IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *0733603 B.C. Ltd v. City of Vancouver,* 2022 BCSC 1302

Date: 20220803
Docket: S220082
S220064
Registry: Vancouver

Between:

0733603 B.C. Ltd. and
Pender Lodge Holdings Ltd.

Petitioners

And

City of Vancouver

Respondent

Before: The Honourable Justice Douglas

Reasons for Judgment

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Place and Date of Hearing:	Vancouver, B.C. April 20-22, 2022
Place and Date of Judgment:	Vancouver, B.C. August 3, 2022

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I. OVERVIEW

[1] The petitioners, 0733603 B.C. Ltd. (“073 Ltd.”) and Pender Lodge Holdings Ltd. (“Pender Lodge”) bring these petitions pursuant to the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 [*JRPA*] seeking a declaration that three municipal rent control bylaws enacted December 8, 2021 (the “Impugned Bylaws”) are *ultra vires* the City of Vancouver (the “City”) and must therefore be quashed.

[2] The central question posed by these joint petitions is simply stated: does the City have the legislative authority to prohibit rent increases between (as opposed to during) tenancies? The petitioners submit that the Impugned Bylaws fall outside the City’s legislative mandate; the City disagrees, saying its enabling statute, the *Vancouver Charter*, S.B.C. 1953, c. 55, gives it a broad power to regulate business.

[3] 073 Ltd. submits that the City’s decision to enact the Impugned Bylaws was not reasonable because it: (a) failed to consider the limiting effect of s. 272(1)(f) of the *Vancouver Charter*; and (b) improperly applied the “impossibility of dual compliance” test, thereby reaching an overly broad view of its jurisdiction. Pender Lodge adopts the position of 073 Ltd. and alleges that the Impugned Bylaws are patently unreasonable and were enacted in bad faith.

[4] The Province takes no position on these petitions and did not appear at the hearing. By consent order entered April 8, 2022, the parties agreed to have both petitions heard together.

[5] At issue on these petitions is whether the City’s assertion of its jurisdiction to enact the Impugned Bylaws was unreasonable. For the reasons that follow, I conclude that the answer to this question is yes.

II. THE PETITIONERS

[6] 073 Ltd. owns and (through a related entity) manages a building that is designated by the City as a Single Room Accommodation (“SRA”) in Gastown in downtown Vancouver (the “Property”). The Property contains 60 “micro-suites” which are small, high-end, self-contained living spaces, each with a separate

washroom, shower, and kitchen. Tenancies are typically relatively short; while most last more than a year, longer tenancies are rare. Monthly rents generally range from $800 to $1,200. Only seven long-term tenants at the Property currently pay significantly below market rent.

[7] 073 Ltd. distinguishes the Property from low quality Single Room Occupancy ("SRO") housing popularized in local media, saying that, while rental rates are relatively low (due to the low square footage), the monthly cost of renting the suites is not suited for individuals on fixed incomes or government assistance. It submits that tenants at the Property are more interested in its comfort, convenience, and central location than suite size. Typical tenants are students, young professionals, and workers temporarily based in downtown Vancouver.

[8] The Property is about 60 years old and requires significant maintenance and upgrading. 073 Ltd. says that offering suites for market rent, by raising rent between tenancies, allows it to recover its routine maintenance and upgrading costs for individual suites and the Property.

[9] Pender Lodge is the owner of a multi-residential SRA-designated building in East Vancouver (the "Building"). The Building contains 30 units which are rented at an average rate of $563 per month. Pender Lodge has not raised rents for any tenant since 2017 but has increased rent between tenancies. The cumulative average of these rental increases is approximately 2.5% per year.

[10] Despite this rent increase, net income for the Building remained flat between 2017 and 2021. On Pender Lodge's uncontroverted evidence, fixed costs for the Building (excluding the mortgage) increased by 34.87% over the last five years while rental income for the same period increased by only 12.5%.

III. THE RELEVANT LEGISLATION

A. The *Vancouver Charter*

[11] Municipalities are creatures of statute; their powers are statutorily delegated by the provincial government: *1193652 B.C. Ltd. v. New Westminster (City)*, 2020

BCSC 163, aff'd 2021 BCCA 176 at para. 18 [*New Westminster BCSC*]; *Canadian Plastic Bag Association v. Victoria (City)*, 2019 BCCA 254 at para. 40 [*Canadian Plastic Bag BCCA*]. They must therefore act within the legislative confines the Province has imposed on them; if they do not, their decisions or bylaws may be set aside on judicial review: *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2 at para. 11.

[12] The City derives its legislative powers from the *Vancouver Charter*. It relies on ss. 203, 272, and 273 of the *Vancouver Charter* for its authority to enact the Impugned Bylaws. Those sections provide, in part, as follows:

> **203**. Where and to the extent that the Council is authorized to regulate, license, or tax persons carrying on a business, trade, profession, or other occupation, it shall have the power to
>
> (a) divide and subdivide such businesses, trades, professions, or other occupations into as many groups or classes as it sees fit, having regard to the number of persons engaged therein, the extent of the accommodation offered to the public, or on such other basis as the Council may think expedient;
>
> (b) differentiate and discriminate between groups or classes both as to the amount of any licence fee or tax to be paid and the terms and conditions under which any group or class may or may not carry on the business, trade, profession, or other occupation;
>
> (c) define any business, trade, profession, or other occupation;
>
> (d) prohibit, but only by the unanimous vote of the members present.
>
> **By-laws respecting business regulation and licensing**
>
> **272.** (1) The Council may from time to time make by-laws
>
> **Licensing**
>
> (a) for providing for the licensing of any person carrying on any business, trade, profession, or other occupation;
>
> **Extent of regulation**
>
> (f) for regulating every person required to be licensed under this Part, except to the extent that the person is subject to regulation by some other Statute;
>
> **Terms and conditions of a licence**
>
> **273.** (1) The Council may, by by-law, do one or more of the following:
>
> (a) provide for the effective period of a licence referred to in section 272(1);

> (b) establish terms and conditions of a licence referred to in section 272(1);
>
> (c) establish terms and conditions that must be met for obtaining, continuing to hold or renewing a licence referred to in section 272(1);
>
> (d) provide that terms and conditions for a licence referred to in section 272(1) may be imposed, the nature of the terms and conditions and who may impose them;
>
> (e) set different effective periods of a licence for different classes of licenses and, with respect to a licence referred to in section 272(1)(a), set different effective periods or a licence for different businesses, trades, professions or occupations;
>
> (f) provide for the prorating of the prescribed fee for a licence referred to in section 272(1) in relation to the effective period of the licence.

[13] The *Vancouver Charter* does not define “business”. The term “regulating” is defined in s. 2 of the *Vancouver Charter* as follows:

> "regulating" includes authorizing, controlling, limiting, inspecting, restricting, and prohibiting;

[14] The parties disagree about how s. 272(1)(f) of the *Vancouver Charter* ought to be interpreted. The petitioners submit that the City’s legislative authority is limited by s. 272(1)(f) to areas not already regulated by the Province. The City says it can regulate businesses in areas of overlapping jurisdiction, if doing so does not lead to the impossibility of dual compliance. This debate is the crux of the parties’ dispute.

B. The *Community Charter*

[15] The City is not governed by the *Community Charter*, S.B.C. 2003, c. 26. However, it is instructive to consider the comparable provisions in this enabling statute when assessing limits on the City’s authority to legislate in the areas of rental housing and rent control. The *Community Charter* provides, in part, as follows:

> **Principles of municipal-provincial relations**
>
> **2** (1) The citizens of British Columbia are best served when, in their relationship, municipalities and the Provincial government
>
> (a) acknowledge and respect the jurisdiction of each,
>
> (b) work towards harmonization of Provincial and municipal enactments, policies and programs, and
>
> (c) foster cooperative approaches to matters of mutual interest.

(2) The relationship between municipalities and the Provincial government is based on the following principles:

(a) the Provincial government respects municipal authority and municipalities respect Provincial authority;

(b) the Provincial government must not assign responsibilities to municipalities unless there is provision for resources required to fulfill the responsibilities;

(c) consultation is needed on matters of mutual interest, including consultation by the Provincial government on

(i) proposed changes to local government legislation,

(ii) proposed changes to revenue transfers to municipalities, and

(iii) proposed changes to Provincial programs that will have a significant impact in relation to matters that are within municipal authority;

(d) the Provincial government respects the varying needs and conditions of different municipalities in different areas of British Columbia;

(e) consideration of municipal interests is needed when the Provincial government participates in interprovincial, national or international discussions on matters that affect municipalities;

(f) the authority of municipalities is balanced by the responsibility of the Provincial government to consider the interests of the citizens of British Columbia generally;

(g) the Provincial government and municipalities should attempt to resolve conflicts between them by consultation, negotiation, facilitation and other forms of dispute resolution.

Fundamental powers

8 (6) A council may, by bylaw, regulate in relation to business.

Spheres of concurrent authority

9 (1) This section applies in relation to the following:

(a) bylaws under section 8(3)(i) [public health];

(b) bylaws under section 8(3)(j) [protection of the natural environment];

(c) bylaws under section 8(3)(k) [animals] in relation to wildlife;

(d) [Repealed 2015-2-47.]

(e) bylaws under section 8(3)(m) [removal and deposit of soil and other material] that

(i) prohibit soil removal, or

(ii) prohibit the deposit of soil or other material, making reference to quality of the soil or material or to contamination.

> **Division 2 — Scope of Jurisdiction**
>
> **Relationship with Provincial laws**
>
> **10** (1)A provision of a municipal bylaw has no effect if it is inconsistent with a Provincial enactment.
>
> (2) For the purposes of subsection (1), unless otherwise provided, a municipal bylaw is not inconsistent with another enactment if a person who complies with the bylaw does not, by this, contravene the other enactment.

C. The *Residential Tenancy Act*

[16] Residential tenancies are regulated by the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [*RTA*] and its regulations. The *RTA* regulates rent increases during tenancies. The parties agree it is silent regarding rent increases between tenancies.

[17] Section 2(1) of the *RTA* provides that "despite any other enactment […] this Act applies to tenancy agreements, rental units and other residential property". Section 41 of the *RTA* precludes a landlord from increasing rent "except in accordance with this Part". Section 42 of the *RTA* addresses timing and notice requirements relating to rent increases. Section 43 of the *RTA* sets out the parameters for lawful rent increases. Sections 43(3) and 69 of the *RTA* outline a process for landlords to apply to the Director of the Residential Tenancy Branch (the "RTB") for permission to increase rents beyond the lawful rent increases set out in the *RTA*, s. 43.

[18] In 2021, the *RTA* was amended to permit:

a) Additional tenant compensation for bad faith evictions;

b) Rent increases for capital expenditures;

c) Rent increase freezes; and

d) An expanded scope of administrative penalties.

[19] Sections 23 and 23.1 to 23.4 of the *Residential Tenancy Regulation*, BC Reg 477/2003, allow landlords to apply for additional rent increases after completing necessary repairs, installation, or replacement of a major system or component to a

rental unit or building (i.e. capital expenditures) or after incurring certain financial losses.

IV. PRINCIPLES OF STATUTORY INTERPRETATION

[20] A bylaw is presumed to be validly enacted until proven otherwise: *MacMillan Bloedel Ltd. v. Galiano Island Trust Committee* (1995), 10 B.C.L. R. (3d) 121 at para. 144 (C.A.). If the Impugned Bylaws are not authorized by the *Vancouver Charter*, they are *ultra vires* the City and must be set aside: *Benoit v. Strathcona (Regional District*), 2019 BCSC 362 at para. 22 [*Benoit*]. .

[21] Municipal authority to enact bylaws is governed by the basic principles of statutory interpretation: *New Westminster BCSC* at para. 31. In assessing the City's decision to enact the Impugned Bylaws, the usual principles of statutory interpretation apply: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 115, 120 [*Vavilov*]. Those principles are well-established and succinctly summarised in *New Westminster BCCA* at paras. 63 – 65:

> 63 Courts and administrative decision makers interpret statutory provisions by applying the modern principle of statutory interpretation. Pursuant to the modern principle, 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": *Bell ExpressVu Ltd. Partnership v. Rex*, 2002 SCC 42 at para. 26. In *United Taxi*, the Supreme Court of Canada applied this broad and purposive approach to statutory interpretation when interpreting the enabling powers of a municipality: at para. 8.
>
> 64 Legislative intent can be understood only by reading the chosen statutory language in light of a provision's purpose and the entire relevant context, which includes not only the whole of the statute containing the words, but also other statutes that pertain to the same subject matter. A provision's meaning is discernible "by an analysis that has regard to the text, context and purpose": *Vavilov* at paras. 117 — 120; *Vancouver Oral Centre for Deaf Children v. Assess. Area #09 (Vancouver)*, 2002 BCCA 667 at para. 17. When the words of a provision are precise and unequivocal, the ordinary meaning of those words plays a dominant role in the interpretive exercise: *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54 at para. 10. As Justice LeBel observed in *Re: Sound v. Motion Picture Theatre Associations of Canada*, 2012 SCC 38, "Although statutes may be interpreted purposively, the interpretation must nevertheless be consistent with the words chosen by Parliament": at para. 33.

> 65 There is a presumption that the Legislature does not intend to abrogate existing statutory rights in the absence of specific language that clearly expresses such an intention. […]

[22] When explicit reasons for a municipality's decision regarding a matter of statutory interpretation are not given, courts have traditionally deduced them from the debate, deliberations, and policy statements giving rise to the bylaw: *New Westminster BCCA* at para. 61.

V. LEGISLATIVE BACKDROP TO THE IMPUGNED BYLAWS

A. The SRA Bylaw

[23] Section 193D of the *Vancouver Charter* authorizes the City Council to regulate the conversion and demolition of SRAs by enacting bylaws. Towards that end, the City enacted the Single Room Accommodation By-law (the "SRA Bylaw"). The SRA Bylaw is not in issue on these petitions but it forms part of the legislative and factual backdrop to the impugned Bylaws.

[24] The SRA Bylaw restricts the conversion and demolition of designated SRAs. A schedule to the SRA Bylaw designates certain rooms and buildings as SRAs. Since the SRA Bylaw was enacted, SRA-designated rooms in Vancouver have been governed by the SRA Bylaw (in relation to conversion or demolition) and the *RTA*. The *RTA* is administered by the RTB, a provincial administrative tribunal.

B. BC's Rental Housing Task Force

[25] In 2018, the Premier of BC appointed a rental housing task force. Its mandate was to advise on how to improve security and fairness for renters and rental housing providers in the province. The task force was appointed to look at the *RTA,* the *Manufactured Home Park Tenancy Act*, S.B.C. 2002, c. 77, and RTB processes. In December 2018, it presented its final report entitled "*Rental Housing Review: Recommendations and Findings"* (the "BC Rental Housing Review"). The BC Rental Housing Review specifically recommended maintaining rent "tied to the renter" and "not the unit".

[26] The rationale for this recommendation is explained in the BC Rental Housing Review as follows at page 14:

> During the engagement process, the Task Force heard a strong desire from some renters and renter advocates to improve affordability by tying rent increases to the unit, not the tenant. They felt that this would help end wrongful evictions intended to raise rents beyond the allowable maximum.
>
> Members also heard concerns from rental housing providers that a change of this kind would make it challenging for them to cover their costs, with some considering selling and, therefore, removing their property from the rental stock. Rental housing developers said that they would cease developing needed rental units if this change was brought in, as it would make their developments unaffordable to build. Concerns were also raised about the large amount of paperwork and bureaucracy that would need to be created to implement such a system.
>
> Due to the above concerns, and the large number of changes that have already been made, including a reduction in the annual allowable rent increase, increased fines for bad-faith evictions, increased enforcement of the law and changes that are being recommended, the Task Force is not recommending a change at this time.

C. The City's 2019 Motion

[27] The City admits it repeatedly sought amendments to the *RTA* so that the Province could administer a system of vacancy control for SRAs (thereby limiting allowable rent increases between tenancies), and that the Province declined to amend the *RTA* to implement vacancy control. Nonetheless, in 2019, a City Councillor submitted a motion (the "2019 Motion"), passed unanimously by the City, that it be resolved:

> A. That City Council, through the Mayor and staff, urgently ask the provincial government to tie rent increases to the rooms, not the tenancy in SRO designated properties, in an effort to discourage speculative investment, slow rent increases, and discourage displacement of very low income tenants into homelessness.
>
> B. That staff investigate alternate ways to meet the goals in A, such as using business licences and/or amendments to the SRA [B]ylaw that the City Council could implement under their existing *Vancouver Charter* authority and report back by Q2, 2020.

[28] Further to the 2019 Motion, the City Mayor wrote to the Minister of Housing for BC to ask the Province to strengthen rent controls in SRA properties by tying rent increases to the rental unit, rather than to the tenant. On January 15, 2020, the

Minister of Housing for the Province wrote to the City Councillor who had introduced the 2019 Motion to advise, in part, as follows:

> I also appreciate your suggestion about rent control being tied to the unit, not the renter. As you are aware, the Rental Housing Task Force heard from many renters and renter advocates during their province-wide consultation sessions in 2018 who expressed similar concerns. Ultimately, the Task Force determined that rent control tied to the unit would have the unintended consequence of reducing affordable rental stock or reducing investment in needed repairs. Government accepted the Task Force recommendations to maintain rent tied to the renter, not the unit, while lowering the annual allowable rent increase.

D. The Vacancy Control Report

[29] Before enacting the Impugned Bylaws, the City considered a November 4, 2021 City staff report entitled “Vacancy Control Regulations in Single Room Accommodation (“SRA”) Designated Properties” (the “Vacancy Control Report”). The Vacancy Control Report stated, in part, as follows:

a) SRAs play an important role in the City’s low-income housing stock and act as housing of last resort before homelessness for many of our most marginalized residents. The majority of buildings are over 100 years old and consist of small 10 by 10-foot rooms with shared bathrooms and kitchens.

b) Provincial income assistance has not kept pace over time with rent increases, which puts a higher burden on low-income renters.

c) Vacancy control would limit the allowable rent increase between tenancies and decrease the attractiveness of SRA-designated properties to speculative investment.

d) Staff explored a number of options to establish vacancy control. Council is authorized to regulate businesses pursuant to sections 203, 272 and 273 of the *Vancouver Charter*. The powers set out in these sections are broad and include the authority to require a business licence, regulate business

licence holders, and impose terms and conditions on business licence holders.

e) The City's Licence By-Law currently regulates businesses, but does not include any form of rent regulation. This would be the first use of the business regulation powers to regulate rents in this manner.

f) Staff have drafted amendments to the License By-Law establishing vacancy control of SRA-designated housing operators.

g) Vacancy control is meant as a stopgap measure to stem speculative investment and worsening unaffordability, until the stock is replaced and other policy interventions from senior government including increases to the shelter component of income assistance.

[30] The Vacancy Control Report recommended that the City Council:

a) Direct staff to implement a vacancy control policy for SRA-designated properties;

b) Approve a vacancy control policy for SRA-designated properties; and

c) Approve in principle the Impugned Bylaws to implement vacancy control.

[31] The Vacancy Control Report comments on the City's jurisdiction to implement vacancy control, in part, as follows:

> **City of Vancouver's Jurisdictional Authority to Implement Vacancy Control**
>
> Staff explored a number of options to establish vacancy control. Council is authorized to regulate businesses pursuant to sections 203, 272 and 273 of the *Vancouver Charter*. The powers set out in these sections are broad, and include the authority to require a business licence, regulate business licence holders and impose terms and conditions on business licence holders. The Licence By-law currently regulates businesses, but does not include any form of rent regulation. This would be the first use of the business regulation powers to regulate rents in this manner […]

> **Legal**
>
> Council is granted broad authority to regulate business pursuant to sections 203, 272 and 273 of the *Vancouver Charter*. The proposed by-law amendments will not conflict with the *Residential Tenancy Act*, but adds [sic] an additional layer of rent regulation.
>
> **Appendix A of the Vacancy Control Report:**
>
> **1.4 Role of British Columbia's Residential Tenancy Act**
>
> British Columbia's *Residential Tenancy Act* (*RTA*) regulates all tenancy agreements in residential rental units across the province […]
>
> The *RTA* does not currently regulate rents between tenancies – only during them. While the Province at both the staff and political level recognize the value of vacancy controls in SROs […] the Province has taken no steps to establish vacancy control. It is important to note that the *RTA* does not prohibit vacancy control; it simply does not currently impose it. The policies in this document are intended to supplement the *RTA*.

E. The November 17, 2021 Meeting

[32] On November 17, 2021, the Standing Committee of Council on Policy and Strategic Priorities approved the Impugned Bylaws in principle, subject to approval of operating funding in the City's 2022 budget (the "November Meeting"). Based on the Minutes of the November Meeting, the City Council reviewed the Vacancy Control Report and a presentation to the City Council regarding Vacancy Control Regulations in SRAs (the "Vacancy Control Presentation").

[33] Minutes of the November Meeting make two references to the City's jurisdiction to enact the Impugned Bylaws. The first is from the City staff person who presented the Vacancy Control Report and the Vacancy Control Presentation:

> […] It is staff's position that the [C]ity is authorized under the Vancouver Charter to regulate businesses through the licence bylaw and impose conditions on business licence holders. And this can be done through the creation of a new licence category.
>
> It's important to note that this would be the first time that the licence bylaw is used to regulate rents in this manner and that implementing vacancy control would not conflict with provincial *RTA* regulations. […]

[34] The second was in response to a question from a City Councillor about the legality of the City superseding the jurisdiction of the RTB:

> My understanding of it is that we can create regulations in relation to businesses provided that they don't require you to breach the *Residential Tenancy Act*. My understanding of our program here is that nothing we are doing requires you to breach, in any manner, the *Residential Tenancy Act*. We're authorized to regulate businesses. These are businesses. We're proposing regulations in relation to business. And generally the test, as we understand it, is that --- it's called the impossibility of dual compliance. Does what we do require you to breach another statue, a provincial statute. If that was the case, we could not do that.

VI. THE IMPUGNED BYLAWS

[35] On December 8, 2021, acting on the recommendations in the Vacancy Control Report, and using its power to grant business licenses, the City implemented the Impugned Bylaws. The Impugned Bylaws impose rental controls on privately-owned SRAs. They provide, in part, as follows:

(a) By-Law No. 13182: *A By-Law to amend License By-Law No. 4450 Regarding Vacancy Control*:

> **25.1A(2)** After a period of vacancy for a designated room, every single room accommodation operator may cause, permit or allow the rent charged for a designated room to be increased to no more than the base rent plus an increase equal to the inflation rate, unless a tenant who vacated the designated room during the previous 12 months was subjected to an annual increase in the previous 12 months, in which case no further rent increase is permitted by this subsection.
>
> **25.1A(3)** Despite subsection (2):
>
> (a) If the base rent for a designated room is below $500 per month at the time of a period of vacancy, and no tenant of the designated room was subject to an annual rent increase during the previous 12 months, then a single room accommodation operator may only increase the rent by 5% plus the inflation rate, but once the increased rent for the designated room reaches $500 per month, rent may only increase by the inflation rate; or
>
> (b) If the base rent for a designated room is below $500 per month at the time of a period of vacancy, and a tenant of the designated room was subject to an annual rent increase during the previous 12 months, then a single room accommodation operator may only increase the rent by 5%, but once the increased rent for the designated room reaches $500 per month, rent may only increase by the inflation rate; or

(c) If the base rent for a designated room is below $375 per month at the time of a period of vacancy, then a single room accommodation operator may increase the rent to $375 per month, but once the increased rent for the designated room reaches $375 per month, rent may only increase in accordance with (3)(a) or {3)(b), until the rent reaches $500 per month and is governed by (2).

25.1A(4) Subsections (2) and (3) allow one rent increase following a period of vacancy in any 12-month period, regardless of how many times a period of vacancy may occur.

[…]

25.1A(6) If occupied designated rooms are eligible for a rent increase, other than an annual rent increase, authorized by the Director pursuant to Part 4 of the Residential Tenancy Regulation, then the single room accommodation operator may apply to the Chief Licence Inspector for an increase on any vacant designated rooms in rent equal to the amount that would otherwise be foregone as a result of this By-law. The Chief Licence inspector may, after consulting with the GM Arts, Culture and Community Service, approve such an increase if the increase was otherwise approved by the Director, and the applicant submits the following for review by the Chief Licence Inspector

(a) all documents submitted to the Director seeking its approval of the rent increase for occupied rooms in the building, and details of the Director's decision;

(b) documents demonstrating how the designated rooms came to be untenanted and how the applicant complied with the Single Room Accommodation By-law Tenant Relocation Policy; and

(c) copies of all necessary City permits required for the eligible capital improvement approved by the Director.

[…]

25.1A(8) Except as otherwise restricted by this By-law, a single room accommodation operator may increase the rent payable by existing tenants during the term of their tenancy as authorized by the *Residential Tenancy Act* and its regulations.

25.1A(9) Every single room accommodation operator must submit to the Chief Licence Inspector by January 31 of each year, in writing:

(a) the name and address of the single room accommodation operator;

(b) the address of each designated room, including unit numbers;

(c) whether each designated room is occupied, empty, or permanently closed;

(d) the monthly rent for each designated room; and

(e) the reason for any rent increase since the previous report in writing.

[…]

25.1A(12) No single room accommodation operator shall charge a tenant in a designated room more than the maximum rent allowed under this By-law.

(b) By-Law No. 13183: *A By-Law to amend the Ticket Offences By-Law No. 9360 Regarding Vacancy Control*:

1. This By-law amends the indicated provisions and schedules of the Ticket Offences By-law.
2. In Table 3, Council adds two new rows at the end as follows:

Chief License Inspector	Fail to provide information	Section 25.1A(12)(a)	$1,000.00
	Provide false information	Section 25.1A(12)(b)	$1,000.00
	Charge too much rent	Section 25.1A(13)	$1,000.00

(c) By-Law No. 13184: *A By-Law to amend License By-Law No. 4450 Regarding Vacancy Control:*

1. This By-law amends the indicated provisions of the License By-law.

2. Council inserts into Schedule A, after the line for "Short Term Rental Operator" the following:
"Single Room Accommodation Operator Per annum deemed"

VII. ANALYSIS AND CONCLUSIONS

A. Standing

[36] Section 524 of the *Vancouver Charter* provides as follows:

> 524. On the application of an elector or a person interested in the by-law or resolution, a Judge may declare the by-law or resolution void in whole or in part for illegality.

[37] The City admits the petitioners have standing to bring these petitions.

B. Standard of Review

[38] It is common ground that the applicable standard of review is one of reasonableness: *Vavilov* at para. 83. In applying this standard, the court's task is to review the decision, together with its underlying reasoning, and determine if it was

unreasonable: *Vavilov* at para. 83; *1120732 B.C. Ltd. v. Whistler (Resort Municipality)*, 2020 BCCA 101 at paras 36-39 [*Whistler*].

[39] The Court in *Vavilov* described a reasonableness review as follows:

> [68] Reasonableness review does not give administrative decision makers free rein in interpreting their enabling statues, and therefore does not give them licence to enlarge their powers beyond what the legislature intended. Instead, it confirms that the governing statutory scheme will always operate as a constraint on administrative decision makers and as a limit on their authority. Even where the reasonableness standard is applied in reviewing a decision maker's interpretation of its authority, precise or narrow statutory language will necessarily limit the number of *reasonable* interpretations open to the decision maker – perhaps limiting it to one. Conversely, where the legislature has afforded a decision maker broad powers in general terms – and has provided no right of appeal to a court – the legislature's intention that the decision maker have greater leeway in interpreting its enabling statute should be given effect. 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".
>
> 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": 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.

[40] I have applied these principles here. I accept that the City is entitled to some deference in the interpretation of its own enabling legislation. However, when considering whether the Impugned Bylaws are *ultra vires* the City, I am unable to find that the City's rationale for its decision or the resulting outcome are reasonable.

C. Admissibility of Extrinsic Evidence

[41] Some of the material filed on these petitions was not before the City when it enacted the Impugned Bylaws. The petitioners submit that the intent of the provincial Legislature can be understood by reviewing correspondence between the City and the Province on the issue of vacancy control, the Province's Rental Housing Review,

and its policy recommendations. In my view, this extrinsic evidence is admissible to inform an assessment of the reasonableness of the City's decision to enact the Impugned Bylaws: *New Westminster BCCA* at para. 66.

[42] This approach is supported by the Court of Appeal's decision in *English v. Richmond (City)*, 2021 BCCA 442:

> [76] That brings us to the methodology by which a reasonableness review is performed in a case involving statutory interpretation, including the consideration of material that was not before the decision maker.
>
> [77] In our view, there are circumstances in which a court may properly look beyond the material that was before the decision maker to perform its reasonableness review, including (but not limited to) the use of extrinsic aids when applying the modern principle of statutory construction. Among other things, extrinsic aids can play an important role in defining the purpose of a statutory provision or scheme. […]
>
> [79] We see nothing in *Vavilov* that bars a court from admitting and relying upon material not before the decision maker for the purpose of conducting a reasonableness review of a decision that engages statutory interpretation, provided that its receipt complies with generally accepted admissibility principles. Indeed, we read the majority's decision as contemplating the admission of material that extends beyond the four corners of the decision maker's record […].
>
> [83] An absolute prohibition on the use of material not before the decision maker, including extrinsic aids, would deprive the reviewing court of the fullness of the decision's legal or factual context, including potential constraints that heavily condition the decision maker's exercise of authority. We consider that situation inconsistent with the form of reasonableness review established by *Vavilov*. It would also mean that in cases such as this one, where an interpretation is discernible but the decision maker did not explain their path of reasoning, the reviewing court's ability to assess an interpretation's consistency with text, context and purpose may be substantially impaired. A prohibition against reaching beyond the material that was before the decision maker might also incentivize administrative officials to limit their interpretive consultation or analysis, and to keep their records small, so as to immunize themselves from meaningful review.

[43] A court can look at the background and circumstances of a statute's enactment as well as at the words used in it in order to determine its purpose: *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at para. 51. Accordingly, I conclude that it is open to me to consider both intrinsic evidence (such as the applicable legislation's preamble or purpose clauses) and extrinsic evidence

(such as Hansard or minutes of parliamentary committees) in assessing the reasonableness of the City's decision to enact the Impugned Bylaws.

D. Impossibility of Dual Compliance v. Pith and Substance

[44] Determining the test to apply when assessing the City's legislative mandate, as set out in the *Vancouver Charter*, is central to a resolution of the parties' dispute.

[45] The City submits that the words "except to the extent that the person is subject to regulation by some other Statute" in s. 272(1)(f) of the *Vancouver Charter* should be interpreted as incorporating the impossibility of dual compliance test. Counsel for the City presumes this wording was included in the *Vancouver Charter* to prevent conflict between City by-laws and provincial statutes.

[46] The City argues that the modern test for resolving conflicts between municipal bylaws and provincial legislation is the impossibility of dual compliance test, saying it can be traced to *Multiple Access Ltd. v. McCutcheon* [1982] 2 S.C.R. 161 [*Multiple Access*] and was re-affirmed by the Supreme Court of Canada in *114957 Canada Ltée* (*Spraytech*, *Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40 [*Spraytech*]. In *Spraytech*, at para. 38, the Court summarized the impossibility of dual compliance test by quoting our Court of Appeal in *B.C. Lottery Corp. v. Vancouver (City)*, 1999 BCCA 18 [*BC Lottery* 1999] as follows:

> A true and outright conflict can only be said to arise when one enactment compels what the other forbids.

[47] *BC Lottery* 1999 was a zoning (and not a business regulation) case involving a conflict between two enactments: one by the municipality and the other by an administrative body. In addressing this conflict, the Court applied the *Multiple Access* test of dual compliance and decided that the city bylaw was legal, valid, and effective because citizens were not being told to do inconsistent things: compliance with one enactment was not defiance of the other. The Court explained:

> [19] It is no longer the key to this kind of problem to look at one comprehensive scheme, and then to look at the other comprehensive scheme, and to decide which scheme entirely occupies the field to the

> exclusion of the other. Instead, the correct course is to look at the precise provisions and the way they operate in the precise case, and ask: Can they co-exist in this particular case in their operation? If so, they should be allowed to co-exist, and each should do its own parallel regulation of one aspect of the same activity, or two different aspects of the same activity.
>
> [20] A true and outright conflict can only be said to arise when one enactment compels what the other forbids. That is not the kind of conflict we have in this case. Here, the Vancouver enactment forbids in Vancouver an activity which the lottery enactment authorizes or permits, but does not compel. The two enactments, neither of which is made by a body which is, in legal terms, dominant over the other, and which are made by bodies which are coordinate in legal terms, should, to the greatest extent, be permitted to operate in accordance with their own terms, side by side.

[48] The petitioners submit that the impossibility of dual compliance is the wrong test. They say it is instead necessary to determine the pith and substance of the Impugned Bylaws. It is their position that the pith and substance, or predominant purpose, of the Impugned Bylaws is clearly the imposition of rent control and not the regulation of business. Accordingly, they submit that the Impugned Bylaws are an impermissible encroachment on provincial jurisdiction.

[49] The City maintains that the key to addressing this kind of problem no longer involves comparing two comprehensive schemes and deciding which one occupies the field to the exclusion of the other. It says the correct course involves reviewing the relevant statutory provisions, and the way they operate, and asking whether they can coexist. If the answer is yes, the City submits that they should be allowed to do so, with each parallel scheme regulating one aspect, or different aspects, of the same activity.

[50] In *Canadian Plastic Bag Association v. Victoria (City)*, 2018 BCSC 1007 [*Canadian Plastic Bag BCSC*], Justice N. Smith was asked to quash a municipal bylaw banning the use of plastic bags and requiring businesses to charge a fee for reusable or paper bags, as *ultra vires* the City of Victoria. The issue was whether the municipality had infringed s. 9(3) of the *Community Charter* requiring provincial ministerial approval for certain matters, including environmental protection.

[51] The City of Victoria relied on a broad business regulatory power allowing the imposition of operating conditions on businesses. It asserted that its municipal bylaw was a business (and not an environmental) regulation. This distinction was important because, unlike environmental regulations, business regulations were not subject to ministerial approval. Notably, the impugned bylaw did not receive approval from the Minister of the Environment. It was the city's position that municipal bylaws ought to be upheld provided they have a lawful purpose that falls within its enabling legislation and are enacted in good faith, citing *Koslowski v. West Vancouver (District)* (1981), 26 B.C.L.R. 210 (S.C.).

[52] In undertaking his analysis, Smith J. noted that a reviewing court must consider both the purpose and the effects of the impugned bylaw, having regard to both intrinsic and extrinsic evidence: *Canadian Plastic Bag BCSC* at para. 34. Ultimately, he found that the bylaw was valid. On appeal, Justice Newbury noted that the city was governed by the *Community Charter* which provided that municipal laws that regulate "in relation to" the protection of the natural environment require the approval of the provincial Minister of the Environment. She found that the impugned bylaw related to the protection of the environment, rather than to a valid exercise of the city's power to regulate "in relation to" business, and therefore required approval of the Province. There was no evidence that the city had sought to obtain the Province's approval for the adoption of the impugned bylaw: at para. 21.

[53] The Court in *Canadian Plastic Bag BCCA* explained "pith and substance" in the context of construing the true character of an impugned law as follows:

> [43] It is trite law that "pith and substance" refers in constitutional law to the "true character" or "dominant characteristic" of an impugned law and that the determination of pith and substance involves an examination of the purpose and effects of the law, including its effects on the rights of citizens and practical consequences: see generally Peter Hogg, *Constitutional Law of Canada* (5th ed., Supp. 2016), at §15.5. The doctrine is essentially the opposite of the principle applied in *Koslowski*: here, the focus *is* on "*predominant* purpose" rather than the existence merely of *a* legitimate purpose which could justify a bylaw standing alone. Here, a choice must be made between two sources of delegated authority — the authority to "regulate in relation to business" under s. 8(6) and the (concurrent) authority to "regulate, prohibit and impose requirements in relation to [...] protection of

> the natural environment" under ss. (8)(3)(j) and 9(1)(b). I agree with counsel's submission that this issue should be resolved with reference to the "true nature and character" of the Bylaw. As in the federal/provincial context, this principle reflects the fact that the different "fundamental powers" listed in s. 8 are not watertight compartments but overlap considerably; and that a bylaw that properly belongs to one heading may "incidentally affect" others: see *Canadian Western Bank v. Alberta* 2007 SCC 22 at para. 29.

[54] The petitioners rely on *Canadian Plastic Bag BCCA*. They say the Court found that, where a statutory restriction creates a division of powers between different legislative bodies, a lawful purpose is insufficient to ground the legality of the enactment and the true character of the legislation must be determined through an analysis of its pith and substance:

> 41 As we have seen, cases such as *Koslowski* and *International Bio Research* demonstrate that where a bylaw is enacted in good faith and the municipality has a purpose that, broadly speaking, can be said to fall within the enabling legislation, it will (absent any other statutory restriction) be upheld — even though there may also be other underlying purposes and even though individual members of the council may have had other motivations. Cases construing the meaning of "business" in the context of the *Community Charter* and similar enactments have given the term a broad meaning. In addition to *International Bio Research*, reference may be made to *Re Try-San International Ltd. and City of Vancouver* (1978), 83 D.L.R. (3d) 236 (B.C. C.A.), *lve. to app. dism'd.*, [1978] S.C.R. xii, in which massage parlours were prohibited from using nude attendants and were required to charge certain fees; and *1114829 B.C. Ltd. v. Whistler (Municipality)*, 2019 BCSC 752, in which owners of rental properties were required to rent only through certain "pooling" arrangements.
>
> 42 Setting aside s. 9 for the moment, then, Bylaw 18-008 might well be justified as having *a* "lawful purpose" in relation to "business." (See *Koslowski* at 222.) In this instance, however, we must consider s. 9, which makes environmental protection a matter of "concurrent authority" and *prima facie* at least, requires provincial approval for a bylaw that regulates "in relation to […] protection of the natural environment." If the "*true character*" of the bylaw is found to relate to the protection of the environment, the second issue is whether properly interpreted, the requirement for approval is negated by another provision of the *Community Charter* or a regulation thereunder, as the City contends.

[Emphasis added.]

[55] Chief Justice Hinkson considered *Canadian Plastic Bag BCCA* in *New Westminster BCSC*, a case involving a municipality's legislative authority to enact a "renovictions" bylaw restricting property owners' ability to evict tenants in order to

complete renovations. In considering this issue, Hinkson C.J. declined to engage in an analysis of the pith and substance of the impugned bylaw, instead applying the impossibility of dual compliance standard in *Multiple Access*. In doing so, he found the bylaw was not *ultra vires* the city.

[56] Notably, and unlike this case, the municipality in *New Westminster BCSC* was governed by the *Community Charter*, which expressly incorporates the *Multiple Access* standard. Section 10 of the *Community Charter* provides that a municipal bylaw which addresses a subject matter falling within provincial jurisdiction is not invalid unless dual compliance is impossible. Chief Justice Hinkson specifically addressed the municipality's contention that he ought to apply a pith and substance analysis:

> 49 The City contends, and I agree, that the pith and substance, or dominant purpose, analysis as a means of limiting the scope of municipal power, is only appropriate where there is an applicable legislative direction that precludes overlap between the municipal power at issue and another specified power where the legislative regime at issue expressly provides for a division of powers. That is not the circumstance in this case.
>
> 77 Section 10(2) of the *Community Charter* permits a municipality to pass a bylaw so long as it is not inconsistent with another enactment. Pursuant to s. 10(2), a municipal bylaw is not inconsistent with another enactment if a person who complies with the bylaw does not, by this, contravene the other enactment. The Impugned Bylaw does not require those complying with it to disobey a provision of the *Residential Tenancy Act.*

[57] The Court of Appeal upheld this decision in *New Westminster BCCA*, finding no operational conflict between the impugned bylaw and provincial legislation:

> 77 In reaching his conclusion, the Chief Justice rejected 119's submission that it was necessary to identify the "pith and substance" of the Impugned Bylaw to determine its *vires*, together with its related reliance on Justice Newbury's comments in *Canadian Plastic Bag*. As he explained, a predominant purpose analysis is only appropriate "where there is an applicable legislative direction that precludes overlap between the municipal power at issue and another specified power where the legislative regime at issue expressly provides for a division of powers": at para. 49. Given the requirements of s. 9 of the *Community Charter*, unlike this case, *Canadian Plastic Bag* was a case in which a predominant purposes analysis was warranted. As he also explained, the Impugned Bylaw fits comfortably within the jurisdiction granted to the City by ss. 8(6) and 8(3)(g) of the *Community Charter*, interpreted textually, contextually and purposively. In my view, 119 has failed to show this interpretation is unreasonable. […]

> [80] […] [A]s the Chief Justice recognized, s. 10 of the *Community Charter* contemplates overlapping municipal and provincial jurisdiction by providing that a municipal bylaw is inconsistent with a provincial enactment only if it requires contravention of that enactment: at paras. 70, 75 — 77. Accordingly, it was reasonable for the City to conclude that the Impugned Bylaw would not frustrate the *Residential Tenancy Act* scheme unless it required contravention of the provisions of that Act, which it did not.

[58] The Court rejected the submission that it was necessary to identify the pith and substance of an impugned by-law to determine its *vires* except in certain limited circumstances related to the *Community Charter*: *New Westminster BCCA* at para. 77.

[59] As I read *Spraytech*, the *Multiple Access* test is not a generally applicable default standard. Rather, it applies to resolve conflicts arising between otherwise validly enacted statutes:

> 36 *Multiple Access* also applies to the inquiry into whether there is a conflict between the by-law and provincial legislation, except for cases (unlike this one) in which the relevant provincial legislation specifies a different test. The *Multiple Access* test, namely "impossibility of dual compliance", see P. W. Hogg, *Constitutional Law of Canada* (loose-leaf ed.), vol. 1, at p. 16-13, was foreshadowed for provincial-municipal conflicts in *dicta* contained in this Court's decision in *Arcade Amusements*, *supra*, at p. 404. There, Beetz J. wrote that "otherwise valid provincial statutes which are directly contrary to federal statutes are rendered inoperative by that conflict. Only the same type of conflict with provincial statutes can make by-laws inoperative: I. Rogers, *The Law of Canadian Municipal Corporations*, vol. 1, 2nd ed., 1971, No. 63.16" (emphasis added).

[60] Accordingly, I conclude that I must first determine whether the Impugned Bylaws are valid by considering whether the City had the legislative authority to enact them in the first place.

[61] While the *Community Charter* expressly contemplates concurrent jurisdiction, s. 272 of the *Vancouver Charter* explicitly limits the City's ability to pass bylaws relating to business licences. The City can pass bylaws regulating every person requiring a business licence "except to the extent that the person is subject to regulation in some other Statute". The result in *New Westminster BCSC* was tied to

the finding that the provincial legislation and municipal bylaws were complementary; in my view, that is not the case here.

[62] Where there is a legislative direction limiting the municipal scope of authority, the pith and substance or dominant purpose analysis set out in *Canadian Plastic Bag BCCA* applies. By contrast, if the municipality's enabling legislation (as in *New Westminster BCSC*) expressly incorporates a different test (including, for example, the *Multiple Access* or impossibility of dual compliance standard) that test applies.

E. Limits on the City's Legislative Authority

[63] No matter how laudable the purpose of the Impugned Bylaws might be, and whether or not they express the will of members of the community, the means to enact them must be found somewhere in the law: *Spraytech* at paras 48 - 49.

[64] The City asserts that the *Vancouver Charter* grants it expansive powers to regulate business. The petitioners' position is that the City's legislative authority is expressly constrained by the language of s. 272(1)(f).

[65] Section 272(1)(f) is the key provision at issue in the *Vancouver Charter*, the City's enabling statute. It provides as follows:

> Extent of regulation
>
> (f) for regulating every person required to be licensed under this Part, except to the extent that the person is subject to regulation by some other Statute;

[66] The City denies it is precluded from exercising its regulatory role simply because a provincial statute addresses residential tenancies and regulates rent. It relies on the decision of Justice Holmes in *Fonent Properties Ltd. v Vancouver (City)* (1990), 45 B.C.L.R. (2d) 338 [*Fonent*]. In *Fonent*, Holmes J. acknowledged that there already was significant regulation of residential property in Vancouver but upheld the City's by-laws prohibiting long term leases of residential property, finding they were neither regulated under the *RTA* nor excluded in a manner that indicates no regulation was intended. Notably, *Fonent* relied on *Attorney-General (Ontario) v. City of Mississauga,*124 D.L.R. (3d) 385, a decision that was subsequently

undermined in *B.C. Lottery* 1999 at paras. 18 and 19. According to the City, the impugned bylaw in *Fonent* was subsequently obviated by a set of provincial enactments (see *West Vancouver (District) v. No. 5 Seabright Holdings Ltd.*, 1 B.C.L.R. (3d) 312 at para. 6). It suggested that legislative experimentation at the municipal level often results in provincial legislative changes.

[67] The City relies heavily on *New Westminster BCSC*. In my view, this decision is distinguishable on its facts. Notably, the City is governed by the *Vancouver Charter*, not the *Community Charter*. These two enabling statutes use different language. The *Community Charter* expressly incorporates the *Multiple Access* standard; the *Vancouver Charter* does not, particularly with respect to business regulation. In my view, this distinction is significant. Absent the kind of language found in s. 10 of the *Community Charter* in s. 272(1)(f) of the *Vancouver Charter*, I am not persuaded that the *Multiple Access* test applies to this case.

[68] In *New Westminster BCCA*, the Court found the municipality's decision to enact the impugned bylaw was based on a reasonable interpretation of its statutory authority in the *Community Charter*. It held that the city's decision regarding its legislative authority to enact the bylaw in question was "grounded in and consistent with the text, context and purpose of its enabling statute, the *Community Charter*": *New Westminster BCCA* at para. 76. I am unable to reach the same conclusion.

[69] On a plain reading of s. 272(1)(f), taken in context with the *Vancouver Charter* as a whole, I conclude its language indicates that the City's authority to regulate business must reasonably be considered in light of the Province's existing regulation of the same persons engaged in the same business. This requires that the City consider the dominant purpose of provincial enactments regulating the same persons or businesses, and that the City's business regulation authority is limited in relation to the scope of this provincial regulatory scheme.

[70] In my view, I must therefore apply a pith and substance analysis to the Impugned Bylaws and the provincial regulatory scheme. Doing so involves identifying the main thrust, dominant purpose, or most important characteristic of the

Impugned Bylaws. Applying this test, I reach the inescapable conclusion that the pith and substance or dominant purpose of the Impugned Bylaws is rent control in the context of residential tenancies. Rent control is regulated by the *RTA*. I agree with the petitioners that the City is prohibited from legislating, by using its business licensing power, to regulate persons who are already subject to regulation by the Province, directed at the same dominant purpose, even if it is possible to comply with both legislative schemes.

F. Implied Exclusion Rule

[71] The City denies the *RTA* has occupied the field of rent control, underscoring its silence on the matter of vacancy control (i.e., the imposition of rent increases between tenancies). The petitioners maintain this omission was intentional and reflects a clear policy decision by the Province, as set out in the recommendations of BC's Rental Housing Task Force. In this context, they deny there is any legislative gap in the *RTA* for the City to fill. They rely on the implied exclusion rule, explained by Ruth Sullivan in *Sullivan on the Construction of Statutes*, 5th ed (Markham: LexisNexis Canada, 2008) at 243-244 as follows:

> An implied exclusion argument lies whenever there is reason to believe that if the legislature had meant to include a particular thing within its legislation, it would have referred to that thing expressly. Because of this expectation, the legislature's failure to mention the thing becomes grounds for inferring that it was deliberately excluded. Although there is no express exclusion, exclusion is implied. As Laskin J.A. succinctly put it, "legislative exclusion can be implied when an express reference is expected but "absent". The force of the implication depends on the strength and legitimacy of the expectation of express reference. The better the reason for anticipating express reference to a thing, the more telling the silence of the legislature.

[72] Pender Lodge submits that, given the Province's clear policy decision to exclude rent increases tied to rental units, the *RTA* must be interpreted as regulating this matter by omission. Given that s. 193D of the *Vancouver Charter* empowers the City to deal with SRA properties in various specified ways, and is silent regarding rental rates or vacancy control, Pender Lodge argues that the implied exclusion rule should preclude the City from controlling the rental structure of SRAs. It submits that, if the Province had wanted the City to have the legislative authority to control rents in

SRA buildings, it would have included explicit language to this effect in section 193D of the *Vancouver Charter*.

[73] Pender Lodge argues that the Province's legislative intention, effected by an omission from the *RTA*, was to maintain rent control tied to the tenant and not the rental unit, and that the Impugned Bylaws displace or frustrate this intention. Given the presumption of harmony, coherence, and consistency as between provincial legislation dealing with similar subject matters, Pender Lodge denies it can be reasonable for the City to enact the Impugned Bylaws: *Adam v. Insurance Corporation for British Columbia*, 2018 BCCA 482 at paras 26-27.

[74] Pender Lodge submits that, if the City thought it had authority pursuant to the *Vancouver Charter* to regulate landlord/tenant relationships, the City Mayor would not have asked the provincial Minister to make legislative changes. In my view, just because the City asked the Province to enact vacancy control, does not mean it did not have the authority to do so itself. There are many potential reasons, apart from jurisdictional ones, why the City might have preferred the Province to make these legislative changes.

[75] I accept that the legislative framework in the *RTA* is not exhaustive and contemplates other legislative and regulatory schemes which address residential tenancies and overlapping and complementary jurisdiction: *New Westminster* BCCA at para. 81. A review of the legislative history to the *RTA* is instructive. Municipalities originally had express authority to legislate certain aspects of residential tenancies, such as security deposits and rent control. This power was removed by enactment of the *Landlord and Tenant Act*, R.S.B.C. 1960, c. 207, an early form of the *RTA*.

[76] The 1973 Law Reform Commission of British Columbia "*Report on Landlord and Tenant Relationships*" (the "Law Reform Commission Report") referenced an emerging conflict between the *Rent Control Act*, R.S.B.C. 1960, c. 338 (giving municipalities authority to legislate in the area of residential tenancies) and existing provincial legislation. The Legislature expressly adopted the recommendations in the Law Reform Commission Report, including a repeal of the *Rent Control Act*.

[77] In my view, this legislative history supports the petitioners' position that the City lacks jurisdiction to enact rent control bylaws.

G. Potential for Conflict with *RTA*

[78] The City relies on the principle of subsidiarity. In *Spraytech*, Justice L'Heureux-Dubé explained this as the proposition that law-making and implementation are often best achieved at a level of government that is not only effective, but also closest to the citizens affected and thus most responsive to their needs, to local distinctiveness, and to population diversity: *Spraytech* at para. 3.

[79] I am not persuaded that the subsidiary principle applies here. In my view, the Impugned Bylaws are not complementary to the *RTA* and there is clearly potential for conflict between them. The City did not seriously contest this point, suggesting only that compliance with both is not impossible while acknowledging that the result could be "messy".

[80] One such example is illustrated by comparing s. 43(3) of the *RTA* and s. 23.1 of the *RTA* Regulations with s. 25.1A(6) of the Impugned Bylaws. The former stipulate that, on an application by a landlord for additional increased rent due to capital expenditures, the Director of the RTB must grant the application if certain criteria are met. The latter dictates that any application made under s. 43(3) of the *RTA* is subject to a further application to the City's Chief Licence Inspector for approval. In other words, read together, these two sections create the potential for the Impugned Bylaws to invalidate an order by the Director of the RTB.

[81] The City describes the allowable rent increases under both the *RTA* and the Impugned Bylaws as permissive rather than mandatory, saying it is not impossible for an SRA operator to comply with both. It concedes that the *Vancouver Charter* does not set out in detail a comparable scheme to the "spheres of concurrent jurisdiction" referenced in the *Community Charter*. It submits that all municipal jurisdiction is concurrent, suggesting that s. 272(1)(f) of the *Vancouver Charter* recognizes this concurrent authority and expressly acknowledges the potential for conflict.

[82] According to the City, a municipality may frustrate provincial authority, citing *Yellow Cab Company Ltd. v. Passenger Transportation Board*, 2014 BCCA 329 where Groberman J.A. held as follows:

> 85 A municipality, acting within its jurisdiction, may, in some instances, be able to frustrate the intentions of a provincially-constituted body, also acting within its jurisdiction: see, for example, *B.C. Lottery Corp. v. Vancouver (City)*, 1999 BCCA 18. Such a situation does not raise issues of jurisdiction. Both the provincially-constituted body and the municipality may exercise their authority and neither is compelled to conform to the will of the other.
>
> 86 The *Passenger Transportation Act* fully sets out the jurisdiction of the Board, and it is required to act in compliance with the statute. Nothing in the statute requires it to predict what legislative actions the City of Vancouver might take. Further, it is required to make its own licencing decisions based on statutory criteria. It cannot either defer to or delegate its functions to the City of Vancouver.
>
> 87 In short, both the Passenger Transportation Board and the municipal government of the City of Vancouver are subordinate authorities whose powers derive from Provincial statutes. Neither is required to defer to the other, and both are required to operate as independent authorities within their statutory spheres. As the Supreme Court of Canada's decision in *Spraytech* illustrates, mere differences in the ways that two competent bodies choose to regulate a field will not require a court to find one or the other to have paramount or dominant authority."

[83] Notably, *Yellow Cab* involved two subordinate levels of power. The City acknowledges that, ultimately, the Province can lawfully prevent it from doing anything. In *Yellow Cab*, the Court found that a municipality, acting within its jurisdiction, may, in some instances, be able to frustrate the intentions of a provincially-constituted body, also acting within its jurisdiction: *Yellow Cab* at paras. 83-86. As I read *Yellow Cab*, it does not assist in determining whether or not the City had the legislative authority to enact the Impugned Bylaws in the first place.

H. Grouping of statutory provisions

[84] 073 Ltd. submits that the placement of the City's power to regulate business within the *Vancouver Charter* informs an interpretation of the Legislature's intentions in enacting this enabling statute. The City dismisses this argument, denying there is any significance to the location of a particular section within governing legislation.

[85] In *Jacobs v. Laumaillet*, 2010 BCSC 1229, Justice Butler (then of this Court) said this at para. 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.

[86] The City's power to make regulations relating to businesses is contained within s. 272(1)(f) of the *Vancouver Charter*. It is grouped with other subsections regulating the following matters:

a) S. 272(1)(d) - fuel dealers, hours of delivery, and weigh scales;

b) S. 272(1)(e) - special vehicle licenses;

c) S. 272(1)(g) - the weight of loaves of bread;

d) S. 272(1)(h) – dog licenses;

e) S.272(1)(m) - vending machines; and

f) S. 272(1)(r) – juveniles in poolrooms.

[87] By contrast, broader provisions, apparently intended to expand and delineate the City's power to regulate business, are grouped together in s. 203 of the *Vancouver Charter*. 073 Ltd. submits that, if the provincial legislature had intended to grant the City an important, broad-reaching power to impose any restriction it wanted on a business (provided the impossibility of dual compliance test is satisfied), it would feature more prominently in the *Vancouver Charter*. It describes the City's interpretation as contrary to a plain reading of the statute. In its view, a better reading, based on the actual wording of the relevant section and its placement within the *Vancouver Charter*, is that subsection (f) is constrained and grants the City limited authority to impose regulations that are required as a corollary of licensing businesses (which it says is the clear purpose of section 272 more broadly). The petitioners deny that the City's grant of power permits it to enter fields that are already specifically regulated as a condition of granting a business license including, for example, the conduct of lawyers (who are regulated by the Law Society).

[88] In my view, the placement of s. 272(1)(f) within the *Vancouver Charter* supports a more constrained interpretation of it than the one applied by the City.

I. S. 279 of the *Vancouver Charter*

[89] 073 Ltd. argues that the limited jurisdiction conferred by s. 272(1)(f) can be understood by comparison to s. 279, also contained in Part VI dealing with licenses in the *Vancouver Charter*. Section 279 provides as follows:

> **Certain provisions of *Liquor Control and Licensing Act* not to apply**
>
> 279. Nothing contained in the *Liquor Control and Licensing Act* shall prevent the Council from providing for the licensing of the holder of a licence under the said Act.

[90] 073 Ltd. submits that, unlike s. 272(1)(f), s. 279 expressly contemplates the interaction of two legislative schemes. It interprets the wording of s. 279 to mean that the Legislature clearly considered, where the licensing power in the *Vancouver Charter* overlaps with another regulatory scheme, it must expressly state that the City could provide for licensing. 073 Ltd. says the wording of s. 279 is incompatible with the City's interpretation of s. 272(1)(f): if the limitation in s. 272(1)(f) was intended to incorporate the impossibility of dual compliance standard, the saving provision in s. 279 would be: (a) unnecessary; or (b) intended to permit the City to create a situation where it would be impossible to comply with both statutes. It submits that neither interpretation is sustainable and that s. 279 (unlike s. 272(1)(f)) clearly contemplates and permits two supplemental layers of regulation.

[91] I agree. Section 279 expressly permits what the City maintains s. 272(1)(f) allows. There is a presumption at law that words used in statutes are not superfluous or gratuitous: *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 at para. 38.

J. Patent Unreasonableness and Bad Faith

[92] The record shows that the City applied the impossibility of dual compliance test to its interpretation of the *Vancouver Charter*. I have found that doing so was unreasonable in this case: *Vavilov* at para. 83. In my view, only one reasonable interpretation is possible here and the City relied on an unreasonable interpretation

of its own power to regulate business in relation to rent control. Accordingly, I need not also consider whether the Impugned Bylaws are patently unreasonable or were enacted in bad faith.

VIII. DISPOSITION

[93] Section 2 of the *JRPA* empowers the court, on application by way of petition, to grant any relief the applicant would be entitled to in any one or more of the proceedings for: (a) relief in the nature of mandamus, prohibition, or certiorari; or (b) a declaration or injunction, or both, in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power. The court may set aside the decision pursuant to s. 7 of the *JRPA*.

[94] For the above-noted reasons, I declare that the Impugned Bylaws are *ultra vires* the City and therefore invalid. I make the following orders:

a) The Impugned Bylaws be quashed; and

b) The City shall promptly and confidentially destroy any information and documentation, including electronic documents, it has collected pursuant to the Impugned Bylaws.

[95] Absent any information the parties may wish to bring to my attention, the petitioners are entitled to their costs on the ordinary scale. If there are any matters arising from these reasons, the parties are at liberty to apply to speak to them.

"Douglas J."