

## THE CONSEQUENCES OF BUILDING IN VIOLATION OF LOCAL RULES: A CASE COMMENT ON *CITY OF SURREY V. SIDHU* 2023 BCSC 1837

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Building a residence or structure without obtaining the necessary permits and where the construction contravenes local bylaws can be a costly lesson for property owners when they become the target of enforcement action by a regulator or local authority. The recent British Columbia Supreme Court decision in *City of Surrey v. Sidhu* 2023 BCSC 1837 (the “**Petition Proceedings**”) highlights the consequences of undertaking construction projects in flagrant violation of local building requirements and carrying on with such construction after a stop work order has been posted on the property. The decision serves as a stark reminder for owners, builders and developers that it is incumbent to comply with local rules and requirements of building and permitting schemes when undertaking construction projects. Where construction violates such requirements, local authorities may seek relief from the courts and obtain court orders requiring the demolition of the building or structure at the property owner’s expense.

In situations where illegal construction is rampant in a particular area or community, a local authority may be pressed to take action against contraveners to send a message to the public and those considering undertaking a construction project without obtaining

the necessary permits or building in violation of the BC Building Code. This was the case with the *Petition Proceedings*, which was part of a broader effort to crack down on illegal construction in the City of Surrey by the local government.<sup>1</sup>

### BACKGROUND

The City of Surrey (the “**City**”) brought a petition before the British Columbia Supreme Court to obtain court orders to have an extension to a residential home and a laneway house that were built on a property within the boundaries of the City (collectively, the “**Structures**”) demolished. The City alleged that the Structures violated the City’s local bylaws related to building and permitting. As noted by the court, the regulatory framework of the City’s *Building Bylaw* No. 17850, 2012 and its *Zoning Bylaw* No. 12000, 1993, is intended to establish a set of standards for building design and construction related to safety, health, accessibility, fire and structural protection.<sup>2</sup> The property owners constructed the Structures without obtaining the necessary building permits and in any event, no permits would have been issued, given that the Structures did not comply with a number of requirements of the City’s bylaws, specifically:

- 1) the Structures exceeded the Zoning Bylaw's permitted lot coverage;
- 2) the Structures exceeded the floor area ratio permitted by the Zoning Bylaw; and
- 3) the extension violated the required setback imposed by the Zoning Bylaw.<sup>3</sup>

The extension was also constructed on top of a septic field on the property, which raised concerns regarding its stability.<sup>4</sup>

Additionally, and prior to the commencement of the Petition Proceedings, the City had placed a stop work order on the property in November of 2021 ordering the property owners to cease construction. The property owners carried on with the construction of the Structures in defiance of the stop work order and ultimately completed construction of both the extension and the laneway house.<sup>5</sup>

The property owners raised a number of defences in reply to the petition of the City. First, they argued that given the housing shortage in the Lower Mainland, it would be wasteful to demolish the structures when they were being offered as rental accommodations. Second, they raised that they were willing to work with the City to retroactively bring the Structures into compliance with the City's bylaws.

## DECISION OF THE COURT

The Court held that the evidence supported the conclusion that the respondents had continued construction of the Structures despite a stop work order being placed on the property and held that the construction in violation of the local bylaws and without the required permits was deliberate.

[34] *The respondents' actions are flagrant and deliberate. **As articulated by counsel for the***

**petitioners, the respondents gambled that they could expand the buildings on the Property and create rental units without obtaining permits and not be caught by the City. They lost that bet.** *In my view, this is similar to the circumstances in Pocrnic where Esson J.A. concluded: "Reduced to its essentials, it is a case of owners deliberately flouting the bylaw for their own benefit and in the hope of not being detected": at para. 19.*

The City introduced demonstrable evidence of the non-conformity of the structures with the requirements of the local bylaws. This proved that even if the respondents had applied for the necessary permits to construct the Structures in the first instance that it would not have been approved by the City.

Further, there was no prospect that even if the court granted the respondents' proposed remedy to have them work with the City to retroactively bring the Structures into conformity with the local bylaws and building requirements that this would be possible. There was no realistic possibility that this could be achieved because of the locations on which the Structures had been built along with their size and proximity to the property line.

The court also unequivocally rejected any notion that the Province of British Columbia's *Homes for People: An action plan to meet the challenges of today and deliver more homes for people, faster*<sup>6</sup> could be interpreted as explicitly or implicitly encouraging the unlawful construction of dwellings to meet the Province's acute housing needs.<sup>7</sup>

The court declared that the property owners contravened the City's Building Bylaw, restrained the property owners from continuing construction work on the Structures, violating or removing any stop work

orders posted on the property and occupying or permitting any person to occupy the Structures. The respondents were ordered to apply for a permit with the City to demolish and remove the Structures and to submit all required documents, information and fees within 15 days of the court order and to carry out the demolition of the Structures within 60 days of receiving the required permit from the City.<sup>8</sup> Additionally, the respondents were required to pay the City's legal costs in bringing the petition before the court.<sup>9</sup>

### **LOCAL GOVERNMENT AUTHORITY TO OBTAIN COURT RELIEF FOR ILLEGAL CONSTRUCTION**

Under Section 274(1) of the *Community Charter*, municipalities are permitted to petition the Supreme Court of British Columbia so that it may enforce its bylaws and prevent or restrain the contravention of its bylaws. This empowers municipalities to commence court proceedings through which they may obtain injunctions requiring property owners that have constructed structures in violation of its bylaws to cease any further construction and to compel the property owner to demolish or remove the contravening buildings or structures. The court will only refuse to enforce the requirements of a local government's bylaws in exceptional circumstances. Exceptional circumstances are generally where it involves weighing the public interest against the hardship the order will impose upon the respondents.<sup>10</sup>

Property owners, builders and developers should remain mindful that municipalities are granted the statutory power to bring legal proceedings under the *Community Charter* to enforce its bylaws through the courts. This enables local governments to bring matters before the court and obtain relief where building, zoning or other bylaws are being contravened and to compel compliance.

### **TAKEAWAYS FOR OWNERS, BUILDERS AND DEVELOPERS**

The consequences of building structures and buildings in violation of a local authority's building, zoning and other bylaws can be costly where legal proceedings are commenced and the courts impose drastic remedies. As demonstrated by the Petition Proceedings, such remedies may go as far as requiring the demolition of the building or structure itself. Such a remedy effectively puts the property owner back at square one with the added consequences of having to not only pay for the costs for the construction of a building or structure that will now be demolished but additionally paying legal costs to defend the proceeding along with the local government's legal costs when they are successful before the courts.

The takeaways for owners, builders and developers are two-fold: first, where planning and undertaking the construction of buildings or structures it is incumbent to do so in conformity with local bylaws and to obtain all necessary permits and approvals before undertaking construction work. Second, in circumstances where a project has commenced and the property owner is informed by local government officials that the project is non-compliant with local requirements or where a stop work order is posted on the property, then the property owner must cease all work until such time as the non-compliance is remedied and all necessary approvals are in place. Carrying on a construction project in violation of the warnings and orders of a local authority will not be viewed upon favorably by the courts. As shown in the Petition Proceedings, even if the construction project is completed, the expense and time spent doing so may be for nothing as the possible outcome of court proceedings will be to see the court order the removal and demolition of the violating structure at the property owner's own cost.

While it can appear enticing and cost-effective to cut corners and avoid the governmental red tape when undertaking a construction project, to appropriately manage the risk of regulatory penalties and the high costs of a legal claim it is in the best interest of owners, builders and developers to undertake projects in conformity with all legal requirements in the first instance. With that said, situations may arise where it is not known that construction has commenced in violation of some legal requirement. When such errors become known it is best practice to down-tools and work with the local authority to rectify the contravention before carrying on with construction. To avoid such unexpected errors, it is advisable that at the outset of any construction project that all applicable bylaws and legal requirements are considered. When these requirements are not known or unclear it is prudent to consult with legal counsel, the local building department and other regulatory authorities as may be required to ensure that the project conforms with all laws and regulations. This will mitigate the risk of a construction project becoming a target of an enforcement action for non-compliance. Likewise, if stop work orders are issued by a local authority, construction should cease in compliance with the order until such a time as the contravention has been appropriately addressed and the local authority has lifted the stop work order from the property.

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Footnotes:

1. City of Surrey, *City of Surrey takes action against illegal construction* (October 2023), online: <https://www.surrey.ca/news-events/news/city-of-surrey-takes-action-against-illegal-construction>.
2. *City of Surrey v. Sidhu* 2023 BCSC 1837 at para 6.
3. *Ibid* at para 35.
4. *Ibid*.
5. *Supra* note 2 at para 33.
6. Province of British Columbia *Homes for People: An action plan to meet the challenges of today and deliver more homes for people, faster* (3 April 2023) online: <[news.gov.bc.ca/files/Homes\\_For\\_People.pdf](https://news.gov.bc.ca/files/Homes_For_People.pdf)>
7. *Supra* note 2 at para 37.
8. *Ibid* at para 39
9. *Supra* note 2 at para 40.
10. *North Pender Island Local Trust Committee v. Conconi*, 2010 BCCA 494 at para. 38.



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David is an associate lawyer of the firm. His practice is focused on municipal, land development and construction matters. Prior to working at Civic Legal LLP, David worked as a litigator and represented insurance corporations, local governments, construction managers and local and national companies in a variety of legal actions and disputes. David has developed a unique perspective on risk management, negotiation, and strategy from his litigation experience, which he draws on to advise his clients on a variety of legal and regulatory issues. In his solicitors practice David routinely advises clients on local government issues, procurement processes and land use planning and development regulatory matters. He has further drafted construction contracts and municipal service agreements on varied construction projects and contractual matters.

*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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