



## RENTAL HOUSING STOCK

Recent amendments to the Strata Property Act (the "Act") will make it easier for local governments to control rental housing stock.

As of January 1, 2010, section 143 of the Act provides that if a new Rental Disclosure Statement applicable to a residential strata lot is filed after December 31, 2009, a rental restriction bylaw will not apply to that strata lot until after the rental period disclosed in the Rental Disclosure Statement expires. As a result, strata corporations can no longer use rental restriction bylaws to change the availability of rental units in the strata development from what was originally disclosed by the owner developer. A new Rental Disclosure Statement now benefits every purchaser, rather than just the first purchaser from the owner developer and increases rental housing stock.

With this amendment in place, local governments can require, where appropriate, developers to set aside a certain percentage of strata units as available for rent. The strata corporation would not be able to override the set amount of units available for rent once it takes over from the owner developer until the Rental Disclosure Statement expires.

## LEGAL NON-CONFORMING USE

### ***Sierra Club of Canada v. Comox Valley Regional District 2010 BCSC 74***

To establish a legal non-conforming use, actual use of the land may no longer be required.

The Court concluded that the Comox Valley Regional District (the "CVRD") did not act inappropriately in issuing a development permit to operate a gas station at the same board meeting where it later adopted a bylaw which prohibited gas stations on the site for which the development permit was issued. In the Court's words:

...the actions of the Board in dealing with this application are consistent with the overall purposes of the *Local Government Act* ..., such as providing local government with flexibility 'to respond to fostering the current and future economic, social and environmental

well-being of its community." ... Courts in the recent past have accepted these as appropriate principles and have given deference to local government decision making.

The Court commented that to establish a legal non-conforming use, actual use of the land is not a prerequisite. The Court felt that an owner could show a *bona fide* commitment to use by other means, including undertaking extensive studies and reports, and retaining professionals to move the project along.

Prior to this decision, the law with respect to establishing non-conforming use in a situation where the actual use has not commenced, was governed by the decision in *Linton v. The Regional District of Comox Strathcona* (1991). The owner needed to demonstrate irrevocable commitment to use land in a certain way by altering it to conform to the owner's intentions. Thus, in *Linton*, the owner commissioned plans, retained designers, approached investors and regulatory authorities, all of which was insufficient to demonstrate commitment to use without actual alteration of the land to further the plans.

In this case, similar to the facts in *Linton*, the owner undertook studies, commissioned reports and retained professionals to move the project along without altering the land. The Court found that even though there was no actual alteration of the land, the steps taken by the owner were sufficient to show commitment to use and a legal non-conforming use was established.

## DEALING WITH UNSIGHTLY OR DAMAGED PREMISES

### ***Prince George (City) v. Riemer 2010 BCSC 118***

The City of Prince George sought an order from the Court that Mr. Riemer remove from his property various materials that were accumulated there. The Court granted the order declaring that Mr. Riemer had one month from the date of the reasons to move whatever he wished from his carport into his house, shed or garage even if to do so required him to discard the "rubbish" accumulated in the house, shed and garage.

That being said, despite the belligerence of Mr. Riemer towards the City's Bylaw Enforcement Officers, and the accumulation of "rubbish" in the carport, the Court did not look favourably on



the Bylaw Enforcement Officers seizing two truckloads of items from the carport without such power being granted either in a City bylaw, or by a Court order. The City had to pay \$1,000.00 to Mr. Riemer as compensation for wrongful seizure.

**Prince George (City) v. Columbus Hotel Company (1991) Ltd., 2010 BCSC 149**

The City sought to recover costs of demolishing a burnt building and removing the debris. The building was owned by the City as a result of an earlier tax sale, but continued to be occupied by Columbus, the previous owner. The Court held that the City could not recover remedial expenses from an occupier of property owned by the City unless the occupier caused or contributed to the condition requiring remediation, which still remained to be determined.

In the Court's words:

The owner clearly has an interest in the property that should be insured. The occupier should insure its limited interest in the property ... and insure against liability for property damage for which it may be liable. There is nothing inequitable in restricting the liability of mere occupiers to liability arising out of the occupiers' own acts or omissions....

**PROPER NOTICE OF LEASE/LICENCE TERMINATION**

**Rain Coast Water Corp. v. British Columbia, 2010 BCSC 114**

This decision reiterates the importance of following proper process in delivering a notice to terminate a lease or a license. The delivery method must strictly follow the procedure set out in the document and any applicable legislation.

In this case, the Province wanted to terminate a license of occupation for non-payment of fees. The Province sent a letter to the occupant, by regular mail, advising them that the license may be cancelled for non-payment. After some

discussions between the parties which did not result in payment of the fee, the license was cancelled and the Province advised the occupant of the cancellation by another letter.

The Court held that the cancellation of the license was unlawful because the notice of cancellation was not delivered by hand or by registered mail, as required in the licence and in the *Land Act*.

**COMMISSION OF INQUIRY INTO THE DECLINE OF SOCKEYE SALMON IN THE FRASER RIVER (THE COHEN COMMISSION)**

The Government of Canada recently established the Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River with Justice Bruce Cohen as Commissioner. The mandate of the Commission includes the following activities:

- to consider the policies and practices of the Department of Fisheries and Oceans with respect to the sockeye salmon fishery in the Fraser River,
- to investigate and make independent findings of fact regarding the causes of the decline of Fraser River sockeye salmon and the current state of Fraser River sockeye salmon, and
- to develop recommendations for improving future sustainability of the sockeye salmon fishery in the Fraser River.


The Commission intends to submit an interim report to the federal government by August 1, 2010 and a final report by May 1, 2011. The Commission is likely to receive submissions from First Nations and the fishing and other affected industries.

*The content of this Newsletter is intended to provide information on Bull, Housser & Tupper LLP, our lawyers and recent developments in the law. The information contained herein is summary in nature, and does not constitute legal advice. For additional details or advice concerning specific situations please contact Brian Taylor at 604.641.4856 or bet@bht.com, or any member of our Local Government Group.*



If you have any questions, please contact any member of our Local Government Group.

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