

Day 4 Update

Squamish First Nation Argument

Yesterday counsel for the Squamish First Nation continued their arguments in response to our Petition.

Initial arguments focused on the standard for review of the COV decisions, with the Squamish Nation taking the position that the standard of review should be reasonableness and not correctness. Counsel also argued that where there is any uncertainty in the interpretation of the statutory provisions, interpretations consistent with UNDRIP and with the constitutional right to Indigenous self-government must be favoured.

Other Squamish Nation arguments were:

- COV Council had relied on the Indian Self Government Enabling Act in deciding they had jurisdiction to enter into the Services Agreement.
- As the density of the on reserve development is outside the City's jurisdiction, had COV consulted citizens they would have been stepping outside their delegated authority.

Considerable time was spent again on Friday on the authority of COV to make the decision to enter into the Services Agreement in-camera (in secret). The Squamish Nation position was that it was open to COV Council to interpret the Vancouver Charter provisions as permitting all steps leading up to reaching an agreement as being permitted to be held in closed meeting.

KPRA Reply

The arguments of COV and the Squamish Nation being complete our KPRA counsel, Nathalie Baker, had an opportunity to make arguments in reply.

Points addressed included:

- The interpretation of COV and Squamish Nation that section 165.2 (1)(k) of the Vancouver Charter permits in-camera meetings to consider all discussions and negotiations of a proposed activity, work or facility until the point that the agreement is signed is contrary to the scheme of the Act.
- Misleading statements were made by the City about their lack of jurisdiction to consult and COV has now conceded they did have that jurisdiction.
- Whether the Squamish Nation needed the Services Agreement to achieve the level of density they propose.
- COV could have had a public meeting about whether to facilitate a project at the scale and density proposed. As the City is facilitating something not within its own bylaws it was akin to a rezoning application that gave rise to a duty to hear from residents if acting in the public interest.

Our counsel also addressed the standard for review . She asserted that a correctness review was required where asserting UNDRIP and interpretations in favour of indigenous rights in the statutory interpretation. She also presented authority about the current test for reasonableness.

Other argument focused on our assertion that the enforcement of Bylaws sections of the Services Agreement are outside the statutory authority of COV. Although COV relied on the Indian Self Government Enabling Act in their amended Petition there is no evidence it was considered by Council in deciding to enter into the Services Agreement.

Final argument addressed the claim by the Squamish Nation that they will suffer prejudice if the Services Agreement is quashed. Our counsel pointed out that there is no evidence from the City that the Triggered Infrastructure Agreements have yet been entered into. She also pointed out that the BC Utilities Commission application for a certificate of convenience is ongoing and that consultation had been

ordered in that process.

The Judge actively engaged in the discussion of the issues and raised a number of questions.

What happens from here?

We await the decision from the Judge. We have no time estimate of when that might be rendered.

While we can expect that she will want to make her decision as quickly as possible there is quite a volume of material for the Judge to review.

