INSIDE CANADA

BILL BUHOLZER, *Associate Counsel, and*
JULIA TIKHONOVA, *Associate, Young, Anderson, Vancouver, British Columbia*

Rental Housing Initiatives on Canada's West Coast

Like many North American cities, British Columbia's largest cities have over the past several years been struggling to accommodate the demand for residential housing that is affordable for families with low to moderate incomes. Part of the challenge has been to attenuate the erosion of affordable rental housing stock through redevelopment and renovation of existing buildings. Some recent legislative changes and court decisions highlight the complementary roles of the provincial and local governments in meeting these difficult challenges.

Rental Tenure Zoning

Pursuant to amendments that were made to B.C.'s *Local Government Act* [1] in 2018, its municipalities are empowered to require rental tenure in apartment buildings. Specifically, the new section 481.1 of the *LGA* allows municipalities to enact zoning bylaws that limit the form of tenure to rental tenure within a zone or part of a zone where multi-family residential use is permitted. This section additionally authorizes municipalities to limit the form of tenure to a specified portion of units within a building.

Section 242 of B.C.'s *Strata Property Act*[2] provides local governments with the discretion to approve or refuse applications to subdivide previously occupied buildings into strata lots, a key step for developers converting rental housing to ownership housing. In exercising this discretion, local governments must consider a variety of factors set out in the legislation, including the priority of rental accommodations in the surrounding area (s. 242(6)(a)) and "any other matters that, in its opinion, are relevant" (s. 242(6)(e)). The City of New Westminster has exercised this authority for several years to protect affordable rental housing in its community. The City was also one of the first to exercise the new rental tenure zoning power.

A recent decision of the B.C. Supreme Court in *V.I.T. Estates Ltd. v. New Westminster (City)* provides guidance in relation to the scope of the above legislation.[3] In this decision, the Court upheld a zoning bylaw that limited the tenure of about 140 units in six different residential properties to rental tenure, pursuant to s. 481.1 of the *LGA*. The City of New Westminster enacted the bylaw to protect rental tenure in buildings that had been subdivided into strata lots many years ago despite the City's moratorium on strata conversions, but had always been managed and operated as rental buildings. The bylaw effectively prevented the conversion of these rental units to owner-occupancies.[4] The bylaw arose in the context of the City's Affordable Housing Strategy. A report accompanying the bylaw stated that "the City is committed to protecting and enhancing this affordable rental stock as it provides an important source of safe, secure and affordable housing for our residents."[5] The petitioners, who were corporate owners of the six properties at issue, argued that the bylaw was *ultra vires*, and that the City could not apply residential tenure zoning to strata units as that would interfere with the right of strata lot owners to occupy their units themselves.

On the reasonableness standard of review that applied to the City's interpretation of its authority under the new s. 481.1 of the *LGA*,[6] the question before the Court was whether the City's interpretation of s. 481.1 as including the power to restrict the form of tenure of residential strata lots to rental tenure in perpetuity was one that no reasonable municipal council could have made. That question included consideration of the entire statutory framework for the City's interpretation.

Justice Saunders of the B.C. Supreme Court held that there is neither any inconsistency between the provincial legislation and the bylaw, nor any conflict between the 2018 amendments to the *LGA*, the *Land Title Act*,[7] or the *SPA*. He further held that nothing in the language of the 2018 amendments suggests that the rights of individual strata unit owners are privileged over those of non-strata residential rental property owners. Since s. 242 of the *SPA* already granted municipalities the power to approve or disapprove applications to stratify previously occupied buildings, the 2018 amendments could not have been, as the owners asserted, intended only to prevent owners from evicting tenants in order to strata-title their buildings. In dismissing the petition, Justice Saunders noted that the bylaw "accomplish[es] the precise aims of the legislation": by empowering the City to prevent an owner from converting a rented strata unit into an owner-occupied unit, the bylaw preserves the City's available rental housing.[8]

This decision provides clarity in relation to the 2018 amendments to the B.C. *Local Government Act*, and should be encouraging for other municipalities around B.C. that wish to use the residential rental tenure zoning power to preserve affordable rental housing in their communities.

Renoviction Regulations

Prior to its repeal on July 1, 2021, a provision in B.C.'s provincial residential tenancy regime expressly permitted evictions for the purpose of renovation, if a landlord had acquired the appropriate permits and the renovation required a vacant unit.[9] Because rent controls in British Columbia attach to the tenant rather than the unit, landlords could evict tenants, perform token renovations, and rent the unit to a new tenant at whatever rent the market would bear. The portmanteau word "renoviction" was coined to describe the practice, which has constituted the business plan for many building acquisitions that have occurred in the Vancouver area housing market over the past several years.

In May of 2019, the City of New Westminster enacted a bylaw to regulate renovictions under its general business regulation power. For any renovations substantial enough to require an eviction of the tenant, the bylaw requires the landlord to either enter into a new tenancy agreement with the tenant in respect of a comparable unit in the same building on the same, or better, terms as the tenant's existing tenancy agreement, or make other arrangements for the tenant's temporary accommodation and return to their unit at the same rent when the work is complete.[10] For the second option, the bylaw prohibits landlords from increasing the rent payable by the tenant upon their return after the renovation. As reflected in Council notes, the policy context for the bylaw was the City's long-standing concerns relating to insufficient affordable housing, as well as the lack of adequate protections in the *RTA* from renoviction projects.

In *1193652 B.C. Ltd. v. New Westminster (City)*,[11] the petitioner landlord (an owner of rental apartments) argued that the City's bylaw is *ultra vires*. In the petitioner's view, the bylaw contravened the Legislature's intention to regulate evictions consistently throughout the province. Honourable Chief Justice Hinkson for the BC Supreme Court disagreed. Applying the correctness standard of judicial review that applied prior to the Supreme Court of Canada's *Vavilov* decision[12] to questions of statutory interpretation, the Court cited section 10 of the B.C. *Community Charter*,[13] which deals with conflict between municipal bylaws and provincial laws. Section 10 provides that a municipal bylaw is inconsistent with a provincial bylaw, and is consequently of no force or effect, only if it requires contravention of the provincial enactment. Here, the City had exercised its authority in an area already subject to a provincial regulatory regime, but in a way that was not inconsistent by this standard. The City also presented a novel argument regarding the scope of municipal authority in ss. 8(6) and 8(3)(g) of the *Community Charter*. Section 8(3) provides that a council may by bylaw, regulate, prohibit, and impose requirements in relation to "the health, safety or protection of persons or property in relation to matters referred to in section 63," which include "rental units and residential property." Regarding this provision, the petitioner argued that "health, safety or protection of persons" must be narrowly inter-

Continued on page 31

Bill Buholzer is associate counsel at Young, Anderson in Vancouver, B.C. He is a registered professional planner and a member of the College of Fellows of the Canadian Institute of Planners, the Planning Institute of BC, the American Planning Association, and IMLA. Bill is the author of the "Planning and Zoning" title in Halsbury's Laws of Canada and British Columbia Planning Law and Practice, a legal practice manual for planners. He teaches planning law at the University of British Columbia and Vancouver Island University

Julia Tikhonova is an associate lawyer at Young, Anderson in Vancouver, B.C. Julia's practice focuses on a broad range of local government issues. Julia holds a law degree from the University of Victoria, and a Bachelor of Arts degree in English literature and Sociology from the University of British Columbia.

Inside Canada *cont'd from page 27*

preted to include protection against citizens' physical harm, which does not encompass the protection of tenants. Justice Hinkson disagreed and held the following (at paras. 58 and 59):

> There is no express limitation in s. 8(3)(g) as to the permissible object of a bylaw aimed at the "protection" of tenants of rental units. I agree with the City that the word "protection" cannot have been included in this section to give authority to deal only with physical harm. I find that there is no reason to conclude that the tenant protection aims of the City are insufficient to bring the Impugned Bylaw within the scope of the authority in s. 8(3)(g). This interpretation of s. 8(3)(g) is consistent with the purpose of the *Community Charter* as described in s. 3(c), which gives a municipality the flexibility to respond to the needs of a particular element of the community; in this case, renters.

Justice Hinkson concluded that the bylaw was *intra vires*, and dismissed the petition.

The landlord appealed, and the issue on appeal was whether the *Community Charter* authorizes municipalities to enact bylaws that protect tenants from renovictions.[14] On the reasonableness standard of review mandated by the *Vavilov* decision, Honourable Madam Justice Dickson, writing for a unanimous Court of Appeal, held that the City's decision to enact the Bylaw was grounded in a reasonable interpretation of its statutory authority. The reasoning of the trial judge in relation to section 10 of the *Community Charter* was also upheld, as the bylaw did not require landlords to contravene the *RTA*. Additionally, the Court noted that the City's interpretation was consistent with the principles of subsidiarity, wherein the local government responded to its community's local needs by introducing complementary legislation within an area of jurisdictional overlap.[15]

The Court of Appeal upheld the decision of the trial judge and dismissed the appeal. This decision provides insight into the authority of municipalities to enact bylaws that respond to community exigencies, so long as they are consistent with provincial legislation.

On March 1st, 2021, in the aftermath of these decisions, the B.C. Legislative Assembly introduced Bill 7: *Tenancy Statutes Amendment Act, 2021* to improve security for renters throughout the province. The legislative provisions relating to the *RTA* came into force on July 1, 2021 and included amendments to the "eviction for renovations" provisions, as well as implementing a freeze

on rent increases for the remainder of the year. Of most significance, s. 49(6)(b) of the *RTA* was repealed; instead, the *RTA* now requires landlords to obtain approval from the provincial government's Residential Tenancy Branch prior to ending a tenancy for the purpose of substantial renovations or repairs. To do so, the landlord must apply to the Branch with evidence that ending the tenancy is the only way the renovations can be done. For clarity, the Branch has published a policy guideline indicating what kinds of renovations should and should not require an eviction. This new application process aims to prevent tenancies from ending unnecessarily, while also allowing landlords to make needed renovations.

Concluding observations.
The bylaws discussed in this article represent novel approaches of local governments to the seemingly never-ending series of business strategies that frustrate the maintenance of a supply of affordable housing on Canada's west coast. As long as the vast majority of housing is provided as a market commodity, provincial and local governments will have to continue to monitor market trends and respond with appropriate legislation to protect the interests of households of modest means. In this regard, both the Province of B.C. and the City of New Westminster have, over the past couple of years, been up to the task. ML

Notes

1. R.S.B.C. 2015, c. 1, amended by *Local Government Statutes (Residential Rental Tenure Zoning) Amendment Act*, 2018, S.B.C. 2018, c. 26.
2. S.B.C. 1998, c. 43.
3. 2021 BCSC 573.
4. In B.C., strata lot owners are allowed to evict their tenants in order to occupy the unit themselves.
5. 2021 BCSC 573, at para 13.
6. Standard of review of is determined pursuant to the Supreme Court of Canada's 2019 decision, *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 ("*Vavilov*").
7. RSBC 1996, c. 250.
8. 2021 BCSC 573, at para 72.
9. former 49(6)(b) of the *Residential Tenancy Act*, SBC 2002, c. 78 [the "RTA"]. The Act set out no criteria for when vacancy was required.
10. Business Regulations and Licensing (Rental Units) Bylaw, s. 47.
11. 2020 BCSC 163.
12. See note 5.
13. SBC 2003, c. 26.
14. *1193652 B.C. Ltd. v. New Westminster (City)*, 2021 BCCA 176.
15. The subsidiarity principle, articulated by the Supreme Court of Canada in its 2001 decision in *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40, holds that regulation is best accomplished by the level of government that is closest to those citizens being regulated.