

THE BC COURT OF APPEAL MAKES IT CLEAR THAT SAFETY REQUIREMENTS IN ARCHITECTS ACT APPLY TO LOCAL GOVERNMENTS' ISSUANCE OF BUILDING PERMITS

The Architectural Institute of British Columbia v. Langford (City), 2021 BCCA 261

This article is a follow-up to our previous commentary published in [October of 2020](#), as the outcome of the appeal was subsequently released earlier this year.

On June 30, 2021, the Court of Appeal for British Columbia released a judgment dismissing the City of Langford's (the "**City**") appeal, affirming that it was unreasonable for the City to issue a building permit for a building designed in contravention of a mandatory safety standard contained in a provincial statute, in this case, the *Architects Act* (the "*Act*") requirements for the involvement of a registered architect in the design and construction of certain buildings, which, as we noted in our previous article, are not necessarily the

same requirements required under the *Building Code*.

As discussed in our previous article, the lower court considered the interaction between the *Act* and the City's bylaws, which gave the building inspector discretion to refuse to issue a building permit where there was non-compliance with any enactment respecting safety and held that it was unreasonable for the building inspector, when exercising this discretion, not to have considered the safety requirements of the *Act*. Based on the reasons for judgment of the lower court, we commented in our previous article that the case had turned on the

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bylaw language and recommended that local governments with similar language in their bylaws should turn their minds to what enactments will be considered during the permitting process and be able to demonstrate how discretion was exercised.

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The Court of Appeal upheld the lower court's decision; however, it appears that the Court of Appeal arrived at the same result through a slightly different analysis. The Court of Appeal stated that this was "in effect a test case to determine whether it is reasonable for municipal officials to approve building plans that have not been approved by an architect in circumstances where the involvement of an architect is mandated by provincial legislation."

Unlike the lower court, the Court of Appeal held that the provisions of the City's Building Bylaw were of limited assistance in the analysis. The Court of Appeal stated that the question to be asked is limited to whether the mandatory safety standard set out in the *Act* is a

statutory constraint on the exercise of the building inspector's discretion, regardless of the terms of the City's Bylaw. The Appeal Court held that it was and explained that it was not a question of having local governments enforce provincial legislation; the issue was that it was unreasonable for the City not to take into account its statutory constraints when exercising its discretion.

Again, we emphasize that local governments should consider statutory provisions relating to public safety when policies are created. These cases also serve as a reminder to all in the construction industry of the statutory requirements (in addition to the Building Code) for the involvement of professionals in certain projects.

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Adrienne brings over 25 years of legal experience in litigation and dispute resolution representing local governments and other public entities, insurers and corporations, including in-house as Senior Staff Lawyer at Municipal Insurance Association of BC. Adrienne has represented and provided strategic and practical advice in relation to a variety of complex matters, including procurement, construction (including builders' lien, delay and defect claims), environmental, regulatory, expropriation, bylaw and FOIPPA disputes and processes, municipal jurisdiction, procedure, constitutional challenges, judicial reviews, remedial action orders, administrative hearing processes, contract claims, and privacy, insurance and risk management issues. Adrienne has extensive experience at all levels of Court in British Columbia, administrative tribunals, mediations and arbitrations. Adrienne regularly writes and presents on a variety of matters of interest to public entities and the construction industry.



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Our lawyers combine legal experience in local government, commercial real estate development, and construction law to provide legal services to local governments, owners, builders and developers on a range of projects, from concept to completion, and beyond.

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