal dismissed with costs throughout.

Solicitors:

Solicitor for the appellant: Attorney General of Canada, Toronto.

Solicitors for the respondent: Jackman Nazami & Associates, Toronto; University of Windsor -- Faculty of Law, Windsor.

Solicitor for the intervener the Attorney General of Ontario: Attorney General of Ontario, Toronto.

Solicitor for the intervener the Attorney General of Quebec: Attorney General of Quebec, Québec.

Solicitor for the intervener the Attorney General of British Columbia: Attorney General of British Columbia, Victoria.

Solicitor for the intervener the Attorney General of Saskatchewan: Attorney General of Saskatchewan, Regina.

Solicitor for the intervener the Canadian Council for Refugees: The Law Office of Jamie Liew, Ottawa.

Solicitor for the intervener the Advocacy Centre for Tenants Ontario - Tenant Duty Counsel Program: Advocacy Centre for Tenants Ontario, Toronto.

Solicitor for the interveners the Ontario Securities Commission, the British Columbia Securities Commission and the Alberta Securities Commission: Ontario Securities Commission, Toronto.

Solicitor for the intervener the Ecojustice Canada Society: Ecojustice Canada Society, Toronto.

Solicitor for the interveners the Workplace Safety and Insurance Appeals Tribunal (Ontario), the Workers'

Compensation Appeals Tribunal (Northwest Territories and Nunavut), the Workers' Compensation Appeals Tribunal (Nova Scotia), the Appeals Commission for Alberta Workers' Compensation and the Workers' Compensation Appeals Tribunal (New Brunswick): Workplace Safety and Insurance Appeals Tribunal, Toronto.

Solicitors for the intervener the British Columbia International Commercial Arbitration Centre Foundation: Fasken Martineau DuMoulin, Vancouver.

Solicitors for the intervener the Council of Canadian Administrative Tribunals: Lax O'Sullivan Lisus Gottlieb, Toronto.

Solicitors for the interveners the National Academy of Arbitrators, the Ontario Labour-Management Arbitrators' Association and Conférence des arbitres du Québec: Susan L. Stewart, Toronto; Paliare Roland Rosenberg Rothstein, Toronto; Rae Christen Jeffries, Toronto.

Solicitors for the intervener the Canadian Labour Congress: Goldblatt Partners, Toronto.

Solicitors for the intervener the National Association of Pharmacy Regulatory Authorities: Shores Jardine, Edmonton.

Solicitors for the intervener the Queen's Prison Law Clinic: Stockwoods, Toronto.

Solicitors for the intervener the Advocates for the Rule of Law: McCarthy Tétrault, Vancouver.

Solicitor for the intervener the Parkdale Community Legal Services: Parkdale Community Legal Services, Toronto.

Solicitors for the intervener the Cambridge Comparative Administrative Law Forum: Cambridge University -- The Faculty of Law, Cambridge, U.K.; White & Case, Washington, D.C.

Solicitors for the intervener the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic: Caza Saikaley, Ottawa.

Solicitors for the intervener the Canadian Bar Association: Gowling WLG (Canada), Ottawa.

Solicitors for the intervener the Canadian Association of Refugee Lawyers: Centre for Criminology & Sociolegal Studies -- University of Toronto, Toronto; Legal Aid Ontario, Toronto.

Solicitor for the intervener the Community & Legal Aid Services Programme: Community & Legal Aid Services Programme, Toronto.

Solicitors for the intervener Association québécoise des avocats et avocates en droit de l'immigration: Nguyen, Tutunjian & Cliche-Rivard, Montréal; Hadekel Shams, Montréal.

Solicitors for the intervener the First Nations Child & Family Caring Society of Canada: Stikeman Elliott, Ottawa.

---

1 Other than one of the two *amici*, no one asked us to modify this category.

2 The "constitutional concerns" cited by the majority are no answer to this dilemma - nothing in *Crevier v. Attorney General of Quebec*, *[1981] 2 S.C.R. 220*, prevents privative clauses from influencing the *standard* of review, as they did for years under the pragmatic and functional approach and in *C.U.P.E.* (David Dyzenhaus, "Dignity in Administrative Law: Judicial Deference in a Culture of Justification" (2012), 17 Rev. Const. Stud. 87, at p. 103; David Mullan, "Unresolved Issues on Standard of Review in Canadian Judicial Review of Administrative Action - The Top Fifteen!" (2013), 42 *Adv. Q.* 1, at p. 21).

3 See *Administrative Tribunals Act*, *S.B.C. 2004, c. 45*. Quebec's recent attempt to introduce such legislation is another example of a legislature which understood that it was free to set standards of review, and that the mere articulation of a right of appeal did not dictate what those standards would be: see Bill 32, *An Act mainly to promote the efficiency of penal justice and to establish the terms governing the intervention of the Court of Québec with respect to applications for appeal*, 1st Sess., 42nd Leg., 2019.

4 The notion that legislative intent finds determinative expression in statutory rights of appeal found no support in the submissions of four of the five attorneys general who appeared before us.

5 Even the *amici* did not go so far as to say that *all* appeal clauses were indicative of a legislative intent for courts to substitute their views on questions of law.

6 *R.S.B.C. 1996, c. 418, s. 159*

7 Consistent with requests from some commentators and some of the interveners at these hearings, including the Canadian Bar Association and the Council of Canadian Administrative Tribunals (see also Mullan, at pp. 76-78).

8 Factum of the intervener the Canadian Association of Refugee Lawyers, at para. 5; factum of the intervener the Council of Canadian Administrative Tribunals, at paras. 24-26.

9 Under the duty of procedural fairness outlined in *Baker v. Canada (Minister of Citizenship and Immigration)*, *[1999] 2 S.C.R. 817*, at para. 43.

End of Document

(b) he had paid in advance to the City the licence fee prescribed in this bylaw, and if no licence fee is presscribed in this bylaw then such licence fee as may be prescribed in another bylaw having application;

(c) he displays such licence in a conspicuous place on the premises, if any, to which the licence applies.

6 Except as otherwise provided by bylaw, each licence shall be in writing, shall be issued by the Licence Inspector, and shall identify the licensee and the nature of the business authorized.

7 An application for a licence shall be made in writing on a form prescribed by the Licence Inspector.

8 (1) Before issuing any licence, the License Inspector may require evidence to his reasonable satisfaction that the applicant has complied with any and all applicable bylaws, regulations and statutes, and may require the applicant to give full particulars of all convictions of any offences recorded against the applicant anywhere in Canada during the two years immediately preceding the date of application.

(2) The License Inspector may also obtain a report from any police force on the applicant's criminal record, and no liability for defamation shall attach to the City or any of its employees or to any member of any police force for communicating such information in good faith, whether or not the information is accurate.

(3) The Licence Inspector may issue or renew a business licence for a business that holds a Liquor Primary or Liquor Primary Club Licence issued under the Liquor Control and Licensing Regulation, B.C. Regulation No. 244/2002, only if the applicant for the business licence

(a) enters with the City into a Good Neighbour Agreement, in the form attached as Schedule B to this bylaw, that includes the conditions set out in paragraph (b); and thereby

(b) agrees that the applicant will:

(i) ensure that noise emissions from the business do not disturb the neighbourhood and comply with the City's bylaws dealing with the regulation of noise,

(ii) ensure that the business does not play amplified music, between 11:00 p.m. and the business' closing time, outside of the building where the business is located,

(iii) post a sign at the entrance of the place of business advising of the dress code, if any, the admission fee and the identification requirements in connection with permitted entry to the business,

(iv) require on-duty employees to wear distinctive identification badges displaying an identification number,

(v) maintain a list that fully identifies all employees by name and identification number,

(vi) employ security personnel to patrol the outdoor areas of the place of business, to monitor the activity of patrons in those areas, particularly at closing time, and to ensure orderly dispersal of patrons as they leave the place of business,

(vii) employ reasonable screening measures to ensure that patrons entering the business premises are at least 19 years of age and that no weapons or illegal drugs are brought onto the business premises,

(viii) not permit patrons to carry or consume alcoholic beverages in areas that are not licensed for that purpose, including the outdoor areas of the place of business,

(ix) when requested, allow those patrons who have consumed liquor at that place of business the use of one of the business' telephones, free of charge, for the purpose of telephoning a taxi or other transportation,

(x) each night after the business closes, inspect its outdoor areas and ensure that they are free of litter, garbage and broken glass,

(xi) ensure that at all times the queue of patrons waiting for entry into the place of business does not impede or obstruct pedestrian traffic along a sidewalk or interfere with access or egress to another place of business,

(xii) immediately remove all graffiti that is placed from time to time on the exterior of the building in which the business is located.

(4) The requirements set out in subsection (3)(b) are conditions that the applicant must comply with throughout the term of its business licence and any renewal term.

9 Until the contrary is proved a person shall be deemed to carry on a trade, business, profession, occupation, calling, employment or purpose without a valid and subsisting licence if he performs a single transaction which is normally performed only by persons engaged in the trade, business, profession, occupation, calling, employment or purpose.

10 (1) Except as otherwise expressly provided in this bylaw every licence shall be valid for a term of one year, commencing on the 16th day of January and terminating on the 15th day of January next, provided that if a licence is issued after the 16th day of January in any year it shall be valid only until the 15th day of January next, but the full licence fee shall nevertheless be payable.

(2) A person who holds a licence under this bylaw must renew the licence and pay the annual licence fee on or before January 15 for as long as that person continues to operate the business.

Honey Fashions Ltd. v. Canada (Border Services Agency)

Federal Court Judgments

Federal Court of Appeal

Montréal, Quebec

R. Boivin, Y. de Montigny and M.J.L. Gleason JJ.A.

Heard: November 6, 2019.

Judgment: March 19, 2020.

Docket: A-407-18

[2020] F.C.J. No. 354 | [2020] A.C.F. no 354 | 2020 FCA 64 | 445 D.L.R. (4th) 522 | 2020 CarswellNat 807

Between The Attorney General of Canada, Appellant, and Honey Fashions Ltd., Respondent

(52 paras.)

Case Summary

Taxation — Customs and excise — Customs — Tariff classification — Imports — Appeal by the Attorney General from a decision setting aside the decisions of the Canada Border Services Agency (CBSA) denying respondent's name change requests to designate respondent as importer of record of goods previously imported by others, so that respondent could obtain remissions under Textile and Apparel Remission Order dismissed — Federal Court did not err in finding that respondent had a legitimate expectation, based on a clear, unambiguous and unqualified regular practice by the CBSA that the CBSA would accept its name change requests and approve the drawback claims.

Appeal by the Attorney General from a decision setting aside the decisions of the Canada Border Services Agency (CBSA) denying the respondent's claims for duty remission made under the Textile and Apparel Remission Order. The Remission orders were part of a program that allowed listed companies to import certain goods duty-free as long as they met the conditions specified in the orders. For many years, the CBSA allowed eligible Canadian manufacturers to contract with Canadian importers so that Canadian manufacturers could take advantage of their remission entitlements. In 2010, the CBSA discovered irregularities in its administration of the Remission program regarding the transfer of remission entitlements between several companies. A Review of the program revealed CBSA had been permitting certain eligible companies to transfer their remission entitlement to other companies in cases it should not have, all with the goal of ensuring that the benefits of the remission program would flow to the Canadian manufacturers. A procedure was developed to be followed where the incorrect party had been named as the importer of record but where the true importer was entitled to remission of duties. To correct the situation, the 2014 Remission Order was enacted that governed the administration of the Program from 2008 until 2012. The CBSA denied the respondent's 2011 and 2012 resubmitted claims on the basis that the documents provided did not clearly establish that the name change was the result of an error of the importer or the CBSA. Both the 2011 and 2012 claims were rejected without any explanation or justification as to why those claims ought to be treated differently from earlier ones. The Federal Court found that the respondent had a legitimate expectation, based on a clear, unambiguous and unqualified regular practice, that the CBSA would accept its name change requests and approve the drawback claims.
HELD: Appeal dismissed.

The Federal Court did not err in finding that it was unreasonable for the CBSA to apparently reverse an administrative practice and deny name change requests to designate the respondent as importer of record of goods that had been previously imported by others, so that the respondent could obtain remissions under the Program.

While the decisions of the CBSA were arguably consistent with the Customs Act and the applicable Remission Order, the impugned decisions of the CBSA were at odds with past practices and past decisions of accepting post-importation name changes on the basis of post-partnering agreements. In the circumstances of this case, the CBSA should have provided an explanation to the respondent with respect to its departure from past practice. The Federal Court did not err in finding that the CBSA had a policy dating back from the inception of the Program of approving post-importation name changes and that the CBSA's refusal to accept the respondent's importer name change requests were made contrary to its legitimate expectations.

Statutes, Regulations and Rules Cited:

Customs Act, *R.S.C. 1985, c. 1 (2nd Supp.), s. 7.1*

Customs Tariff, *S.C. 1997, c. 36*, R

Excise Act, 2001, *S.C. 2002, c.2*,

Excise Tax Act, *R.S.C. 1985, c. E-15*,

Federal Courts Rules, *S.O.R./98-106, Rule 303*

Special Import Measures Act, *R.S.C. 1985, c. S-15*

Textile and Apparel Remission Order, 2014, *SOR/2014-278* (TARO 2014),

Counsel

Stéphanie Lauriault David Di Sante, for the Appellant.

Peter Kirby Alexandra Logvin, for the Respondent.

REASONS FOR JUDGMENT

The judgment of the Court was delivered by

Y. de MONTIGNY J.A.

1 This is an appeal from a decision of Justice Zinn of the Federal Court (the Applications Judge) dated November 7, 2018, which granted two applications for judicial review made by Honey Fashions Ltd. (Honey Fashions, or the respondent). The Federal Court set aside the decisions made by the Canada Border Services Agency (CBSA), which denied Honey Fashions' claims for duty remission made under the *Textile and Apparel Remission Order, 2014*, *SOR/2014-278* (TARO 2014).

2 The central issue is whether it was unreasonable for the CBSA to apparently reverse an administrative practice and deny name change requests to designate Honey Fashions as importer of record of goods that had been previously imported by others, so that Honey Fashions could obtain remissions under the TARO 2014 program. For the reasons that follow, I have concluded that, in light of the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, *2019 SCC 65*, *441 D.L.R. (4th) 1* (*Vavilov*), the Federal Court did not err in quashing these two decisions of the CBSA. The appeal should therefore be dismissed.

Facts

3 All goods imported to Canada are subject to the provisions of the *Customs Act*, *R.S.C. 1985, c. 1 (2nd Supp.)*, the *Customs Tariff*, *S.C. 1997, c. 36*, the *Excise Act*, *2001, S.C. 2002, c. 22*, the *Excise Tax Act*, *R.S.C. 1985, c. E-*

15, and the *Special Import Measures Act*, R.S.C. 1985, S-15, by which customs duties and taxes are assessed. However, the Governor in Council may, on recommendation of the responsible minister, remit all or a portion of the customs duties by way of a remission order.

4 In 1988, the Department of Finance introduced a series of remission orders, intended to help Canadian textile and apparel manufacturers face the challenges of increased international competition. This program allowed listed companies (eligible companies) to import certain goods duty-free as long as they met the conditions specified in the orders. As a result, it was thought that Canadian manufacturers could rationalize their production by specializing in only a few lines while earning remission credits to import complimentary goods, thereby allowing Canadian apparel manufacturers to market a complete fashion line.

5 In 1997-98, these orders were superseded by updated versions to comply with the *North American Free Trade Agreement* (NAFTA). The new version of the program set a capped annual remission entitlement for each listed company, based on the total amount of remission that each manufacturer had received in 1995. The six remission orders listed below formed the basis of the TARO program :

* *Tailored Collar Shirts Remission Order, 1997* (SOR/97-291);

* *Outerwear Greige Fabrics Remission Order, 1998* (SOR/98-86);

* *Shirting Fabrics Remission Order, 1998* (SOR/98-87);

* *Outerwear Apparel Remission Order, 1998* (SOR/98-88);

* *Blouses, Shirts and Co-ordinates Remission Order, 1998* (SOR/98-89); and

* *Outerwear Fabrics Remission Order, 1998* (SOR/98-90).

6 Many manufacturers preferred to focus on manufacturing textiles and apparel in Canada. They had limited, if any, interest in becoming importers. As a result, they began looking for ways to earn the benefits of the program as Canadian manufacturers without being obliged to start or expand an importing business. It appears that for many years, officials of the Department of Finance and of the CBSA allowed eligible Canadian manufacturers to contract with Canadian importers so that Canadian manufacturers could take advantage of their remission entitlements, all with the goal of ensuring that the benefits of the remission program would flow to the Canadian manufacturers.

7 As evidence of that practice, the respondent filed the affidavit of Stephen Yanow, the president of a blouse manufacturer which used the TARO program and whose main business between 1998 and 2012 was matching eligible Canadian manufacturers with Canadian importers who imported qualifying goods. He testified that officials of the Department of Finance approved of that practice, and attached as an exhibit to his affidavit a memorandum (for information) from an official of that Department to that effect. The Applications Judge quoted that memorandum in full at paragraph 10 of his reasons. The memorandum addressed the emerging practice of "remission brokers", which it described in the following way :

> The "remission broker" is a recent phenomenon. These are customs brokers or consultants who identify manufacturers who have not used all of their import entitlement. For a fee, they locate importers who are interested in buying the entitlement. Depending on how you look at it, they essentially provide a service to manufacturers to locate importers willing to purchase excess entitlement. In this way, the manufacturers will receive some of the remission benefit (in the form of cash) that they otherwise would not have used.
>
> Appeal Book, vol. 2, p. 447

8 The Department official advised that such a possibility was contemplated at the inception of the program, and that such a practice was in compliance with the conditions set out in the remission Orders and the *Customs Act* :

> Finance was apprised at the inception of the program about the possibility of selling of entitlement and, as it is currently taking place, the practice is in compliance with the conditions set out in the remission Orders and the Customs Act. (There is no requirement in the Orders that the importer of record be the owner of the goods imported. Manufacturers are simply acting as agents for third party owners and

> paying a remitted duty - the benefit of which is passed on to the owner.) In fact, it could be argued that it is the marketplace at work.
>
> Appeal Book, vol. 2, p. 448

9 In the summer of 2010, the CBSA discovered irregularities in its administration of the TARO program regarding the transfer of remission entitlements between several companies. It suspended the processing of all TARO program claims in the fall of 2010, and undertook a comprehensive Quality Assurance Review (QAR) of the program. As a result, Honey Fashions' claims for duty remission on goods imported in 2006, 2007, 2008 and 2009 were held in abeyance.

10 The QAR confirmed three errors committed by the CBSA, one of which being that the CBSA had been permitting certain eligible companies to transfer their remission entitlement, presumably for a fee, to other companies in cases it should not have. Once these irregularities were discovered, the CBSA developed and issued Memorandum D8-11-7 on November 28, 2012 (Policy on the Transfer of Entitlement Pursuant to the Textile and Apparel Remission Orders), which explains how entitlements to remission of customs duties pursuant to the remission orders may be transferred. It explains that the entitlements of an eligible manufacturer cannot be bought, sold or transferred, but can be re-allocated permanently to another company when that other company acquires, purchases or otherwise takes control of the operation of the eligible manufacturer.

11 The above-mentioned memorandum additionally recognizes the possibility of entering into "partnering agreements". Paragraph 5 of the Memorandum states as follows :

> Subject to conditions, an eligible manufacturer or eligible fabric producer (one who is named in the Schedule to the Order), may enter into a partnering agreement with another company in order to realize its full remission allocation in a given year. In this way, the eligible company is the importer of record for the goods and the other company is the owner or consignee of the goods.

12 Such an agreement is subject to some conditions, one of which is that the agreement must be finalized and dated "prior to the release of the imported goods by the CBSA" (Memorandum D8-11-7, at para. 5(b)).

13 Paragraph 6 of the Memorandum also seemingly allows a party that has imported goods and paid the duty on those goods to be subsequently replaced as the importer of record by an eligible manufacturer, by way of a name change request. Such a name change request must be made at the same time and on the same form as the claim for remission by the eligible manufacturer. This paragraph reads in part as follows :

> If goods that are subject to a partnering agreement and for which remission is or will be claimed have already been imported and accounted for in the name of the other company (i.e., the owner or purchaser), it will be necessary to amend the importer name before remission will be approved. In such cases, a name change request must be submitted in accordance with instructions set out in CBSA Memorandum D17-2-3, *Importer Name/Account Number or Business Number Changes*.

14 Memorandum D17-2-3, referenced in Memorandum D8-11-7, outlines the procedures to be followed when an importer name change is necessary due to error on the part of the importer or the CBSA. Pursuant to section 7.1 of the *Customs Act*, all information provided to the CBSA must be "true, accurate and complete". Paragraphs 14 to 22 of this Memorandum set out the procedure to be followed where the incorrect party has been named as the importer of record but where the true importer was entitled to conditions, exemptions and/or privilege (such as remission of duties under TARO). Paragraph 22 provides that the name change request must be :

> (a) supported by documents (e.g., purchase orders, commercial invoices, cancelled cheques, fax transmissions, written correspondence), which clearly indicate the claimant's interest and the part played by the claimant in the import transaction;
>
> (b) supported by a letter from the importer of record, disclaiming involvement in the importation; and

(c) Supported by a clear and complete explanation of why the party named as the importer on the original accounting document was so named, and why the importer/broker/agent now believes that a second party is the true importer.

15 The CBSA recognized that the errors identified in the QAR were entirely its fault. Since Schedule 1 manufacturers who received remissions had relied in good faith on representations made and authorizations issued by CBSA officials, and had made business decisions accordingly, the CBSA concluded that it would be unfair to revoke the authorizations and seek to collect the duty that had been remitted.

16 To correct the situation, TARO 2014 was enacted. It governed the administration of the TARO program from 2008 until 2012, the year the TARO program ended. TARO 2014 was designed to ensure that eligible Schedule 1 manufacturers received their full entitlement to remission up to 2012. Remissions to the companies listed in Schedule 1 to the Order were subject to the following conditions : a) the goods were imported into Canada between January 1, 2008 and December 31, 2012; b) the erroneous authorization for the remission must have been issued by the CBSA on or before December 31, 2012; and c) an application for the remission is received by the CBSA on or before the deadline set out in Schedule 2 of the Order. The conditions from the six original and separate TARO programs were also incorporated into TARO 2014.

17 Honey Fashions is one of the companies listed on Schedule 1 of TARO 2014. Three of its drawback claims are relevant for the purpose of this appeal, each of which was accompanied by a name change request :

* Claim 262903 related to goods imported in 2009. It was filed on November 22, 2010 - before the QAR and before TARO 2014. It was held in abeyance during the review process and approved by Gilles Cormier, a CBSA official, on April 30, 2015;

* Claim M270228 for $68,512.48, dated October 19, 2016, related to imports occurring in 2011 and sought remission pursuant to the *Outerwear Apparel Remission Order*;

* Drawback claim M270217 for $3,071,133.83, dated December 23, 2016, related to imports occurring in 2012 and sought remission pursuant to the *Blouses, Shirts and Co- Ordinates Remission Order*.

18 The last two claims were essentially resubmissions of past drawback claims that had been refused by the CBSA in February and August 2016 because they did not provide the proper documentation required in accordance with Memorandum D17-2-3. The resubmitted claims were accompanied by additional letters and arguments, but Honey Fashions did not provide the substantiating documents required by the Memorandum for their name change requests. On September 6, 2017 a senior official of the CBSA denied both of the resubmitted claims, on the basis that the documents provided "do not clearly establish that the name change is the result of an error of the importer or the [CBSA] or that the terms of Memorandum D17-2-3 have been met" (Appeal Book, vol. 1, pp. 175 and 292).

The impugned decision

19 Applying the reasonableness standard, the Federal Court found in favour of Honey Fashions. Reasoning that the decision to deny Honey Fashions the remissions under the TARO program stands or falls with the decision not to accept the name change requests, the Court focused on that decision and determined that it was made in breach of the CBSA's duty of fairness in addition to being arbitrary and unreasonable.

20 The Federal Court found that Honey Fashions had a legitimate expectation, based on a clear, unambiguous and unqualified regular practice, that the CBSA would accept their name change requests and approve the drawback claims. In denying the claims without detailed reasons for what the Federal Court characterized as a "change in the procedure for changing the importer of record", the CBSA treated Honey Fashions unfairly (Reasons, at paras. 43-48).

21 The Federal Court also found that the CBSA's decision was unreasonable because it lacked justification, transparency and intelligibility. In the Federal Court's view, there was no material difference between the claim filed in 2010 and the claims filed in 2015 (and refiled in 2016). Although acknowledging that CBSA officials are not

subject to the doctrine of *stare decisis*, the Federal Court found the decision to grant the former but deny the latter without additional explanation to be arbitrary, and thus unreasonable.

Issues

22 In my view, the only issue to be decided by this Court is whether the Applications Judge erred in its application of the reasonableness standard of review to the CBSA's decisions. The parties have also challenged the Applications Judge's ruling on procedural fairness but for reasons developed below, I do not think that issue need be addressed here, if only because it appears to be a mere restatement of the conclusion on substantive reasonableness.

23 The Federal Court's finding that the CBSA has jurisdiction to determine the identity of the importer of goods into Canada is not under appeal.

Preliminary Matter

24 The original appellants in this appeal were the Attorney General of Canada and the President of the Canada Border Services Agency. They were the unsuccessful respondents in the application for judicial review in the Federal Court.

25 According to Rule 303 of the *Federal Courts Rules*, *S.O.R./98-106*, however, the Attorney General of Canada should have been the only respondent in the Federal Court. As a result, the Attorney General of Canada is the only proper appellant in this Court. The style of cause should therefore be amended to reflect that change, and the President of the Canada Border Services Agency should be removed as an appellant.

Analysis

26 After the hearing of this appeal, the Supreme Court of Canada released its decision in *Vavilov*. This Court thus requested further written submissions from the parties with respect to the applicable standard of review. There is no dispute between the parties that when this Court sits on appeal of a decision by the Federal Court reviewing an administrative decision, our task is to determine whether the application judge correctly identified the appropriate standard of review and applied it correctly : *Agraira v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at paras. 45-47 [*Agraira*]. In the case at bar, both parties agree that reasonableness remains the applicable standard of review.

27 Understandably, the appellant and the respondent focus on different aspects of the *Vavilov* decision. The appellant acknowledges that where a decision maker departs from longstanding practices or established internal authority, the departure must be explained in its reasons. However, the appellant argues that the CBSA did not break with its longstanding practices because it has consistently considered importer name change requests in the context of its evaluation of remission claims under TARO. In the appellant's view, Honey Fashions' longstanding practice of submitting post-importation name change requests without substantiating evidence must not be conflated with the CBSA's past decisions to accept its request without substantiating evidence.

28 The respondent retorts that the majority in *Vavilov* stressed the importance of justification for administrative decision makers, and that a more robust form of review is called for to ensure consistency and to guard against the threat of arbitrariness. Accordingly, in the respondent's view, the Federal Court was right to focus on the CBSA's reasons and on the need for the CBSA to explain its abrupt policy change. Relying more explicitly on paragraph 131 of *Vavilov*, the respondent stresses that one of the factors constraining the reasonableness of a decision is the need to provide explanations when a decision departs from longstanding practices or established internal decisions. Needless to say, Honey Fashions strongly disagrees with the appellant's submissions that past practices and internal decisions are not the same.

29 In my view, the respondent rightly points to the importance given by the Supreme Court in *Vavilov* to the

justification of a decision. To the extent that reasons have been provided, the reviewing court must pay close attention to those reasons to ensure that the decision is the result of an "internally coherent and rational chain of analysis" (*Vavilov*, at para. 85). In other words, the reasons may be as important as the result. As the majority stated at paragraph 86 :

> In short, it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis.

30 In addition to the reasons provided, *Vavilov* directs the reviewing court to examine the reasonableness of an administrative decision in terms of the legal and factual constraints on the decision maker's discretion. Among the constraints that bear on the reasonableness of a decision are the governing statutory scheme, the evidence before the decision maker, past practices and past decisions, and the impact of the decision on the affected individual. I will turn to each of these factors as they are the most relevant to the resolution of this dispute.

31 Because they exercise delegated authority, administrative decision makers must obviously act within the powers they receive by statute; accordingly, the governing statutory scheme is of crucial importance in determining the reasonableness of their decisions. In that respect, the range of discretion given to a decision maker will be of particular interest in assessing whether they have acted within the confines of the law.

32 In the case at bar, the appellant claims that the CBSA's decisions comply with the rationale and purview of the statutory scheme under which the decisions were made, namely section 7.1 of the *Customs Act* and the TAROs. For situations like this, the D8-11-7 Memorandum directs parties to file name change requests "in accordance with instructions set out in CBSA Memorandum D17-2-3". In each of the remission claims at issue, Honey Fashions provided accounting documentation that identified another company as importer of the qualifying goods. The drawback claims included letters noting the CBSA's memorandum on importer name changes, and indicating that "incorrect party has been named as importer of record" (Tevel affidavit, Appeal Book, vol. 1, Tab 7, Ex. E, pp. 332, 341-342, 351, 354 and 362).

33 The D17-2-3 Memorandum is very clear on what documentation is required in support of a name change application (see paragraph 14, above). A pre-importation partnering agreement would have been acceptable substantiating evidence, as well as any documents clearly establishing that the claimant was the true importer. Honey Fashions did not provide the necessary documentation; instead, it tried to rely on a declaration that it was assuming the obligations of importer of record with the consent of the original importer (Appeal Book, vol. 1, pp. 300, 387).

34 I agree with the appellant that for the CBSA to comply with the *Customs Act*, it had to ensure that the person who causes the goods to be exported to Canada was truly the importer before it could approve retroactively an importer name change request. This is consistent with section 7.1 of the *Customs Act*, which requires that all information provided to the CBSA shall be true, accurate and complete, and with the plain and ordinary meaning of "importer". There is certainly an argument to be made that if the CBSA is precluded from excluding post-importation involvement and is forced to accept name change requests on the basis of a partnering agreement entered into after the goods are effectively imported to Canada, it would be constrained from performing its regulatory functions of verification and would be acting contrary to section 7.1 of the *Customs Act*.

35 If the reasonableness of the decisions under review were to be assessed on the sole basis of their conformity with the overall legislative scheme pursuant to which they were made, they might pass muster. The decisions of the CBSA are arguably consistent with the *Customs Act* and the applicable TAROs. To that extent, they may be considered reasonable in the abstract.

36 The respondent claims, however, that the impugned decisions of the CBSA are at odds with past practices and past decisions. Relying on testimonial and documentary evidence, Honey Fashions argued that there was a

consistent and longstanding departmental practice of accepting post-importation name changes on the basis of post-partnering agreements. The Applications Judge accepted that evidence in the following terms :

> [47] The uncontradicted evidence before the Court is that Honey Fashions has participated in the TARO Program since its inception, that it was not a major importer of apparel but took full advantage of its entitlements under the program by becoming the importer of record of goods previously imported by others. It did so by filing a name change with the CBSA to record it as the importer of record, with the agreement of the initial importer. This procedure was accepted and arguably endorsed by the CBSA. Until the decisions under review were made "CBSA officials consistently accepted the name change notification to change the importer of record, and processed Honey Fashions' remission applications on the basis that Honey Fashion was the importer of record." The change in the procedure for changing the importer of record had dramatic consequences to Honey Fashions.

37 In its initial submissions, the appellant stressed that the doctrine of *stare decisis* does not apply to administrative decision makers, and that they are not required to explain the differences between two separate decisions. Following the release of *Vavilov*, counsel recognized that departures from longstanding practices or established internal authority must now be explained, but argued that there was no such departure in the case at bar. In a somewhat specious argument, counsel contends that the CBSA's practice has not changed in the context of a claim for remission of customs duties because its decision to accept the name change in the past is not a practice but a substantive outcome. To quote from their written submissions (at paragraph 6 of their January 31, 2020 letter), "[e]ssentially, Honey Fashions conflates *their* alleged long- standing practice of submitting post-importation name change requests without substantiating evidence, with the CBSA's past *decisions* to accept their request without substantiating evidence". In my view, this is a distinction without a difference and, as such, an argument without merit.

38 First of all, I note that the Supreme Court uses "past practices" and "past decisions" interchangeably in *Vavilov*, and is more concerned with the need for coherence and justification than with semantics. What matters is that like cases be treated alike and that outcomes shall not be dependant on the identity of the individual decision maker (at para. 130). In that spirit, it matters not whether a course of action is labelled as "past practices" or "past decisions". Of course, I agree with the appellant that the CBSA must always be able to exercise its discretion to determine how and when verification for compliance is conducted, and to consider importer name change requests in the context of its evaluation of remission of customs duty claims under TARO. However, if the evidence establishes that the CBSA has consistently allowed importer name change requests for remission of customs duties without requiring substantiating evidence showing pre-importation partnering agreements, these past decisions amount to past practices (both for Honey Fashions and the CBSA).

39 As previously mentioned at paragraph 18 of these reasons, both the 2011 and 2012 claims were rejected without any explanation or justification as to why those claims ought to be treated differently from earlier ones. This is particularly egregious considering that the 2009 claim had been accepted on the basis of the same information given by Honey Fashions (although admittedly on the basis of the pre-QAR policies and before CBSA issued the D8-11-7 Memorandum). Once again, this is not to say that the CBSA was bound to follow the same course of action it had followed in the past. CBSA was indeed entitled to modify its policy in order to comply with the *Customs Act*, provided that in so doing, its interpretation is reasonable. However, in the circumstances of this case, the CBSA should have provided an explanation to Honey Fashions with respect to its departure from past practice. As the Supreme Court stated in *Vavilov* (at para. 131) :

> We repeat that this does not mean administrative decision makers are bound by internal precedent in the same manner as courts. Rather, it means that a decision that departs from longstanding practices or established internal decisions will be reasonable if that departure is justified, thereby reducing the risk of arbitrariness, which would undermine public confidence in administrative decision makers and in the justice system as a whole.

40 I am therefore of the view that the decisions of the CBSA were not reasonable in light of this important contextual consideration in the present case. It was not sufficient to claim, *ex post facto*, that the decisions made by the CBSA official complied with the rationale and purview of the statutory scheme under which they were made. In

light of the impact of the decisions on the respondent, CBSA had to provide it with an explanation as to why the past practice was not followed and, presumably, why a post-importation partnering agreement would be contrary to section 7.1 of the *Customs Act* and would undermine the customs scheme when such agreements had been accepted without question in the past. Accordingly, on the basis of the recent teachings of the Supreme Court in *Vavilov*, it was open to the Federal Court to hone in on the fact that the CBSA official made no reference to his earlier decision or to the longstanding departmental practice of accepting name change requests without certain supporting documentation. I therefore agree with the Federal Court's conclusion that the CBSA's decisions lack justification, transparency and intelligibility.

41 Finally, the appellant challenges the Federal Court's factual finding that the CBSA had a policy dating back from the inception of the TARO program of approving post-importation name changes. They argue that, in the absence of direct evidence, the Federal Court could only consider serious, precise and concordant presumptions, the like of which do not arise from this record. The respondent, on the other hand, asserts that there was direct evidence as well as supportive indirect evidence allowing the Applications Judge to find that the CBSA "arguably endorsed" such a practice.

42 I accept the appellant's submission that the testimonies of Bernie Tevel and Stephen Yanow are not sufficient to establish that the CBSA was aware of and endorsed Honey Fashions' practice to claim duty remission on goods previously imported by others. These individuals could certainly testify that the CBSA routinely accepted name change notifications changing the name of the importer of record on the customs entry forms from the original importer to the Canadian manufacturer, without any indication as to whether the agreement was made prior to or after the importation. But they cannot purport to know what the CBSA was aware of at the time these decisions were made, and in particular whether the CBSA was aware that the importer name changes were based on post-importation agreements. This is precisely why the Federal Court was careful to state that this procedure was accepted "and arguably endorsed" by the CBSA (Reasons, at para. 47).

43 This is not the only basis, however, upon which the Federal Court came to the conclusion that there is direct evidence that the CBSA consistently accepted post-importation name change notifications to allow Schedule 1 manufacturers to claim remissions for goods previously imported by others. It noted that this administrative process was not flagged during the QAR as an unacceptable or illegitimate practice, and was not objected to in the course of the audits to which Honey Fashions was subjected at least three times (Reasons, at para. 48). These factual findings are entitled to a high degree of deference.

44 The appellant further submits that the Federal Court improperly relied on indirect evidence (primarily an internal memorandum from a Minister of Finance official dated April 26, 1993, and Memorandum D8-11-7) to conclude that the CBSA accepted post-importation name change notifications. I agree with the appellant that these two documents are inconclusive and would be insufficient, in and of themselves, to establish that the CBSA has endorsed and condoned post-importation name change agreements. However, this is beyond the point.

45 First of all, it is not at all clear that the Federal Court relied on that evidence to reach its conclusion. There was enough direct evidence to the same effect in the record. More importantly, Memorandum D8-11-7 could not have been offered as proof of the CBSA practice, since it was only released in late 2014. It could only be presented as being consistent with the alleged CBSA practice and in support of the direct evidence. Ultimately, I find the indirect evidence of little help for the resolution of the questions before us.

46 In light of all the foregoing, I am of the view that the Federal Court did not err in finding that the decision by the CBSA not to accept the name change requests was unreasonable. If anything, that conclusion is bolstered by the recent decision of the Supreme Court in *Vavilov*, with its insistence on the need for a reasonable decision to be justified in light of the legal and factual constraints that bear on that decision. A decision maker cannot deviate from earlier decisions or from a longstanding past practice, especially when it is too late for those affected by these decisions to adjust their behaviour accordingly, without providing a reasonable explanation for that departure.

47 As for the Federal Court's finding that the CBSA's refusal to accept Honey Fashions' importer name change

requests were made contrary to its legitimate expectations, I need not say much. I agree with the appellant that the respondent did not raise the duty of fairness before the Federal Court either in its Notices of Application, in its Memoranda of Fact and Law, or at the hearing. Allegations were made that the decisions being challenged were unfair and arbitrary, but these arguments were meant to substantiate the purported unreasonableness of the decisions, not a breach of procedural fairness.

48 As a matter of fairness, courts should constrain themselves to the grounds raised in the pleadings. As the Supreme Court stated in *Saadati v. Moorhead*, *2017 SCC 28*, *[2017] 1 S.C.R. 543* at para. 9, "each party is entitled to know and respond to the case that it must answer". I accept that the respondent did argue unfairness in relation to its legitimate expectations, but this was not sufficient in my view to squarely raise procedural fairness *per se*. It is clear from a transcript of the hearing that the parties never joined issue on that question (see, in particular, Appeal Book, vol. 2, at pp. 629, 657 and 671), and it was therefore an error of law for the Federal Court to conclude that the appellant violated Honey Fashions' legitimate expectations.

49 Be that as it may, the Federal Court's procedural fairness analysis was really a substantive review in disguise. Its conclusion with respect to procedural fairness appears to be nothing more than a restatement of its conclusion on substantive reasonableness, as is readily apparent from these two findings :

> * Procedural fairness : The Federal Court found "a clear, unambiguous and unqualified regular administrative practice of the CBSA that the name change...would be accepted". On this basis, Honey Fashions had a legitimate expectation that the CBSA would accept its subsequent name change applications. The decision was unfair because it departed from previous decisions without explaining why (Reasons, at para. 46).
>
> * Substantive reasonableness : CBSA's decisions were unreasonable because it did not accept the name change applications in spite of its previous decisions and the "long- standing departmental practice" (Reasons, at para. 53).

50 Finally, I also agree with the appellant that the doctrine of legitimate expectations cannot give rise to substantive rights : *Agraira* at para. 97; *Reference Re Canada Assistance Plan (B.C.)*, *[1991] 2 S.C.R. 525*, *83 D.L.R. (4th) 297* at p. 557; *JP Morgan Asset Management (Canada) Inc. v. Canada (National Revenue)*, *2013 FCA 250*, *[2014] 2 F.C.R. 557* at para. 75. Past practices, therefore, could not ground a legitimate expectation that a request for a name change to the importer of record would be granted in the future even if such a practice is established. The Court may only grant appropriate procedural remedies in the event that the conditions for the application of this doctrine are met : see *C.U.P.E. v. Ontario (Minister of Labour)*, *2003 SCC 29*, *[2003] 1 S.C.R. 539* at para. 131.

51 Moreover, legitimate expectations is only one of the factors to be considered in determining what procedural fairness requires in a given context : *Baker v. Canada (Minister of Citizenship and Immigration)*, *[1999] 2 S.C.R. 817*, *174 D.L.R. (4th) 193* at paras. 22-28. In the case at bar, there is no suggestion that Honey Fashions was not given a fair procedure, including notice and an opportunity to provide additional substantiation for its claims. I find, therefore, that the Federal Court erred in concluding that the decision by the CBSA not to grant the name change requests was made in breach of its duty of fairness.

Conclusion

52 For all of the above reasons, I would dismiss the appeal, maintain the judgment of the Federal Court, and return the remission claims of Honey Fashions to the CBSA for redetermination in accordance with these reasons, the whole with costs in this Court and in the Court below. I would amend the style of cause and remove the President of the Canada Border Services Agency as an appellant. The style of cause on these Reasons and on the Judgment should reflect this amendment.

Y. de MONTIGNY J.A.

R. BOIVIN J.A.:— I agree.

M.J.L. GLEASON J.A.:— I agree.

End of Document

Peters First Nation v. Engstrom

Federal Court Judgments

Federal Court of Appeal

Vancouver, British Columbia

J.D.D. Pelletier, D.J. Rennie and M.J.L. Gleason JJ.A.

Heard: December 2, 2021.

Judgment: December 20, 2021.

Docket: A-86-20

[2021] F.C.J. No. 2090 | 2021 FCA 243

Between Peters First Nation Band Council, Norma Webb in Her capacity as Chief of Peters First Nation, David Peters in His capacity as Councillor of Peters First Nation and Victoria Peters in Her capacity as Councillor of Peters First Nation, Appellants, and Brandon Lee Engstrom and Amber Rachel Ragan, Respondents

(35 paras.)

Case Summary

Aboriginal law — Communities and governance — Membership in community — Application for membership — Requirements and entitlement — Appeal by Council of Peters First Nation from dismissal of judicial review of decision requiring Council to admit applicants as members — Council rejected applicants' applicant for membership — Federal Court found applicant qualified for admission as members — Applicants were biological children of father who was registered as member on Band list — Council improperly interpreted Membership Code by placing age limit on application — Applicants satisfied conditions for membership.

Appeal by the Peters First Nation Band Council (Council) from a decision allowing an application for judicial review and ordering that the Band take all necessary steps to grant membership in the Peters First Nation Indian Band to the applicants, Brandon Lee Engstrom and Amber Rachel Ragan. The applicants applied to the Council for membership in the Band. The Membership Code provided that membership was available to everyone who was a natural child of a parent whose name was registered on the Band list. Both applicants were natural children of a father whose name was on the Band list, but their applications for membership were rejected. The Council took the position that the applicants were ineligible for membership because they were 18 or over when they applied, and because a child applying for membership must have the consent of both parents, which the applicants did not have. The applicants' application for judicial review of the refusal of membership was granted and the Federal Court ordered that the Band take all necessary steps to grant the applicants' membership. The Band appealed.
HELD: Appeal dismissed.

The Federal Court correctly selected reasonableness as standard of review of decisions refusing membership and correctly applied the reasonableness standard to the Council's interpretation of natural child. The Council's interpretation of the Membership Code was not reasonable. It was undisputed that the applicants were the biological children of a father who was registered as a member on the Band list. The term "natural child" had an ordinary meaning the same as "biological child", and referred to descendancy or biological relationship between offspring and parent. The use of the term was not limited to people under certain age. The language used in the Membership Code also suggested that "natural child" was not restricted by age. The Council's own conduct in assessing applications indicated that age was not relevant to being a natural child as they did not screen for age, there was no mention of an age requirement in the first decision refusing membership, and age was not mentioned during the general meeting to consider appeals. The Membership Code did not have to be read to take into account

effects that an increase in membership would have on the governance and economic well-being of the current members as that consideration was neither mentioned in the Code nor in the deliberations of Council. The Band's economic situation could not be used to read requirements into the Membership Code that did not exist or were contrary to the plain meaning of Code. The legislative history of the Code also supported the interpretation of the term "natural child" to include all persons born of a Band member. The Federal Court did not err in ordering Council to grant the applicants' membership. The applicants satisfied the conditions for Band membership. It was open to the Federal Court to conclude that the interests of justice were not served by having the question return to Council for a third time. Reconsideration should be avoided where outcome was inevitable and remitting case would serve no useful purpose.

Counsel

Stan H. Ashcroft, for the Appellants.

Karey Brooks, for the Respondents.

REASONS FOR JUDGMENT

The judgment of the Court was delivered by

D.J. RENNIE J.A.

1 The Peters First Nation Band Council appeals from the judgment of the Federal Court (*2020 FC 286*, *per* Barnes J.) allowing the respondents' application for judicial review and ordering that the Band take all necessary steps to grant the respondents membership in the Peters First Nation Indian Band.

2 The appellants appeal on two grounds.

3 The Band contends that the Federal Court erred in concluding that the respondents were eligible for membership under the Membership Code of the Peters First Nation. The Federal Court held that, having regard to the text of the Membership Code and the evidence surrounding its application by the Band, the only reasonable interpretation was that the definition of "natural child" included persons claiming membership who were the biological children of band members, regardless of age.

4 The Band also challenges the order of the Federal Court that the Band grant membership to the respondents forthwith, contending that the question of membership ought to have been remitted to the Band for reconsideration.

5 I see no merit in either of these arguments. However, some context is necessary to understand why I have reached this conclusion.

6 In December 2015, the respondents submitted applications for membership in the Band. In July 2016, the Band Council issued decision letters rejecting the respondents' applications. The decision letters did not provide reasons, merely stating that under the Membership Code they were not entitled to become members.

7 The respondents filed a notice of appeal and, as provided by the Membership Code, the Band Council convened a general meeting of the Band to vote on both appeals. The respondents' appeals were voted on as a single question and were dismissed by a 19 to 18 vote. The Chief and two councillors who made the original decision, appellants in this proceeding, also voted.

8 The respondents then brought an application for judicial review of the decision to deny them membership.

9 The Federal Court granted the application (*Peters v. Peters First Nation Band*, *2018 FC 544*, 2018 CarswellNat

2702 [*Peters*]), finding the decisions unreasonable and procedurally unfair. The decisions refusing membership were set aside and the matter was remitted to the Band Council for redetermination.

10 Three months later the Band Council again rejected the respondents' applications for membership. In refusing membership, the Band concluded that the respondents would "not promote harmony and the common good" of the First Nation, that they were not under the age of 18 and that the consent of both parents was required.

11 Again, the respondents appealed. However, the Band Council refused to convene a general meeting to vote on the appeals, reasoning that the previous decision to reject the previous appeals was "final".

12 Again, the respondents sought judicial review in the Federal Court, resulting in the judgment that is the subject of this appeal.

13 The governing standard of review is as expressed in *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42, [2021] 12 W.W.R. 1 at paragraph 12. The question before this Court is whether the Federal Court adopted the correct standard of review and applied it correctly. The Federal Court judge's discretionary decision not to remit the question to the Band Council is reviewable on a standard of palpable and over-riding error.

14 The Federal Court correctly selected reasonableness as the standard of review of the decisions refusing membership (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1 [*Vavilov*]) and correctly applied the reasonableness standard to the Band Council's interpretation of "natural child". I see no error in the judge's discretionary decision not to return the question of membership to the Band.

Was the Band Council's interpretation of the Membership Code reasonable?

15 The primary legal constraint on the reasonableness of a decision like the present is the legal and evidentiary framework (*Vavilov* at para. 120). A decision-maker must interpret the law, regulations and rules that apply to the matter before it in a way that is consistent with the text, context and purpose of the relevant provision. Where the words employed are precise and unequivocal, their ordinary meaning will usually be determinative. In such situations, it is not open to the decision-maker to adopt an inferior interpretation merely because it is plausibly available or expedient.

16 The legal framework governing the Band Council's decision-making is the Membership Code. The relevant section of the Code provides:

> Part III -- Membership Criteria
>
> 1. Membership in the Peters Indian Band shall consist of the following persons:
>
> ...
>
> E. everyone who is a natural child of a parent whose name is registered on the Band List;
>
> ...

17 It is undisputed that the respondents are the biological children of a father who was at the relevant time registered as a member on the Band List.

18 The term "natural child" has an ordinary meaning. Now more commonly referred to as a "biological child", it references descendancy or the biological relationship between the offspring and parent, and its usage is not limited to only people under a certain age. The term natural child contrasts with the term adopted child, a distinction reflected in the jurisprudence (see, *e.g., In Re Gage*, [1962] S.C.R. 241, 1962 CanLII 2 (SCC); *Hope v. Raeder Estate*, 1994 CanLII 2185 (BCCA), [1994] 2 B.C.L.R. (3d) 58 (BCCA); *Podolsky v. Podolsky*, 1980 CanLII 2438 (MBCA), [1980] 111 D.L.R. (3d) 159 (MBCA); *Plut v. Plut Estate*, 1991 CanLII 1329 (BCCA), [1991] B.C.J. No. 942; *Strong v. Marshall Estate*, 2009 NSCA 25, 309 D.L.R. (4th) 459).

19 Black's Law Dictionary (11th ed., 2019) defines natural child as "[a] child by birth, as distinguished from an adopted child."

20 The context of Article 1.E also supports the view that the term "natural child" is not restricted by age. Membership in Peters First Nation shall "consist of" ... "everyone" who is a natural child of a band member. This suggests that membership automatically follows paternal and maternal lineage.

21 The reasonableness of a decision may also be constrained by other factors, in addition to the legal framework. Of particular pertinence to this case, these include the facts and evidence before the decision maker, past practice and policies and the impact of the decision on an individual.

22 Here, the evidentiary context casts doubt on the reasonableness of the Band Council's interpretation of the term. The applicants' membership applications were not summarily screened out on the basis of age. No mention of an age requirement was made in the first decision refusing membership, nor was age mentioned during the general meeting to consider the appeals. The appellants were questioned about their character and whether they had criminal records, but not about their age. During cross-examination on an affidavit filed in the first judicial review, one of the councillors who made the decision to refuse membership could not point to any document or prior decision of the Band suggesting that age was a requirement.

23 The age requirement first appears in the Band's memorandum of argument on the first judicial review, prompting the Federal Court judge to observe that "the various rationales subsequently provided by the Band Council were developed *ex post facto*" and that the "justifications were offered in piecemeal fashion long after the decisions had been communicated to the Applicants" (*Peters* at para. 51). I agree with this characterization of the evidence.

24 The Band submits that the Membership Code must be read to take into account the effects that an increase in membership will have on the governance and the economic well-being of current Band members. Again, this consideration is neither mentioned in the Membership Code nor in the deliberations of Band Council. The Band's economic situation cannot be used to read requirements into the Membership Code that do not exist or are contrary to the plain meaning of the Membership Code.

25 Lastly, the Band points to the decision *Norris v Matsqui First Nation*, *2012 FC 1469*, *[2013] 1 C.N.L.R. 227* [*Norris*], contending that the Membership Code in *Norris* is analogous to its Membership Code and that this Court should adopt the same interpretation of the Code as the Code in *Norris*. It is sufficient to observe that the Membership Code in *Norris* had key differences from the Code at issue. The Code in Norris contained an explicit provision governing the age of a "child" and specific membership criteria for children.

26 The legislative history of the Code also supports the interpretation of the term "natural child" to include all persons born of a band member.

27 In September 2016, a proposal was brought forward to the general band membership that the Peters First Nation Code be amended to include an age requirement. The proposed new Membership Code defined child as "a child under the age of 18", whether biological or legally adopted. The proposed Code stated that a person "who has status as an Indian and is a Child of a Parent whose name is registered on the Membership List is eligible to apply for Membership and shall automatically be accepted ...". Persons between the ages of 19 and 30 and with Indian status with at least one parent who is a member would be eligible to apply for membership. Membership would be determined by a vote.

28 The proposed amendment was a matter of debate and controversy and was ultimately rejected by the Band. However, the proposed, and rejected Code reflects the interpretation of the current Code the Band Council advanced in the Federal Court and now in this Court.

Did the Federal Court err in the remedy granted?

29 The Supreme Court has consistently held there will be circumstances where the ordinary tools of statutory interpretation will make it clear that there is only one reasonable interpretation (see, *e.g., Vavilov* at para. 124; *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29, [2016] 1 S.C.R. 770 at para. 35; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471 at para. 64; *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895 at para. 38). This Court, and other appellate courts across Canada have also recognized that reasonableness encompasses situations where there is only one possible interpretation (see, *e.g., Nova Tube Inc./Nova Steel Inc. v. Conares Metal Supply Ltd.*, 2019 FCA 52, 2019 CarswellNat 14755 at para. 61; *English v. Richmond (City)*, 2021 BCCA 442, 2021 CarswellBC 3665 at para. 120; *Ontario Nurses' Association v. Participating Nursing Homes*, 2021 ONCA 148, 154 O.R. (3d) 225 at para. 84).

30 For the reasons outlined above, the term "natural child" can only have one reasonable meaning. This is not a term for which there is a range of reasonable outcomes.

31 Given that there is only one reasonable interpretation of the term, the Federal Court did not err in ordering the Band Council to grant the respondents' membership. The Membership Code stated that the membership *shall* consist of the following persons: "everyone who is a natural child of a parent whose name is registered on the Band List". *Shall* is not discretionary and as the criteria is met, the only conclusion is that the respondents satisfy the conditions for band membership. The undisputed fact of paternity combined with the express terms of the Membership Code are sufficient to support an order that the respondents are entitled to membership in Peters First Nation.

32 Counsel for the Band argues that the question of band membership, particularly in a small band like the Peters First Nation, is critical to maintaining social cohesion, cultural traditions and values. Membership, it is argued, is essential to identity.

33 I do not question this argument or the legitimacy of any of these considerations, and in the ordinary course the Federal Court would return questions of Band membership to a Band for redetermination. However, in the circumstances of this case, these arguments also weigh in favour of an order directing the respondents to be granted membership. Given the importance of Band membership to an individual's sense of identity, culture and values, rules governing membership must survive reasonableness review and the requirements of procedural fairness.

34 As is apparent from the lengthy history of this matter, it was open to the Federal Court to have concluded that the interests of justice were not served by having this question return to the Band Council for a third time. Nearly six years have passed since the first applications for membership were made, during the course of which the respondents' rights to procedural fairness were breached on two occasions and there has been ample evidence of bad faith on the part of Band Council. Fairness and efficiency also support the decision not to return the question to the Band for a third time. Reconsideration should be avoided where the outcome is inevitable and remitting the case would serve no useful purpose.

35 I would dismiss the appeal with costs to the respondents, which I would fix at $30,000.00.

D.J. RENNIE J.A.
J.D.D. PELLETIER J.A.:— I agree.
M.J.L. GLEASON J.A.:— I agree.

End of Document

Uyanze c. Canada (Ministre de la Citoyenneté et de l'Immigration)

Jugements de la Cour fédérale du Canada

Cour fédérale

Ottawa (Ontario)

Le juge Y. Roy

Entendu : le 3 avril 2024.

Rendu : le 9 avril 2024.

Dossier : IMM-6210-23

[2024] A.C.F. no 645 | 2024 CF 554

Entre Ganea Uyanze, demandeur, et Le ministre de la Citoyenneté et de l'Immigration, défendeur

(24 paragr.)

Avocats

M. Ganea Uyanze, pour le demandeur (pour son propre compte).

Me Janan Arafa, pour le défendeur.

JUGEMENT ET MOTIFS

LE JUGE Y. ROY

1 M. Ganea Uyanze, le demandeur, a obtenu l'autorisation de se pouvoir en contrôle judiciaire d'une décision rendue par la Section d'appel de l'immigration [SAI]. L'autorisation est obtenue en vertu de l'article 72 de la *Loi sur l'immigration et la protection des réfugiés*, *LC 2001, c 27* [LIPR]. Le demandeur ne bénéficie pas des services d'un avocat. M. Uyanze avance, entre autres, que la décision ne rencontre pas les critères d'une décision raisonnable.

2 Pour les motifs qui suivent, cette affaire doit être retournée à la SAI pour qu'une formation différente rende une décision transparente et intelligible. Celle dont contrôle judiciaire est demandé ne rencontre pas les conditions minimales d'une décision justifiée. Ceci dit avec égards, je ne partage pas l'avis du défendeur qui avance que les «motifs de la décision expliquent bien et clairement comment la SAI est parvenue à ces conclusions» (mémoire des faits et du droit, para 26).

3 C'est qu'une décision administrative qui a un impact majeur chez le justiciable doit être motivée pour expliquer le processus décisionnel et la raison pour rendre une décision donnée. Comme le dit la Cour suprême du Canada dans l'arrêt phare *Canada (Ministre de la Citoyenneté et de l'Immigration) c Vavilov*, *2019 CSC 65*, [2019] 4 RCS 653 [*Vavilov*], les motifs «permettent de montrer aux parties concernées que leurs arguments ont été pris en compte et démontrent que la décision a été rendue de manière équitable et licite. Les motifs servent de bouclier contre l'arbitraire et la perception d'arbitraire dans l'exercice d'un pouvoir public» (*Vavilov*, au para 79). L'absence de motivation adéquate rend la décision déraisonnable.

4 La cour de révision adopte le principe de la retenue judiciaire et fait preuve de respect à l'égard de la décision administrative, ne cherchant pas à substituer son avis à celui du décideur administratif. Mais la Cour suprême

insiste dans *Vavilov* à ce que les décideurs administratifs adhèrent à une culture de la justification où l'exercice du pouvoir public est justifié aux yeux du justiciable qui y recherche rationalité et équité. Or, les motifs dans notre cas d'espèce font défaut (*Vavilov*, au para 14).

5 Étant donné que la cour de révision ne s'intéresse pas seulement au résultat mais aussi aux motifs de la décision sous étude, elle doit tenter de comprendre le raisonnement ayant mené à la décision pour en trouver la cohérence et la rationalité face aux contraintes juridiques et factuelles. On en recherche la justification. Il faut que la décision soit justifiée :

> [86] L'attention accordée aux motifs formulés par le décideur est une manifestation de l'attitude de respect dont font preuve les cours de justice envers le processus décisionnel : voir *Dunsmuir*, par. 47?49. Il ressort explicitement de l'arrêt *Dunsmuir* que la cour de justice qui procède à un contrôle selon la norme de la décision raisonnable «se demande dès lors si la décision et sa justification possèdent les attributs de la raisonnabilité» : par. 47. Selon l'arrêt *Dunsmuir*, le caractère raisonnable «tient principalement à la justification de la décision, à la transparence et à l'intelligibilité du processus décisionnel, ainsi qu'à l'appartenance de la décision aux issues possibles acceptables pouvant se justifier au regard des faits et du droit& raquo; : *ibid*. En somme, il ne suffit pas que la décision soit *justifiable*. Dans les cas où des motifs s'imposent, le décideur doit également, au moyen de ceux?ci, justifier sa décision auprès des personnes auxquelles elle s'applique. Si certains résultats peuvent se détacher du contexte juridique et factuel au point de ne jamais s'appuyer sur un raisonnement intelligible et rationnel, un résultat par ailleurs raisonnable ne saurait être non plus tenu pour valide s'il repose sur un fondement erroné.
>
> [Je souligne.]

6 Ainsi, une tentative de l'avocat d'améliorer les motifs d'une décision administrative ne peut réussir car c'est au décideur de justifier. Autrement, ce serait transformer la justification requise du décideur administratif en justification *ex post facto* offerte par le plaideur. Il en est de même pour la cour de révision (*Vavilov*, au para 96). Elle ne peut chercher à combler les lacunes identifiées dans une décision dont contrôle judiciaire est demandé.

7 Qui plus est, les motifs doivent avoir une qualité qui dépasse l'abstrait : les motifs doivent justifier la décision prise.

I. Décision de l'agent d'immigration

8 L'affaire qui nous importe n'est pas particulièrement complexe. M. Uyanze cherche à parrainer une jeune fille qu'il prétend être sa fille. Si elle est sa fille, elle pourrait donc tomber dans la catégorie du regroupement familial. La LIPR, à son article 12, établit bien que le regroupement familial a lieu en fonction de la relation entre un citoyen canadien ou un résident permanent et un étranger à titre d'enfant ou de père ou mère. La demande de résidence permanente de la personne se présentant comme étant la fille du demandeur a été refusée par l'agent d'immigration canadien à Dakar, au Sénégal.

9 C'est l'article 117 du *Règlement sur l'immigration et la protection des réfugiés*, *DORS/2002-227* [Règlement], qui définit plus avant qui appartient à la catégorie du regroupement familial. Ainsi, ce sera «l'enfant à charge» qui se qualifiera (alinéa 117(1)b)). Mais encore faut-il que l'enfant soit à charge. Le terme est défini à l'article 2 du Règlement :

> 2 Les définitions qui suivent s'appliquent au présent règlement.
>
> ***enfant à charge*** L'enfant qui :
>
> a) d'une part, par rapport à l'un de ses parents :
>
> (i) soit en est l'enfant biologique et n'a pas été adopté par une personne autre que son époux ou conjoint de fait,
>
> (ii) soit en est l'enfant adoptif;
>
> b) d'autre part, remplit l'une des conditions suivantes :

(i) il est âgé de moins de vingt-deux ans et n'est pas un époux ou conjoint de fait,

(ii) il est âgé de vingt-deux ans ou plus et n'a pas cessé de dépendre, pour l'essentiel, du soutien financier de l'un ou l'autre de ses parents depuis le moment où il a atteint l'âge de vingt-deux ans, et ne peut subvenir à ses besoins du fait de son état physique ou mental. (*dependent child*)

* * *

2 The definitions in this section apply in these Regulations.

dependent child, in respect of a parent, means a child who

(a) has one of the following relationships with the parent, namely,

(i) is the biological child of the parent, if the child has not been adopted by a person other than the spouse or common-law partner of the parent, or

(ii) is the adopted child of the parent; and

(b) is in one of the following situations of dependency, namely,

(i) is less than 22 years of age and is not a spouse or common-law partner, or

(ii) is 22 years of age or older and has depended substantially on the financial support of the parent since before attaining the age of 22 years and is unable to be financially self-supporting due to a physical or mental condition. (*enfant à charge*)

10 La lettre de décision de l'agent d'immigration indique qu'un test d'ADN a révélé en mars 2022 que la probabilité que M. Uyanze soit le père de la jeune fille est 0 %. D'ailleurs, une demande antérieure de parrainage avait été refusée parce que le test d'ADN demandé n'avait pas été complété. Face au test d'ADN négatif, M. Uynanze aurait répondu être «le père officiel et reconnu»; il aurait indiqué croire à une erreur relativement au test d'ADN.

11 L'agent note aussi au sujet de la jeune fille que «vous n'avez pas été déclaré et examiné dans le demande de résidence permanente de votre répondant. Vous êtes donc exclus selon le R117(9)d) du Règlement expliqué ci-haut» (reproduit tel que rédigé). Le texte de l'alinéa 117(9)d) se lit :

(9) Ne sont pas considérées comme appartenant à la catégorie du regroupement familial du fait de leur relation avec le répondant les personnes suivantes :

[...]

d) sous réserve du paragraphe (10), dans le cas où le répondant est devenu résident permanent à la suite d'une demande à cet effet, l'étranger qui, à l'époque où cette demande a été faite, était un membre de la famille du répondant n'accompagnant pas ce dernier et n'a pas fait l'objet d'un contrôle.

* * *

(9) A foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor if

...

(d) subject to subsection (10), the sponsor previously made an application for permanent residence and became a permanent resident and, at the time of that application, the foreign national was a non-accompanying family member of the sponsor and was not examined.

12 Enfin, l'agent disait au sujet de la jeune fille «croire qu'il y a une présentation erronée qui aurait pu entrainer une erreur dans l'application de la Loi» (reproduit tel que rédigé). Étant ainsi reconnue coupable d'avoir fait une fausse déclaration relativement à la qualité d'enfant à charge, la jeune fille prétendant être la fille du demandeur devient interdite de territoire.

II. La décision dont contrôle judiciaire est demandé

13 Comme je l'ai expliqué à l'audience, la décision de l'agent n'est pas celle qui se retrouve devant la cour en révision judiciaire. La seule demande de contrôle judiciaire est relative à la décision de la SAI. C'est ainsi qu'une partie du mémoire des faits et du droit du demandeur est inutile. Le regard ne doit porter que sur la décision de la SAI, même si la décision de l'agent fait partie, dans une certaine mesure, du contexte dans lequel la décision, dont contrôle judiciaire a été demandé, a été rendue.

14 C'est cette décision qui, à mon avis, n'est pas raisonnable en raison de la qualité des motifs. C'est que «la prise de décisions motivées constitue la pierre angulaire de la légitimité des institutions» (tel que reproduit au para 74 de *Vavilov* : tiré du mémoire des *amici curiae* dans cette affaire, au para 12).

15 À mon avis, et ceci dit avec égards, la décision de la SAI pêche par défaut de transparence et d'intelligibilité, deux caractéristiques nécessaires à une décision raisonnable. Essentiellement, un justiciable doit savoir pourquoi on lui refuse le remède recherché. C'est pourquoi nous sommes à la recherche de la décision intrinsèquement cohérente et rationnelle qui est intelligible et transparente, non pas dans l'abstrait, mais bien pour l'individu qui en fait l'objet.

III. Analyse

16 Le refus de délivrer le visa de résident permanent dans le cadre d'une demande de parrainage au titre du regroupement familial peut faire l'objet d'un appel auprès de la SAI (art 63 de la LIPR). Mais la décision de la SAI, qui compte à peine deux petites pages, n'explique pas : elle déclare.

17 D'emblée, et pour une raison inconnue, la SAI choisit de tenir «pour acquis que la demandeure est l'enfant à charge de l'appelant» (décision, para 5), malgré que le test d'ADN avait établi la probabilité de filiation père-fille comme étant de zéro.

18 Il en résulte évidemment que la SAI a dû s'en reporter à d'autres raisons. On comprend que c'est du fait que le demandeur n'aurait pas déclaré sa «fille» lorsqu'il a obtenu la résidence permanente que le visa est refusé; mais le demandeur conteste vertement cette affirmation puisqu'il dit avoir déclaré la possibilité d'être le père d'un enfant, possibilité qui serait aux notes consignées par l'agent d'immigration. Pourtant on ne retrouve aucune discussion à cet égard. On ne retrouve pas plus en quoi il n'y aurait pas eu «contrôle» (en anglais «examined»). De fait, on ne sait pas en quoi consiste cette notion. Cette notion de «contrôle», que l'on retrouve au paragraphe 7 de la décision, ne peut que référer à l'alinéa 117(9)d) du Règlement qui exclut de la catégorie du regroupement familial un membre de la famille du répondant (M. Uyanze) qui n'a pas fait l'objet d'un contrôle. La décision déclare, elle n'explique pas. On ne trouve pas le raisonnement intrinsèquement cohérent qui permet de comprendre ce qui mène à la décision.

19 Mais il y a plus encore. Le demandeur prétendait à l'existence d'une politique d'intérêt public dont l'effet serait de suspendre l'application de l'alinéa 117(9)d) du Règlement. Or, la SAI se déclare ne pas avoir «la compétence législative requise pour se pencher sur la politique d'intérêt public» (décision, para 7). On ne sait pas de quelle «compétence législative» le décideur administratif aurait besoin. On ne sait pas davantage de ce en quoi cette politique d'intérêt public consiste, quand et à qui elle s'applique, et en quoi elle ne serait pas contraignante à l'égard du décideur administratif, comme le prétend le demandeur. De fait, la SAI se déclare compétente pour disposer d'un appel en fonction de la législation, non en fonction de politiques publiques car elles ne seraient pas du ressort de la SAI. On ne sait pas pourquoi alors même que l'article de la LIPR permettrait l'adoption d'une telle politique, selon la SAI (art 25.2). Si la politique ne s'applique pas à la SAI, encore faudrait-il le dire et pourquoi elle viserait d'autres acteurs mais pas la SAI.

20 Le propos n'est pas d'opiner sur caractère raisonnable du résultat. Cela n'est pas possible à la lecture de la décision. Que le décideur ait tort ou raison n'est pas pertinent. C'est l'absence de motifs qui permettent de comprendre le raisonnement outre que dans l'abstrait qui fait en sorte que la décision n'est ni transparente, ni intelligible. Il se peut que le décideur administratif n'ait pas tort. Mais là n'est pas la question.

21 Il en est de même du rejet par la SAI de l'invocation par le demandeur de motifs d'ordre humanitaire. La SAI déclare ne pas avoir compétence pour entendre une telle demande. Pour seule explication, on ne trouve qu'une note de bas de page, la note 11, qui réfère à la note 1 qui elle-même n'est qu'une référence à la compétence d'appel de la SAI du refus de délivrer le visa de résident permanent dans le cadre d'une demande de parrainage au titre du regroupement familial. Cela ne peut être adéquat. En fait, plus tôt dans cette courte décision, la SAI indiquait ne pas avoir la «compétence juridictionnelle pour trancher l'affaire en fonction de l'existence de motifs d'ordre humanitaire» (décision, para 3). La note de bas de page référait à l'article 65 de la LIPR. Cette confusion ne favorise évidemment pas une compréhension de la raison pour laquelle les motifs d'ordre humanitaire ne pourraient être retenus puisqu'il aurait fallu expliquer en quoi l'article 65 ne peut s'appliquer au cas d'espèce. En quoi consiste une absence de «compétence juridictionnelle» reste tout aussi inexpliqué.

IV. Conclusion

22 La Cour en vient donc à la conclusion que la décision rendue par la SAI n'a pas les apanages de la décision raisonnable en ce qu'elle n'est ni justifiée, ni transparente, ni intelligible. Les auteurs R.A. MacDonald et D. Lametti ont écrit que des motifs qui «ne font que reprendre le libellé de la loi, résumer les arguments avancés et formuler ensuite une conclusion péremptoire» ne fournissent pas ce qui est nécessaire pour comprendre le raisonnement («Reasons for Decision in Administrative Law» (1990), 3 RCDAP 123, à la p 139, et cité dans *Vavilov*, au para 102). Dans notre cas d'espèce, nous n'avons même pas le libellé de la loi et les arguments avancés. Il ne s'agit pas, bien sûr, de requérir une réponse à tous les arguments présentés. Mais le droit requiert de s'attaquer aux questions clés ou aux arguments principaux. Cela n'a pas été fait. Comme le disait la Cour suprême dans *Vavilov*, «[l]orsque la décision a des répercussions sévères sur les droits et intérêts de l'individu visé, les motifs fournis à ce dernier doivent refléter ces enjeux» (para 133). La Cour écrivait au paragraphe 135 :

> [135] Bon nombre de décideurs administratifs se voient confier des pouvoirs extraordinaires sur la vie de gens ordinaires, dont beaucoup sont parmi les plus vulnérables de notre société. Le corollaire de ce pouvoir est la responsabilité accrue qui échoit aux décideurs administratifs de s'assurer que leurs motifs démontrent qu'ils ont tenu compte des conséquences d'une décision et que ces conséquences sont justifiées au regard des faits et du droit.

23 En conséquence, la demande de contrôle judiciaire doit être accordée. L'affaire doit être retournée à la SAI pour qu'une formation différente fasse une nouvelle détermination.

24 La nouvelle formation devrait s'assurer d'avoir un dossier certifié du tribunal complet avant de chercher à disposer de l'appel. En effet, le demandeur prétendait à l'existence de notes au dossier produites par l'agent d'immigration (voir le mémoire du demandeur aux para 24 et 25). Dans une affaire dont c'est la décision d'un agent d'immigration de refuser de délivrer un visa de résident permanent qui fait l'objet d'un appel, on devrait s'assurer que les notes préparées par l'agent fassent partie du dossier devant le tribunal administratif. En effet, les notes, s'il en est, font partie de la décision rendue (*Baker c Canada (Ministre de la Citoyenneté et de l'Immigration)*, *[1999] 2 RCS 817*, au para 44) et dont un appel est permis en vertu de l'article 63 de la LIPR. Si les notes étaient au dossier de la SAI, elles auraient dû être au dossier certifié du tribunal. Elles n'y étaient pas. Il y aurait lieu de s'assurer qu'un dossier complet soit présenté à la SAI pour traiter de la nouvelle détermination de l'appel.

JUGEMENT au dossier IMM-6210-23

LA COUR STATUE que :

1. La demande de contrôle judiciaire est accordée.
2. Le dossier est retourné à la Section d'appel de l'immigration. Une nouvelle formation devra procéder à une nouvelle détermination
3. Il n'y a pas de question à certifier en vertu de l'article 74 de la *Loi sur l'immigration et la protection des réfugiés*.
4. Aucune question n'est certifiée.

LE JUGE Y. ROY

End of Document