



No. 15703
Rosland Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HAMMER HEAD EQUITIES INC., 0897306 BC LTD., 0708752 BC LTD.
and ROCK CUT NEIGHBORHOOD PUB LTD.

PLAINTIFFS

AND:

KATHY MOORE, DIRK LEWIS, ANDY MOREL,
STEWART SPOONER and TERRY MILLER

DEFENDANTS

RESPONSE TO CIVIL CLAIM

Filed by: Kathy Moore, Dirk Lewis, Andy Morel, Stewart Spooner and Terry Miller

PART 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendants Response to Facts

1. The facts alleged in paragraphs 3-9, 13, 16-17, 19 of Part 1 of the notice of civil claim are admitted.
2. The facts alleged in paragraphs 10-12, 14, 15, 18, 20-32 of Part 1 of the notice of civil claim are denied.
3. The facts alleged in paragraphs 1, 2 of Part 1 of the notice of civil claim are outside the knowledge of the defendants.

Division 2 – Defendants Version of Facts

The Defendants

1. Kathy Moore, now retired, is the former City of Rosland (the “City”) mayor, has lived in the City for over 23 years and was in public service as an elected official with the City from 2008-2022.

2. Dirk Lewis, former City councillor, has lived in Rossland since 2005 and is a biologist primarily engaged in mosquito and invasive plant control, and previously served as a City councillor from 2018-2022.
3. Andy Morel, current City mayor, has lived in the City since 1998, was elected as mayor in 2022, and previously served as a City councillor from 2016-2022. His educational and professional background includes carpentry, ski instructing, trail work, and property management.
4. Stewart Spooner, current City councillor, has lived in the City since 1991, and was first elected as City councillor in the year 2018. His occupation is as an operations manager for a non-profit society that manages a network of hiking and mountain biking trails around the City and community.
5. Terry Miller, now retired, is a former City councillor who has lived in the City since 1976, and was a City councillor in the years 2020-2022. His professional background includes emergency preparedness and consulting.

The Properties

6. The plaintiffs are all owned and operated by their principal, Warren Hamm.
7. On or about July 12, 2021, the City's council, then including the defendants in addition to two other City councillors, considered four development permit applications brought by the plaintiffs seeking authorization to clear certain properties of trees and other vegetation (the "**DP Applications**").
8. The DP Applications concerned four parcels (the "**DP Parcels**") owned by plaintiffs as follows:
 - a. PID 017-012-937 - owned by plaintiff 0897306 BC Ltd. (the "**Granite Mountain Property**");
 - b. PID 023-979-046 - owned by plaintiff Rock Cut Neighbourhood Pub Ltd. (the "**Rock Cut Property**");
 - c. PID 023-979-038 – owned by plaintiff 0708752 BC Ltd. (the "**Hwy 3B Property**");
and
 - d. PID 024-888-991 – owned by plaintiff Hammer Head Equities Ltd. (the "**Granite Road Property**").

9. The territorial jurisdiction of the City includes Red Mountain Village and Red Mountain Ski Resort, a picturesque ski resort nested in a heavily treed alpine setting, which is well-known amongst downhill skiing enthusiasts and is both a source of pride and an economic generator for the Rossland community.
10. The Rock Cut Property, Hwy 3B Property and Granite Road Property are located in the Red Mountain Village area and adjacent to Highway 3B, which is the vehicular route from the main urban area of the City to Red Mountain Ski Resort. The Granite Mountain Property is located in an undeveloped forested area located approximately 2 km southwest of Red Mountain Village.

The City's Land Use Regulations

11. The City is authorized by the *Local Government Act*, RSBC 2015, c.1 and *Community Charter*, SBC 2003, c. 26 and other statutory authorities to regulate the use and the development of lands within its territorial jurisdiction by, *inter alia*:
 - a. Dividing land into various zones and identifying the permitted uses of land within those zones;
 - b. Adopting an official community plan, identifying areas where development permits will be required to authorize certain development activities and identifying priorities and regulations with respect to the type and manner of development; and
 - c. Managing the development of lands through permitting and other land use regulatory processes.

i. Zoning Bylaw

12. At all material times, the DP Parcels were regulated by the City of Rossland Zoning Bylaw No. 1912 (the "**Zoning Bylaw**"), which identified the DP Parcels as being located within the following zones:
 - a. Granite Mountain Property Mountain Activity Area - Jumbo (CD-1-MA-1-Jumbo) Zone – which permitted the following uses and no others:
 - i. Cross-country and downhill ski trails;
 - ii. Eating and drinking establishments;
 - iii. Ski lifts and towers;
 - iv. Skier Services Buildings;

- v. Accessory uses, Building and Structures; and
 - vi. Recreation Cabin (1 per parcel) and Accessory Recreation Cabin (1 per parcel).
- b. Rock Cut Property and Hwy 3B Property - Residential Fringe Area (CD-3-RFA) Zone – which permitted the following uses and no others:
- i. One and two family detached dwelling;
 - ii. Multiple family dwelling;
 - iii. Short-term rental;
 - iv. Natural open space;
 - v. Playground and park;
 - vi. Accessory buildings and structures; and
 - vii. Secondary suite.
- c. Granite Road Property - Detached Residential Rural (R-1R) Zone – which permitted the following uses and no others:
- i. One or two family detached dwelling;
 - ii. Secondary suite or detached secondary suite;
 - iii. Agricultural use;
 - iv. Agricultural stand;
 - v. Kennel;
 - vi. Home occupation; and
 - vii. Accessory buildings and structures.
13. At all material times, pursuant to the Zoning Bylaw, forestry, logging and other forest management activities were only permitted uses in the City's P-4 (Resource Management Area) and P-5 (Resource Management Area – Residential) zones.
14. None of the uses of the DP Parcels permitted under the Zoning Bylaw contemplated a primary, accessory or incidental use which would require or justify that any of the DP Parcels be entirely or substantially denuded of trees.

ii. OCP Bylaw

15. At all material times, the DP Parcels were regulated by the City of Rossland Official Community Plan Bylaw No. 2425, 2008 (the “**OCP Bylaw**”).
16. The adoption of the OCP Bylaw resulted from an engaging process of community consultation which identified preservation of the natural environment and natural settings, including maximal retention of trees and vegetation, as important priorities for the City and its community members.
17. The OCP Bylaw reflected the priorities of the City and community respecting the maximal retention of trees and vegetation through several provisions including, *inter alia*:
 - a. Principle 4 – Conservation of Natural Resources: *Rossland is committed to growth and economic development that protect the natural environment and promote efficient and equitable use of land, energy, water and material resources. Rosslanders recognize that a healthy environment is integral to the City’s long-term economic and social interest;*
 - b. 12.1.3 – Objectives: *...to ensure the built environment is integrated with natural features; and*
 - c. 14.2.6 – General Policies: *...Preserve, whenever possible, all forest stands age class 7 or older, while continuing to review the use of these lands in the broader context of community land use requirements.*
18. The OCP Bylaw further reflected the priorities of the City and community respecting the maximal retention of trees and vegetation through the establishment of Development Permit Areas. The OCP Bylaw outlined the intent of establishing the Development Permits Areas as, *inter alia*:
 - a. Part VII: Development Permit Areas – Section 31: Background and Exemptions:

Section 919.1 and 920 of the Local Government Act authorize the establishment of Development Permit Areas in which a development permit must be issued by Council prior to the subdivision of land, the construction or alteration of a structure or the alteration of land. In order for this to occur, the objectives that justify the designation of Development Permit Areas and the

guidelines that will enable the objectives to be achieved must be established in the Official Community Plan.

The creation of Development Permit Areas is intended to give greater control over the form and character of development in the affected areas, beyond the provisions of the Zoning Bylaw and the Subdivision Bylaw. Development Permit Areas may also be designated for the protection of the natural environment, its ecosystem and biological diversity and the protection of develop from hazardous conditions.

19. The OCP Bylaw established the Red Mountain Development Permit Area (the “**Red Mountain DPA**”). Provisions of the OCP Bylaw reflecting the priorities of the City and community respecting the maximal retention of trees and vegetation within the Red Mountain DPA included, *inter alia*, at section 33:
 - a. *The Red Mountain Development Permit Area is established for the protection of the natural environment, its ecosystem and biological diversity...*
 - b. 33.1.2 – Objectives: *...To ensure that the form and character of the Red Mountain Resort reflects the area’s unique qualities and natural setting.*
 - c. 33.4.8 – Environmental Protection Guidelines: *...Development activities that will require vegetation clearing shall be limited only to those areas that require levelling, including each unit location, roadways and driveway and shall be done in accordance to [sic] Best Management Practices as determined by the City of Rossland.*
20. The Red Mountain DPA further incorporates Schedule H – Red Mountain Design Village Guidelines (“**Schedule H**”), which forms part of the OCP Bylaw. Schedule H reinforces the OCP Bylaw and the Red Mountain DPA’s prioritization of the maximal retention of trees and vegetation.
21. At all material times, The Rock Cut Property, Hwy 3B Property, and Granite Mountain Property all fell under the ambit of the Red Mountain DPA.

The DP Applications

22. At all material times, Development Permit applications were governed by the City's OCP Bylaw, Zoning Bylaw, and other relevant enactments concerning land use and development within the City.
23. The DP Applications sought authorization to clear trees and vegetation from the DP Parcels primarily for the purpose of "site preparation – tree removal – fire protection" and were accompanied by plans indicating that all or nearly all trees and vegetation were intended to be cleared from the DP Parcels and sold for market value (the "**Tree Harvesting**").
24. The DP Applications did not identify any further plans to develop the DP Parcels beyond the Tree Harvesting and:
 - a. Tree Harvesting (including logging or other resource-extraction based uses) was not a permitted use in any of the DP Parcels at the time of the DP Applications; and
 - b. There were no other permitted uses of the DP Parcels which would permit, as necessary, accessory or incidental to the permitted uses, that all or nearly all trees and vegetation be removed from the DP Parcels.
25. At the time of the DP Applications, the City's *Tree Retention Bylaw No. 2389, 2008* (the "**Tree Retention Bylaw**") was then in force.
 - i. The July 12, 2021 Council Meeting
26. At all material times the defendants understood that:
 - a. City council held the authority to grant or deny development permit applications, and that council held a limited scope of discretion to approve or deny such applications based on the application of the OCP Bylaw, including the application of OCP guidelines;
 - b. Reports which were commonly provided to council by the City's planning staff were intended to describe applications, explain staff's view of the relevant considerations and contain recommendations as to disposition of applications, but were not intended to replace or fetter the exercise of council's decision-making authority; and

- c. More particularly, the role of council was not to “rubber stamp” staff recommendations, as council had a duty to fully consider such applications.
27. The DP Applications were accompanied by City staff reports (the “**Staff Reports**”) which recommended that the DP Applications be granted.
28. It was observed by the defendants that the Staff Reports did not discuss or correlate:
 - a. The disconnect between the proposed removal of trees or vegetation, which appeared to be nothing more than applications to “clear cut” the DP Parcels, and permitted uses of the DP Parcels under the Zoning Bylaw, which were not supported by the DP Applications;
 - b. How the restriction contained in Red Mountain DPA Guideline 33.4.8 providing, in part, that “*Development activities that will require vegetation clearing shall be limited only to those areas that require levelling*” was to be understood in the context of the DP Applications, including how the DP Applications did not support any identified “development activities”; or
 - c. How the broader, contextual language of the OCP Bylaw, including the context of Schedule H, supported an interpretation of Red Mountain DPA Guideline 33.4.8 which was intended to retain maximal retention of trees and vegetation so as to protect and retain and unique character and qualities of the relevant area, including Red Mountain Village.
29. Based on the Staff Reports and deliberations at the council meeting, City staff and council formed the understanding that the Tree Retention Bylaw, in so far as directly restricted the removal of trees, did not specifically apply to the DP Applications.
30. Instead, the Tree Retention Bylaw specified that “This Bylaw does not apply to.... Privately owned forest lands...” and that, pursuant to the terms of the Tree Retention Bylaw, lands under such exemption were subject to having forest management plans and replanting programs in place.
31. Prior to considering the DP Applications, and at all relevant times thereafter, City staff and City councillors, including the defendants, were aware that Mr. Hamm commonly employed threats of legal action against the City in order to support desired outcomes in proposed development activities.

32. At the July 12, 2021 council meeting that first considered the DP Applications, the defendants raised several concerns about the nature of the DP Applications based on their understanding of the OCP Bylaw's prioritization of maximal tree and vegetation retention, and council resolved to table consideration of the DP Applications to seek, *inter alia*, additional direction from City staff regarding the authority of the City to control development of the DP Parcels.

ii. August 9, 2021 Council Meeting

33. On August 9, 2021, City council, including the defendants, re-convened to consider the DP Applications.
34. The defendants, acting in good faith and guided by the interests of the community as reflected in the OCP Bylaw, believed that the broad deforestation proposed in the DP Applications, which were not brought in the context of limited tree removal supporting permitted uses of development of the DP Parcels as authorized by the Zoning Bylaw, were inconsistent with the OCP Bylaw and, accordingly, exercised their judgment to vote to deny the DP Applications.
35. On or about August 13, 2021, the plaintiff 0897306 BC Ltd. filed a petition seeking, *inter alia*, to quash the decision to refuse the Granite Mountain Property DP Application (the "**Original Petition**").

Adoption of the Tree Management Bylaw

36. Between September 7 and September 21, 2021, City council considered and adopted the City of Rossland Tree Management Bylaw No. 2769, 2021 (the "**Tree Management Bylaw**").
37. Since prior to the date of the DP Applications, it was the intention of City staff to bring forward on the City's legislative agenda a recommendation to council to update the Tree Retention Bylaw.
38. The concept of what became the Tree Management Bylaw was not initiated by the defendants but was first raised with council by City staff, and described to council as a bylaw which would:
- a. Improve the ability to administer tree management and retention within the City;
 - and

- b. Ensure that the City's regulations respecting tree management and retention applied to privately owned lands.
39. The DP Applications highlighted the inadequacy of the Tree Retention Bylaw and prompted City staff to prioritize council's consideration of the new Tree Management Bylaw so that if faced with future similar applications, the City would have clear and unequivocal authority to restrict removal of trees within the City, including on privately owned lands.
40. By the time of the September 21, 2021 adoption of the Tree Management Bylaw, the plaintiffs had, on August 13, 2021, commenced the Original Petition and the defendants understood it was possible that, as a consequence of judicial review proceedings, the decision of council to deny the DP Applications could be overturned and the DP Applications be ordered granted.
41. While the DP Applications underscored for the defendants the need and urgency for the City to consider the adoption of the Tree Management Bylaw, the adoption of the Tree Management Bylaw was:
- a. Not intended or understood by the defendants to be a bylaw which would be effective against, or targeted towards, the plaintiffs in the context the DP Applications;
 - b. Believed by the defendants to be a bylaw which would only be applicable to future relevant applicants, and not to the plaintiffs in the context DP Applications; and
 - c. Believed by the defendants to be a bylaw which was within the legal authority of the City to adopt and a regulation which would harmonize tree-cutting regulations with the existing OCP Bylaw objective to preserve, to the greatest extent possible, the forested areas of the City.

The Judicial Review Proceedings

42. In specific response to paragraph 6 of the legal basis of the notice of civil claim, the principles of *res judicata* and issue estoppel and the findings of fact in the decision reported as *Hammer Head Equities Inc. v Rossland (City)*, 2023 BCSC 73, as relied on in the plaintiffs' notice of civil claim, do not apply to the current action.
43. On or about September 20, 2021, the plaintiffs filed a petition for judicial review against the City seeking, *inter alia*, to quash the decision to reject the DP Applications and to

declare the Tree Management Bylaw as invalid (the “**Judicial Review**”). The Judicial Review replaced the Original Petition, which did not proceed.

44. The defendants were not personally named in the Judicial Review, were not individually or collectively represented by legal counsel and did not provide evidence on those proceedings.
45. On or about October 2022, the City held a municipal election. Two of the defendants, Andy Morel and Stewart Spooner, are presently members of City council.
46. The judgment against the City in the Judicial Review was made on January 16, 2023, which quashed the decision to deny the DP Applications and ordered that the Tree Management Bylaw did not govern the DP Applications.
47. The City did not appeal the Judicial Review.
48. The hearing record of the Judicial Review included:
 - a. The amended petition and response to petition, which contained extracts and reproductions of the portions of counsel’s deliberations with respect to the DP Applications;
 - b. Affidavits deposed by the City’s Manager of Planning and Development;
 - c. Affidavits sworn by the principal for the petitioners and plaintiff of the current action, Mr. Hamm;
 - d. Affidavits sworn by the paralegal of the City’s counsel, attaching procedural and other documents; and
 - e. An affidavit sworn by the City’s Chief Administrative Officer,
(the “**Hearing Record**”).
49. The Hearing Record did not include any affidavits or other evidence directly from the defendants, and the defendants did not directly participate in the Judicial Review proceedings.
50. In finding that the City acted in bad faith, the hearing judge, Madam Justice Lyster, relied on the approach set out in *Macmillan Boedel Limited v. Galiano Island Trust Committee*, 1995 CanLII 4585 (BCCA) as follows:

[217] The leading case in British Columbia on bad faith involving local governments is *Macmillan Boedel Limited v. Galiano Island Trust*

Committee, 1995 CanLII 4585 (BCCA) [*Galiano*]. Speaking for himself and Wood J.A., Finch J.A. (as he then was) defined bad faith as follows:

[153] The words bad faith have been used in municipal and administrative case law to cover a wide range of conduct in the exercise of legislatively delegated authority. Bad faith has been held to include dishonesty, fraud, bias, conflict of interest, discrimination, abuse of power, corruption, oppression, unfairness, and conduct that is unreasonable. The words have also been held to include conduct based on an improper motive, or undertaken for an improper, indirect or ulterior purpose. In all these senses, bad faith describes the exercise of delegated authority that is illegal, and renders the consequential act void. And in all these senses bad faith must be proven by evidence of illegal conduct, adequate to support the finding of fact.

[154] Bad faith, however, is also used to describe the exercise of power by an administrative body, that is beyond the scope or the ambit of the powers delegated to that body by the legislature. In those cases the exercise of powers is sometimes described as unauthorized, or beyond the scope, or outside the limit of the delegated power. It is an act that is ultra vires. Frequently, allegations of bad faith include both the aspect of illegality in the first sense, and in the sense of ultra vires. To the extent that the allegation focuses on the way the delegated power was exercised, or on the conduct of the administrative body, there is an issue of fact. In those cases where powers are said to have been exceeded, however, there is another issue. That is the scope, or the amplitude, of the powers delegated by the legislature. That issue invariably requires an interpretation of the empowering statutes, and that raises an issue of law.

[218] The majority in *Galiano* then stated the following, at para. 178: In my view courts should be slow to find bad faith in the conduct of democratically elected representatives acting under legislative authority, unless there is no other rational conclusion.

51. In determining that the City acted in bad faith, Madam Justice Lyster's main findings were:

[227] There is merit to many of the City's submissions in respect of good faith. Many people, not only in Rossland but elsewhere as well, no doubt share the antipathy to clear cut logging expressed by some members of Council. Municipal council members are not judges. They are democratically elected politicians who will doubtless take into account not only their personal convictions, but also what they perceive to be the public interest, in their deliberations and votes.

[228] Further, even if, as I have found, the interpretation of the OCP which appears ultimately to have buttressed the City's decision is unreasonable, that does not necessarily mean that acting on the basis of it would be bad faith. Bad faith, as the cases make clear, requires more than acting on an incorrect or unreasonable interpretation of the law.

[229] Unfortunately, however, a review of Council's deliberations and actions reveals more than an incorrect or unreasonable interpretation of the law...

...

[242] As matters evolved, that is precisely what Council did. They rejected the petitioners' applications, and then, after the first of these petitions for judicial review was filed, changed the Tree Retention Bylaw in an attempt to ensure that the petitioners would never be able to pursue these applications, regardless of what a court might do on judicial review.

...

[247] For these reasons, I conclude that the City acted in bad faith.

52. As compared to the Judicial Review:

- a. The causes of action in the current action are distinct from the cause of action in the Judicial Review, which did not name the defendants;
- b. The respondent City in the Judicial Review is a different party from the defendants in the current action, and at all material times were not subject to the same privies;
- c. On the Judicial Review, the Court made no findings with respect to the individual subjective knowledge or intentions of the individual defendants, which are required elements of the causes of action pleaded in the current action; and
- d. The Court's findings regarding bad faith were made in the context of an administrative law proceeding seeking administrative law remedies against a public body, and not in the context of a private law tort seeking damages against private individuals.

53. The Hearing Record was absent evidence pertaining to:

- a. The defendants' prior experiences which informed their understanding of their authority in evaluating development permit applications;
- b. The defendants' understanding of their authority pursuant to the OCP Bylaw;
- c. The impact of prior staff experiences with Mr. Hamm, including threats of litigation, on the content of recommendations contained in the Staff Reports;

- d. The Schedule H “form and character“ guidelines that were applicable to the Red Mountain DPA;
 - e. Zoning designations that applied to the DP Parcels, and in particular, the permitted and non-permitted uses of the DP Parcels;
 - f. The defendants’ subjective state of mind with respect to the DP Applications;
 - g. The defendants’ knowledge about the plaintiffs’ prior threats of litigation, (the “**Additional DP Context**”).
54. The broader evidentiary elements of the Additional DP Context support the conclusions that:
- a. There are reasonable inferences as to the defendants’ intentions other than “bad faith”; and
 - b. The defendants’ decisions were made in good faith with an honest belief in their lawfulness.
55. At all materials times:
- a. The defendants’ intentions were to protect the public interest and the development priorities of the City as those values were reflected in the OCP Bylaw, the Zoning Bylaw, and other land-use related enactments;
 - b. None of the defendants held an individual or collective subjective intent to harm the plaintiffs; and
 - c. The defendants did not act in bad faith.
56. In addition or in the alternative, it was not unlawful for the defendants to vote to refuse the DP Applications or to vote in favour of the adoption of the Tree Management Bylaw.
57. The plaintiffs did not suffer loss or damage, as alleged or at all.
58. In the alternative, any loss or damage suffered by the plaintiffs was not caused by any acts, omissions or fault of the defendants.
59. In particular, if there was any delay in approving the DP Applications after the Judicial Review, which is not admitted but which is denied, such delay was not attributable to any acts, omissions or fault of the defendants.

60. In the further alternative, if any loss or damage suffered by the plaintiffs was caused by any acts, omissions or fault of the defendants, which is not admitted but is denied, the plaintiffs failed to mitigate their damages.

Division 3 – Additional Facts

1. n/a

PART 2: RESPONSE TO RELIEF SOUGHT

1. The defendants oppose the granting of the relief sought in Part 2 of the notice of civil claim.

PART 3: LEGAL BASIS

1. The plaintiffs have not suffered any loss or damage.
2. If the plaintiffs have suffered any loss or damage, which is not admitted but is denied, then such loss or damage was not caused by any wrongful act, omission or fault of the defendants.
3. In the alternative, if any loss or damage suffered by the plaintiffs was caused by any acts or omissions attributable to the defendants, which is not admitted but which is denied, the plaintiffs failed to mitigate their damages.

Local Government Land Use Authority

4. There was a reasonable, good faith basis upon which the defendants could conclude that the DP Applications were incompatible with the regulations contained in the City's OCP Bylaw and Zoning Bylaw, which were lawfully enacted based on the authority set out in the *Local Government Act*.

Misfeasance in Public Office

5. At all material times, the defendants acted in the public interest and intended to protect the public good and the development priorities of the City as those values were reflected in the OCP Bylaw, the Zoning Bylaw, and other land-use related enactments.
6. At all material times, none of the defendants subjectively intended to harm the plaintiffs.

7. At all material times, none of the defendants acted with recklessness or conscious disregard as to the lawfulness of their actions respecting the DP Applications or the adoption of the Tree Management Bylaw.
8. At all material times, the defendants did not act in bad faith.
9. In addition or in the alternative, it was not unlawful for the defendants to vote to refuse the DP Applications or to vote in favour of the adoption of the Tree Management Bylaw.

Res Judicata and Issue Estoppel

10. The doctrines of *res judicata*, cause of action estoppel, and/or issue estoppel do not apply in the current action to the findings made by Madam Justice Lyster in the Judicial Review.
11. In addition or in the alternative, it would not be in the interests of justice to apply the doctrines of *res judicata*, cause of action estoppel, and/or issue estoppel in the current action based on the findings of Madam Justice Lyster in the Judicial Review with respect to bad faith or otherwise, as the defendants should be entitled to fully defend claims of intentional wrongdoing made against them personally as a principle of natural justice.

Contempt of Court Allegations

12. The plaintiffs have not pleaded sufficient facts to establish that the defendants have committed any contempt of court. In particular, any delay with respect to the DP Applications after the Judicial Review, which delay is not admitted but which is denied, is not attributable to any acts, omissions or fault of the defendants.

Interference with Economic Relations Allegations

13. The plaintiffs have not pleaded sufficient facts to establish that interference with economic relations applies in the current action. In particular, no unlawful act against a third party has been alleged.

Defendants' address for service:

Stewart McDannold Stuart
Barristers & Solicitors
2nd Floor, 837 Burdett Avenue
Victoria, BC V8W 1B3

Fax number address for service (if any):

N/A

E-mail address for service:

jlocke@sms.bc.ca

Date: October 27, 2023



Jeffrey W. Locke
Lawyer for the defendants

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - a. Prepare a list of documents in Form 22 that list
 - i. All documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - ii. All other documents to which the party intends to refer at trial, and
 - b. Serve the list on all parties of record.