

## 1909988 Ontario Limited v. North Cowichan (Municipality), 2020 BCSC 1666

Unlike the courts, administrative decision makers, such as local governments, do not have to follow their previous decisions.

This has caused inconsistency amongst decisions and courts have criticized such unpredictability. In a recent case involving the District of North Cowichan (the 'District'), British Columbia's Supreme Court offered some guidance regarding the local government's decision-making process.

In *1909988 Ontario Limited v. North Cowichan (Municipality)*, 2020 BCSC 1666 the petitioner sought to extend their existing business, a motorsport circuit, to adjacent lands. Therefore, they applied for the same development permit as was issued for the existing circuit. Despite previously approving the same uses with the same zoning, the District refused the permit application on the basis that it was not allowed under the relevant zoning bylaw (the 'decision'). The petitioner sought a judicial review of the decision. The issue on review was whether it was reasonable for the District to come to the opposite conclusion when it had previously allowed for such a use under the same zoning requirements.

The petitioner argued the decision was procedurally and substantively unfair, as well as that it was arbitrary and undermined the rule of law. The District argued that council was not required to make the same decision as it had previously. Moreover, the District suggested the previous decision was inconsistent with the zoning bylaw.

Madam Justice MacDonald explained that while administrative decision makers are not bound by their previous decisions, where a decision maker departs "from longstanding practices or established internal authority, it bears the justificatory burden of explaining that departure in its reasons" (at para 50). Otherwise, the decision will be unreasonable.

Madam Justice MacDonald went on to say that "to allow a municipality through interpretation to come to the opposite conclusion regarding a development permit based on the same parties, the same uses, and the same Bylaw, without affording an expla-

nation to the impacted party, strikes me as unreasonable" (at para 67). The petitioner was entitled to an explanation as to why the District deviated from its previous decision. As a result, the decision was held to be unreasonable and it was therefore quashed and sent back to council for reconsideration.

This case demonstrates that where decision-making is inconsistent, property owners have a right to know why. While the District did not have to make the same decision, it needed to provide a justification for its departure from its previous interpretation and decision. Although not bound by their previous decisions, courts may not accept unpredictable decision-making from local governments.

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Kelsey joined Civic Legal LLP as an Articled Student after completing her Juris Doctor at the Peter A. Allard School of Law at the University of British Columbia. During her time at law school, Kelsey was the Social Justice and Public Interest Representative for the Allard Law Student Society Careers Committee. She also volunteered with Pro Bono Students Canada as a student researcher for the Canadian Mental Health Association and completed the Indigenous Community Legal Clinic.

Prior to attending law school, Kelsey completed a Bachelor of Arts in the Faculty of Communication, Art and Technology at Simon Fraser University, specializing in political communication.

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