Civic Legal LLP

LEGAL ISSUES IN MUNICIPAL TAX SALES

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I. INTRODUCTION[1]

Tax sales have been a municipal collection remedy in British Columbia for over a century. More recently, tax sales of property in Penticton, Spallumcheen and Pemberton have illustrated the significant financial and emotional consequences to owners, and the significant financial and political risk to municipalities, that can arise from owners misunderstanding the tax sale process or being unaware that their property has been sold. The court has also recently considered the interplay between Aboriginal title and tax sales.

Tax sales are a harsh, strict and effective response to the non-payment of property taxes by ratepayers. The burden on a collector of complying with statutory procedures and addressing legal issues that arise with tax sales is far outweighed by the benefit of a process that strongly encourages most owners to pay municipal property taxes on time. Tax sales almost always operate as an effective collection mechanism against the small minority of owners who fall too far behind on their tax payments.

A municipal tax sale is a statutorily mandated response to property taxes becoming delinquent. A delinquent tax is a property tax or eligible fee that has been imposed but has gone unpaid by the end of two consecutive calendar years. If a property still has delinquent taxes imposed against it by 10 a.m. on the last Monday in September, the property must be offered at an auction that day. The intended effect of the tax sale is that the collector, first, uses the money received from the highest bidder at the auction to collect those taxes that have been imposed on the property but not paid for multiple years, and second, holds on to any surplus money for the benefit of the owner or others claiming an interest in the property. The statutory process gives the owner one year (in most cases) to either pay the purchaser back with interest if the owner wants to keep the property or to wait until the property is transferred to the purchaser and make a claim on the surplus (if any). Given that most properties are redeemed rather than transferred to the purchaser, the process might be better described as a mandatory tax loan rather than a tax sale.

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[1] The writer thanks Aidan Andrews for his assistance with research and editing in the preparation of this paper.

The above is a very general and simplistic summary of the mechanics of a municipal tax sale in British Columbia. In practice, the municipal tax sale process is more complex and can give rise to several legal issues. When conducting a tax sale, a collector's first reference should always be to the procedures set out in the *Local Government Act*, RSBC 2015, c 1 and the *Community Charter*, SBC 2003, c 26.[2] The intention of this paper is to provide supplementary commentary on legal issues that arise from matters not expressly covered by statute.

II. PRE-TAX SALE PROCEDURES

The mandatory use of the tax sale process is imposed by section 254 of the *Community Charter*:

> If applicable, a municipality must recover unpaid property taxes, including any interest and penalties owing on those taxes, by tax sale in accordance with Division 7 of Part 16 of the *Local Government Act*.

A more precise requirement imposed on the collector is set out in section 645(1) of the *Local Government Act*:

> At 10 a.m. on the last Monday in September, at the council chambers, the collector must conduct the annual tax sale by offering for sale by public auction each parcel of real property on which taxes are delinquent.

The requirement that the collector offer real property with delinquent taxes for sale protects the integrity of the tax collection process. This is because a mandatory tax sale prevents a situation in which an owner is effectively spared the obligation to pay property taxes because a collector is slow to, or chooses not to, take other effective steps towards collection. Taxes that are never collected are no tax at all.

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[2] Readers should note that this paper discusses tax sales conducted by municipalities under the *Community Charter*, SBC 2003, c 26. This paper does not cover tax sales conducted by the Province of British Columbia in relation to land outside the boundaries of a municipality, tax sales conducted by the City of Vancouver or tax sales conducted by an improvement district. Different legislation applies to such tax sales.

A. Identifying properties liable for tax sale

A collector is expected to be able to identify which properties have had taxes imposed against them that are now delinquent. A more complicated task is identifying if any of these properties with delinquent taxes can be excluded from the tax sale despite the imperative language in section 645(1) of the *Local Government Act*.

Absent a legal basis for exclusion, the collector will breach a statutory duty if the collector withholds from sale a property on which taxes are delinquent. Collectors may note that the Nova Scotia court in *Antigonish/Guysborough Federation of Agriculture v. Antigonish (Municipality)*, 2012 NSSC 352, aff'd 2013 NSCA 71, held that a collector has "no choice" and must sell a parcel liable for tax sale at a tax sale. In that case, a collector had repeatedly refrained from selling a property at the annual tax sale because it was owned by a regional county government and occupied by a non-profit organization.

In the *Antigonish* case, the occupant considered the land to be tax exempt under municipal legislation and the collector appeared to agree. However, the land was being assessed as taxable commercial property and tax bills were being issued annually. Neither the county nor the occupier contested the tax bills or the property's assessment status. Rather, the county and the occupier simply did not pay those tax bills, and the unpaid taxes accumulated over the years. The reasons for judgment in the *Antigonish* case indicate that the property only went up for tax sale because the Nova Scotia government felt compelled to remind municipalities of the obligation to recover unpaid taxes through tax sales.

1. Land exempt from tax sale

Below is a list of some of the situations in which the collector should not offer a property for tax sale despite taxes being delinquent.

a) Property affected by stay or order under federal legislation

The Constitutional division of powers in Canada under the *Constitution Act, 1867* means that federal legislation prevails over conflicting provincial legislation regarding the same subject matter (see *Re: Westline Ranch Ltd.* (1985), 68 BCLR 301 (SC)). The *Companies Creditors Arrangement Act*, RSC 1985, c C-36, the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 and the *Farm Debt Mediation Act*, SC 1997, c 21 are all federal statutes that provide one or more processes for addressing the failure of a debtor to pay debts owing

to creditors. These federal statutes also provide for the issue of orders or notices to creditors that operate to prohibit creditors from taking further action to collect debts except as permitted by the respective statute or an order issued under it. Such prohibitions, commonly called "stays", seek to stop a race to collect among creditors and to allow the debtor some "breathing room" while the process set out in the applicable federal legislation is engaged. Depending on the circumstances, a stay may prevent the sale of lands by tax sale. A collector should seek legal advice if the municipality is served with an order or notice made under a federal statute in relation to a ratepayer.

Collectors should also note that in the case of property owned by a farmer that is not (yet) the subject of a stay, the collector is required to give at least 15 business days' written notice to the farmer under section 21 of the *Farm Debt Mediation Act* before seeking recovery of a debt through tax sale. Agri-Food Canada and the Ministry of Agriculture prescribe a form for this purpose.

b) Tax sale of property prohibited by court order

A court may for a variety of reasons issue an order prohibiting a property from being sold at an upcoming tax sale. For example, a tax sale was stayed (suspended) by the court in *Burnaby (City) v. Thandi*, 1999 BCCA 589, because the owner was actively appealing a court decision regarding the municipality's authority to impose $270,000 in property taxes as an unpaid fees-for-service-to-land imposed by bylaw. Since the owner was engaged in an ongoing challenge to the fees and the validity of the bylaw, the British Columbia Court of Appeal stayed the tax sale pending the determination of these claims. Although it would take time for the court to determine whether the taxes (originally fees) were validly imposed, the Court of Appeal held the municipality was unlikely to be prejudiced by any potential delay in the collection of such taxes.

An order prohibiting the tax sale of a property may also be made in a legal proceeding that does not involve a dispute between the owner and the municipality. The court may make such an order affecting a tax sale as part of a court proceeding involving a dispute over title to the property, a dispute over administration of an estate, or foreclosure by a lender. If made, such an order should be promptly served on the municipality and directed to the collector's attention.

c) Land vested in the Provincial Crown for which an occupier is taxed (subject to exception) or for which a bylaw exemption applies

Land vested in the Provincial government but held or occupied by others is liable for municipal property taxation (*Community Charter*, s. 228(1)). Those taxes could go unpaid and become delinquent. In such cases, the collector is prohibited from selling the land at tax sale and must employ a different process under section 257 of the *Community Charter*. This process could result in the Province cancelling the lease, licence or permit of occupation if the taxes continue to be unpaid.

The statutory prohibition against tax sale referenced above (*Community Charter*, s. 257(1)) only relates to land that is owned by the Province but privately "held under lease, licence, permit or location". By contrast, if taxes are imposed and go unpaid against a private registered owner of land, and that land is subsequently transferred to the Province, then that land will be liable for tax sale if the unpaid taxes are delinquent. The Province's acquisition of land with unpaid taxes could arise, for example, through escheat. As discussed later in this paper, the court in *Saini v. Grand Forks (City),* 2011 BCSC 320 declined to find that escheated land is necessarily exempt from tax sale.

An exception to the rule against the sale of Provincial land for which an occupier is taxed arises if the occupier holds that land under an agreement to purchase. A collector should seek legal advice if intending to sell such land at tax sale under sections 653 and 654 of the *Local Government Act*.

Collectors should also note that section 646 of the *Local Government Act* grants a council the power to adopt a bylaw that exempts property vested in the Province from tax sale.

d) Land vested in Canada

The Constitutional division of powers means a municipality cannot impose property taxes on the Crown in right of Canada or federal Crown agents for land they own within the municipality. Property taxes may be imposed in certain circumstances on a non-federal government occupier of those lands (*Community Charter*, s. 228). If taxes imposed against the occupier go unpaid, the municipal collector may not sell the property owned by Canada to recover those taxes.

e) "Article 13" lands

In the recent case of *Cowichan Tribes v. Canada (Attorney General)*, 2025 BCSC 1490, presently under appeal, the BC Supreme Court considered whether lands described under Article 13 of the 1871 *British Columbia Terms of Union* could have been sold under historic BC tax sale legislation. The court determined that Article 13 applied to lands that had been appropriated by the Crown as a future "Indian" reserve, but for which final demarcation and conversion to a reserve had not occurred. Notwithstanding the incomplete conversion to reserve, these lands are subject to Canada's exclusive legislative authority in relation to "Indians, and Lands reserved for the Indians", meaning that Provincial legislation cannot provide for their mandatory conveyance through tax sale. As with land for which title is vested in Canada, Article 13 lands cannot be sold at tax sale.

In practice, a collector will not know if a property is Article 13 land unless there is a court order declaring the lands such. In the *Cowichan Tribes* case, the court considered historical evidence of lands being appropriated for reserves in 1859 and 1860, prior to Confederation and British Columbia's entry into Canada. While the plaintiffs proved that certain lands had been appropriated for them, the court did not determine what, if any, other lands may have been appropriated, but not converted to reserve, for First Nations elsewhere in the Province. What lands might be found to be Article 13 lands may cover a much smaller area in British Columbia than the lands that are subject to Aboriginal title. The potential effect of Aboriginal title on a property's liability for tax sale is discussed in the next Part.

f) Manufactured home in a manufactured home park

Whether and how a manufactured home in a manufactured home park can be sold at tax sale is a topic of some debate amongst municipal lawyers. The issues arise because under section 3 of the *Manufactured Home Tax Act*, RSBC 1996, c 281 the owner of a manufactured home park is not liable for the unpaid property taxes imposed on the manufactured home owned by someone who rents a pad in their park. If the manufactured home has delinquent taxes, but the manufactured home park does not, seizure and sale of the manufactured home (being a chattel) through distraint under section 252 of the *Community Charter* may be the municipality's only method of "direct" collection. This process is quite different from the tax sale of property, and collectors should consult legal counsel before pursuing this collection remedy.

Outside of a manufactured home park, if a folio for a parcel has delinquent taxes and one of the improvements on the parcel is a manufactured home, then the manufactured home can be sold together with the parcel and other improvements thereon at tax sale.

2. Trickier scenarios

Below is a list of scenarios in which the eligibility of the property for tax sale is less clear under the law or may require more investigation or action by the collector to confirm that the property should be sold.

a) Land owned by a dissolved corporation or society

If a company or society dissolves while still owning property, that property escheats to the Provincial government under the *Escheat Act*, RSBC 1996, c 120. The transfer of ownership by escheat may not be permanent and, furthermore, may be deemed at law to have never occurred in the first place. If a corporation or society is restored within two years of dissolution, the "revival has effect as if the land of the corporation had not escheated to the government" (*Escheat Act*, s. 4(4)). The case of *Saini v. Grand Forks (City)*, 2011 BCSC 320 confirmed that such a revival of a dissolved owner means, for tax sale purposes, that the land was never vested in the Province. As will be discussed later, this potential outcome has important consequences for a collector seeking to give notice of the tax sale and the date the redemption period ends.

If a company or society has been dissolved for more than two years, a court order is required before escheated land may be vested back in the restored company or society. There is a lingering question as to whether such court order could include a term that deems the escheat to have never occurred.

The possibility that presently escheated land may in future be deemed to have never been escheated effectively means that a collector should offer at tax sale land that has delinquent taxes and a dissolved corporation as its registered owner. If the collector does so, one of four results will occur:

- The company is restored before the end of the redemption period such that the escheat is deemed to have never happened;
- The property is redeemed before the end of the redemption period;

- The property is not redeemed by the end of the redemption period and the Province consents to the registration of the purchaser as the new owner despite the escheat; or

- The property is not redeemed by the end of the redemption period and, because of the escheat, the registrar refuses to register title in the name of the purchaser. Under section 664 of the *Local Government Act*, the municipality is now deemed the purchaser, and the original purchaser receives the purchase price back without interest.

All four of these outcomes will result in the municipality recovering taxes owing on the property through either a tax sale of the property to a purchaser or the municipality's acquisition of the property at tax sale (but still subject to the escheat). If the collector does not put a property up for tax sale because of the escheat, the collector risks failing to uphold the statutory duty to sell certain property at tax sale and is allowing one more year to pass in which the taxes for the property will go unpaid.

Before offering for sale any property owned wholly or in part by a corporation or society, a prudent collector should obtain a British Columbia company or society summary from the corporate registry. If the owner is dissolved, legal advice should be sought given the issues that will very likely arise in giving the required notice under section 657 of the *Local Government Act* and registering purchasers upon non-redemption.

b) Land subject to a certificate of pending litigation

A property that is subject to a certificate of pending litigation filed in the land title office should still be liable for tax sale. If the collector becomes aware of a certificate of pending litigation before the tax sale, the collector should contact the filing party because the filing party may be interested in paying the delinquent taxes. The filing party risks losing their claim to the property if the property is sold at tax sale and not redeemed.

c) Land subject to an expropriation notice

A property that is subject to an expropriation notice under section 6 of the *Expropriation Act*, RSBC 1996, c 125 should still be liable for tax sale. The filing of an expropriation notice does not necessarily mean that the property will ultimately be expropriated during the redemption period or at all. Nevertheless, the land title office may not be prepared to register notice of a tax sale or transfer the property upon non-redemption if an

expropriation notice is on title. A collector should seek legal advice if a property with delinquent taxes is subject to an expropriation notice.

d) Land subject to a foreclosure proceeding

A property that is subject to a foreclosure proceeding remains liable for tax sale unless the court has issued an order specifically prohibiting the tax sale (*1055249 B.C. Ltd v. Grace Mtn. Land Co.*, 2018 BCSC 2355). If a collector becomes aware of a foreclosure proceeding, the collector should seek legal advice regarding the terms of the orders made in that proceeding.

e) Land subject to a civil forfeiture proceeding

The *Civil Forfeiture Act*, RSBC 2024, c 1 contains a number of provisions that could affect a tax sale. In a civil forfeiture proceeding, the court may be asked to order the transfer of real property to the Province on the basis that the property was acquired using the proceeds of crime. Section 9 of the *Civil Forfeiture Act* authorizes the court to issue interim preservation orders, which orders could contain wording that bars a tax sale. A municipality might learn about such an order through a lien registered against title pursuant to section 9(4)(f) of the Act.

In forfeiture proceedings, property taxes are treated as an "existing public body interest" as defined in section 60 of the *Civil Forfeiture Act*. This means that unless the municipality gives notice of its interest within 60 days of the start of a forfeiture proceeding, the municipality's interest in the property is suspended. Such a suspension would also appear to preclude a tax sale.

The effect of other provisions in the *Civil Forfeiture Act* is less clear. Section 72(5) of the Act deems a notice of forfeiture proceedings that is registered on title to land as equivalent to a certificate of pending litigation. Although a true certificate of pending litigation would not be a bar to a tax sale, the land title office might decline to register title in the name of a purchaser in the case of land subject to a notice under the *Civil Forfeiture Act.* Alternatively, the land title office might effect the transfer, but allow the notice to remain on title to the property because it is the Province that it is claiming an interest in the land.

Section 8(1)(b) of the *Civil Forfeiture Act* appears to contemplate the proceeds of any sale as replacing the real property if there is a disposition of real property despite registration

of a notice under the Act. This suggests that a tax sale would not, in principle, frustrate the objects of the *Civil Forfeiture Act* if a tax sale nevertheless happened during forfeiture proceedings. However, another section (section 62) could be interpreted as extinguishing the tax sale purchaser's interest in certain circumstances. A collector should seek legal advice as soon as they become aware of a forfeiture proceeding affecting a property that is liable for tax sale or has been sold at tax sale.

f) The delinquent taxes have been challenged, but no court order affects the tax sale

Sometimes an owner refuses to pay property taxes because that owner disputes the amount of taxes imposed or the ability of the municipality to impose a particular charge that has been added to taxes. The appropriate course of action for the owner is to either pay the delinquent taxes and seek to recover the amount paid through a court proceeding or commence a court proceeding and seek an interlocutory order prohibiting the tax sale of the property pending a decision on the validity of the taxes (an example of this latter approach occurred in *Burnaby (City) v. Thandi*, 1999 BCCA 589). If neither of these events occur, a collector must sell the property at tax sale. The collector has no power to decide that delinquent taxes are due and payable, but that those taxes are also sufficiently "iffy" that a tax sale should not be used to collect them.

g) Land subject to Aboriginal title

Among the many matters considered in the *Cowichan Tribes* case was the effect of historical municipal tax sale legislation on land subject to Aboriginal title. Aboriginal title is a unique collective right that is distinct from the fee simple title that is registered in the name of the owner in the land title office. Aboriginal title is unregistered but may be confirmed through a declaration issued by the court (see, e.g., *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44).

In the *Cowichan Tribes* case, the court found that the plaintiffs had proven that certain lands were subject to Aboriginal title. The court also found in that case that the conveyance of such lands through Provincial tax sale legislation – at least the mandatory conveyance to a municipality as deemed purchaser – was an unjustifiable infringement of an Aboriginal right. Consequently, the court found that the transfer of title to the City of Richmond was of no force and effect. In making this finding, the court noted that, with regard to the effect of tax sale on Aboriginal title:

> BC did not make submissions with respect to justification of this particular infringement. This infringement is continuing, and the Crown may only intrude upon the plaintiffs' Aboriginal title with their consent or if it can justify the interference. BC has not justified the infringement.

The trial in *Cowichan Tribes* lasted longer than 500 days and the purpose and effect of tax sale legislation appears not to have been the primary focus of the Province's defence.

The above finding of unjustified infringement raises the question of whether the court might in a future case come to a different conclusion after the court receives submissions from the Province regarding justification of tax sales of land subject to Aboriginal title. The *Cowichan Tribes* case only considered lands that were conveyed to a municipality as deemed purchaser under historic legislation and not lands purchased by a private bidder at tax sale.

Current tax sale legislation provides for two different types of transfer of title. The first type of transfer is conveyance to the highest bidder at auction and only after the property goes unredeemed. The highest bidder is usually a private individual and the legislated transfer of property through tax sale is similar in effect to a private sale by an owner who is struggling financially. In both cases the owner is selling their property to a willing buyer because the owner cannot pay the property tax debt. The transfer of property from one private individual to another through tax sale was not considered in *Cowichan Tribes*. It is unknown whether the court will accept that such transfer of title for transfer for property tax collection purposes is a justifiable infringement of Aboriginal title.

The second type of a transfer is a conveyance to the municipality as deemed purchaser. This transfer occurs when there is no qualifying bidder at auction, and the property goes unredeemed during the redemption period. The municipality obtains title to the property because no one is willing to pay the outstanding taxes to either keep or to acquire that property. As mentioned above, the court did not receive submissions from the Province justifying the transfer of certain lands to the City of Richmond in these circumstances. It may be that the court will come to a different conclusion regarding justification in the future. Alternatively, the court may conclude that if property is to be transferred to a public body because of non-payment of taxes, then the municipality is not the appropriate transferee if the property is subject to Aboriginal title.

Faced with ongoing uncertainty over which lands in British Columbia are subject to Aboriginal title and how such title affects the liability of such lands for tax sale, municipal collectors are likely obliged to continue to offer potentially affected properties for sale at the annual tax sale auction. A collector should seek legal advice if they become aware of a court declaration of aboriginal title applying to a property with delinquent taxes.

h) A home subject to the *Homeowner Protection Act*

A curious situation might arise if a property sold at tax sale contains a "new home" as defined in the *Homeowner Protection Act*, SBC 1998, c 31. Section 22 of the *Homeowner Protection Act* generally prohibits the sale of new homes unless certain warranty insurance is in place. If a new home, without insurance, is liable for tax sale then a question arises as to whether the prohibition on selling the home under the *Homeowner Protection Act* applies to a mandatory tax sale under the *Local Government Act*. Since the regulations do not presently provide for a general exemption for properties sold at tax sale, the statutory remedy would appear to be to obtain a property specific exemption from the registrar responsible for the BC Housing New Homes Registry. Whether this step is legally necessary is unclear, especially since section 23(6) of the *Homeowner Protection Act* exempts a municipality from any liability to a purchaser arising specifically from the statute.

i) Utility company improvements

Section 644 of the *Local Government Act* provides that the land and improvements of a utility company, except for certain "specified improvements", are subject to annual property taxes and thus could be sold at tax sale. Section 644 further provides that "specified improvements", such as poles, cables and towers, cannot be individually taxed as land or improvements and the utility company must instead pay a revenue-based tax calculated in accordance with section 644(7) of the *Local Government Act*. A collector should seek legal advice if an "electric light, electric power, telephone, water, gas or closed circuit television company" is in arrears, because the available remedies will differ depending on whether it is a property tax or a revenue-based tax that is going unpaid.

B. Giving owners notice of an impending tax sale

Amendments to the *Local Government Act* adopted in 2025 now impose a requirement to give every owner (but not charge holders) notice that their property will be sold at tax

sale if the delinquent taxes are not paid. These amendments follow from recommendations made in a report issued in December 2021 by the Office of the Ombudsperson in BC entitled: "A Bid for Fairness: How $10,000 in Property Tax Debt Led to a Vulnerable Person Losing Their Home". This report was critical of several steps taken by a municipality in a particular tax sale and was also critical of the British Columbia tax sale process in general. The report suggested that owners of property liable for tax sale should be better informed of the potential consequences.

1. Mandatory pre-tax sale notice under section 647.1

The Legislature introduced a mandatory pre-tax sale notice requirement through the adoption of section 647.1. The form of this requirement that came into force in 2025 is different from a more onerous version of that same section that was enacted in 2023 but never brought into force. As set out below, the legislation regarding the pre-tax sale notice requirement is more comprehensive than the post-tax sale notice provision under section 657 of the *Local Government Act*. The pre-tax sale notice requirement is also cheaper and simpler to fulfill, because notice can be given through regular mail.

At the time of writing, no regulations in relation to section 647.1 of the *Local Government Act* have been made. Readers should note that a regulation may be adopted that supplements or modifies the requirements discussed below.

a) Recipient of pre-tax sale notice

Section 647.1(1) of the *Local Government Act* requires:

> At least 30 days before the date of the annual tax sale, the collector must, in relation to a property subject to tax sale, give written notice to a person registered in the land title office as an owner of the fee simple of the property.

The obligation under section 647.1(1) only relates to "property subject to tax sale". The collector should not send a notice under this section in relation to a property that is exempt from tax sale. Reasons why a property with delinquent taxes might be exempt from tax sale are discussed earlier in this paper.

The pre-tax sale notice must be given to the registered owner of the fee simple of the property. Unlike with a post-tax sale notice under section 657, the collector is not required to give a pre-tax sale notice to any registered charge holders.

Section 647.1(3) provides that:

> (3) Subject to any regulations, a notice under subsection (1) must be given to the owner of the fee simple at the address of the owner set out in
>
> (a) the most recent revised assessment roll, as defined in section 1(1) of the *Assessment Act*, or
>
> (b) the records of the land title office.

Given that the obligation in subsection (1) is to give notice to the registered owner and not the assessed owner, a collector should always obtain a title search and seek to give notice to the person named on title. Relying on the most recent revised assessment roll is risky because the municipality might give notice to an assessed owner who is, at the time the notice was given, not the owner of the fee simple because of a recent change in ownership.

If the registered owner is listed as two or more people, the collector should prepare a separate notice for each person and send it to each of them separately. This should also be done with joint tenants who have the same address listed on title. Some reasons why joint tenants should be served separately are discussed later in this paper with regard to service of the post-tax sale notice under section 657 of the *Local Government Act*.

b) Timing of the pre-tax sale notice and deemed receipt

Section 647.1 of the *Local Government Act* requires that the notice be given at least 30 days before the date of the annual tax sale. Some collectors may consider sending the pre-tax sale notice together with the annual tax notice in May or June. In this case, the collector should ensure that the assessed owner is also the registered owner at the time the notices are sent. Other collectors may prefer to wait until shortly after the July 2 property tax due date to give notice. Collectors should avoid waiting until the last moment to give notice.

In the case of personal service, notice is effectively given at the time the notice is delivered into the hands of the recipient. If notice is given by ordinary mail, registered mail or courier, the notice is given at the time when the notice is mailed or given to the courier, not when it is received. Section 647.1(6) provides that, if a notice is sent by ordinary or registered mail or by courier, the notice is, "unless received earlier… conclusively deemed to be received" seven days later. Consequently, for mailed or couriered notices, the actual

or deemed receipt date may be less than 30 days before the date of the annual tax sale. Statutorily deemed receipt applies even if the notice is returned undelivered.

It also appears that "conclusively deemed to be received" by the registered owner applies even if the registered owner is deceased, a dissolved corporation, or otherwise lacks the capacity to actually receive the pre-tax sale notice. That deemed conclusive receipt is only available for mailed or couriered notices may discourage the giving of notice by personal service even though personal service is otherwise the best means of providing actual notice.

c) Method and content of pre-tax sale notice

The amended legislation further provides that the pre-tax sale notice must be in writing and must be delivered by personal service, registered mail, regular mail or courier (*Local Government Act*, s. 647.1(4)). In practice, collectors will likely seek to send all pre-tax sale notices by regular mail. Section 647.1(2) sets out the mandatory content of the notice:

> (2) A notice under subsection (1) must include the following:
>
> (a) the time and place of the annual tax sale;
>
> (b) the legal description and street address, if any, of the property subject to tax sale;
>
> (c) the amount of the delinquent taxes calculated in accordance with section 246 *[delinquent taxes]* of the *Community Charter* and a statement that, if the amount of delinquent taxes is not paid before the annual tax sale, the collector will offer the property for sale by public auction at the time and place stated in the notice;
>
> (d) a statement that, if the property is sold at the annual tax sale, a right of redemption will remain in the owner of the fee simple, or a person registered in the land title office as an owner of a charge on the property, until the end of the redemption period;
>
> (e) a statement that the amount payable to redeem the property after the annual tax sale will be greater than the amount of delinquent taxes.

Section 647.1(2)(c) requires a statement of the amount delinquent taxes owing at the time of the notice. This amount includes applicable interest. Collectors may consider also

including a statement or estimate of the minimum amount that the owner must pay immediately before the tax sale to avoid having their property sold.

Sections 647.1(5) and (7) require the collector to maintain a record of each notice that is given, specifically:

> (5) If a notice under subsection (1) is given by a method other than sending by registered mail, the collector must create a record of
>
> > (a) the method by which the notice was given,
> >
> > (b) the date and time the notice was given and, if applicable, the place of mailing, and
> >
> > (c) an acknowledgement, if any, of receipt of the notice by the owner of the fee simple.
>
> (7) The collector must retain a copy of each notice under subsection (1).

If a pre-tax notice sent by regular mail is returned by Canada Post because the named recipient is "unknown" or "moved", this does not affect the collector's fulfillment of the statutory requirement. However, the collector should still consider promptly pursuing other steps to locate and contact the owner for the purpose of encouraging payment of the delinquent taxes prior to tax sale.

d) If a collector fails to give notice under section 647.1, can the property still be sold at tax sale?

A collector is statutorily required to both give a pre-tax sale notice of an impending sale and to then sell the property subject to tax sale if the delinquent taxes are not paid (section 645(1)). Circular No. 25:10 issued by the Ministry of Housing and Municipal Affairs on June 18, 2025 addresses issues that arise from a recognized failure to comply with the notice requirement under section 647.1 prior to the tax sale auction date. The Circular recommends that the collector should sell the affected property and then seek council's cancellation of the tax sale of that property for manifest error. The Provincial guidance also discourages mentioning the section 647.1 non-compliance at the tax sale, as this information is discouraging of bids.

Non-compliance with section 647.1 in relation to a property appears to create an issue for the municipality, the purchaser and the owner. The municipality must go through the

procedure of selling the property at tax sale and then later consider cancelling the sale. As discussed in greater detail later, a council may, without involving the court, set aside a tax sale for a manifest error in the proceedings before the sale under section 668 of the *Local Government Act*. Since notice under section 647.1 is a step to be taken before the tax sale auction, the concern raised in *McCready v. Nanaimo (City)*, 2005 BCSC 762 regarding whether a post-tax sale misstep can be treated as a manifest error is not raised.

If a purchaser buys a property at tax sale and later learns that notice under section 647.1 has not been given, that purchaser should reasonably expect the tax sale to be cancelled and the purchase price returned with interest. Notably, however, the rate of interest that will be paid (*Local Government Act*, s. 668) will be less than what the purchaser would have received if the property was redeemed (*Local Government Act*, s. 660).

An owner who has not received a section 647.1 notice before the tax sale might not promptly receive a section 657 notice after the tax sale, because the municipality foresees cancellation. Nevertheless, if the owner becomes aware of the tax sale, the owner may ask the court to set aside the tax sale because of non-compliance with section 647.1 (*Local Government Act*, s. 666(2)(c)). Given that the court has set aside a tax sale at the request of a municipality because of non-compliance with the post-tax sale notice requirement (*Maple Ridge (Re)*, 2020 BCSC 1473), the court will likely do the same in response to non-compliance with the pre-tax sale notice requirement.

e) What is the impact of section 647.1 of the *Local Government Act* on compensation claims?

Consequent to the adoption of section 647.1 of the *Local Government Act*, section 657(3) has been amended to read:

> (3) No liability or responsibility other than as set out in subsection (1) and section 647.1 [*owners must be given notice before tax sale*] rests with the collector or municipality to give notice of the sale for taxes.

This amendment to section 657(3) suggests that a municipality could be liable to compensate an owner who was never given notice under section 647.1 and whose property was subsequently transferred to a purchaser. However, it is not clear how such exposure to liability is changed (if at all), should the municipality subsequently comply with the post-tax sale notice requirement under section 657. This issue is discussed in greater detail later in this paper.

2. Identifying potential explanations for non-payment

In conjunction with sending a pre-tax sale notice, collectors may wish to assess whether there is an apparent explanation for the non-payment of taxes. It can be difficult to distinguish between three types of delinquent assessed owners: (1) the aware, being those who know they owe overdue taxes but cannot pay or choose not to pay until the last minute; (2) the unaware, being those who do not know that they have overdue taxes, but will pay (if they can) once their attention is drawn to that fact and the risks of tax sale; and (3) the vulnerable, being those who, even after they receive a letter explaining the risk of tax sale, are not able to understand this risk of tax sale or are not capable of paying the delinquent taxes in a timely way because of a personal vulnerability. The Ombudsperson's report focused on the plight of a vulnerable individual.

Collectors might suspect that an assessed owner lives abroad, in which case locating and communicating with the owner by any means will likely be the biggest challenge. If the assessed owner has a lengthy history of late payment of taxes and title to their property is encumbered with multiple financial charges and liens, the collector might conclude that the owner's inability to pay, or the owner's preference towards prioritizing payment of more costly debt, is the reason why the property taxes are now delinquent. If the assessed owner appears to be living in a mortgage-free property, as did the vulnerable person described in the Ombudsperson's report, and tax payments have simply stopped, then there may be something else amiss.

Some potential explanations, such as the owner being a vulnerable person or being deceased with no one administering their estate, will warrant contacting the Public Guardian and Trustee. The sooner this is done, the more time the Public Guardian and Trustee will have to (potentially) assist prior to a critical deadline.

C. Publishing notice of the tax sale

Section 647 of the *Local Government Act* provides:

> 647(1) Notice of the annual tax sale must be published in accordance with section 94 [*requirements for public notice*] of the *Community Charter* and must specify
>
> (a) the time and place of the annual tax sale, and
>
> (b) the legal description and street address, if any, of the property subject to tax sale.

(2) If the council has adopted a bylaw under section 94.2 [*bylaw to provide for alternative means of publication*] of the *Community Charter*, the notice under this section must be published by at least one of the means of publication specified in the bylaw not less than 3 days and not more than 10 days before the annual tax sale.

(3) If the council has not adopted a bylaw under section 94.2 of the *Community Charter*, the last publication of the notice must be not less than 3 days and not more than 10 days before the annual tax sale.

Failure to give the proper statutory notice will jeopardize the tax sale as it may later be cancelled or declared invalid. Although the notice may prompt someone to pay the delinquent taxes on a property, the principal purpose of the advertising notice is to attract bidders.

D. Educating the public about tax sales

Most residents within a municipality are likely unfamiliar with the tax sale process and may never see a reason to familiarize themselves if they habitually pay their property taxes on time. A municipality may nevertheless want to increase community knowledge of the risks associated with tax sale as this could provide some collateral benefit to vulnerable property owners. There are many instances in which a property owner has a friend or family member who is monitoring their welfare. One such example is described in the Ombudsperson's report discussed above:

> Until 2013, Ms. Wilson had lived with their elderly mother. Ms. Allen explained that following their mother's death in 2013, and prior to the tax sale, she was in contact with her sister, which included travelling to Penticton to visit her and to inquire about her well-being. Based on Ms. Wilson's assurances, Ms. Allen understood that she was managing well. She told us that the home was well kept and she had no reason to suspect that Ms. Wilson needed Ms. Allen to assist her in managing her affairs. In 2016, Ms. Wilson had granted Ms. Allen power of attorney. It is important to note that when a person is designated under a power of attorney, they have no positive obligation to manage a capable person's financial affairs. At the time, Ms. Allen was not aware that her sister had not been paying her taxes despite having the financial resources to do so.

> Ms. Allen learned after the sale of the house that her sister's health concerns had made it hard for her to understand the tax notices sent to her home, and to respond appropriately to the other communications she had with the City about her tax situation. Her health concerns also made it difficult for her to actively seek assistance from Ms. Allen or take other steps to protect herself. Because Ms. Wilson had not asked her for help, Ms. Allen did not realize that her sister's ownership of the house was in jeopardy.

For those people who are concerned about a vulnerable property owner it could be very helpful for them to know the risk posed by a tax sale should property taxes go unpaid. It would also be helpful to know that a person can check to see whether a property is liable for tax sale without engaging the property's owner. This can be done by either reviewing the publicized notice of tax sale listing all the properties liable for auction or making a request described under section 249(2) of the *Community Charter*.

> (2) The collector must provide, to any person who requests this, a certificate showing
>
> > (a) the amount of unpaid taxes charged against specified real property,
> >
> > (b) whether the real property has been sold for taxes, and
> >
> > (c) if the property has been sold for taxes, the time if any remaining for redemption and the amount required to redeem it.

A person may also request a copy of the current year's tax notice for a property under section 238 of the *Community Charter.*

Collectors may therefore wish to consider publishing or distributing information regarding the tax sale process that is intended to educate the public at large. This information may encourage those people who are "looking out" for their neighbour, friend, or family member to check to see whether that person's property taxes are delinquent. Although privacy protections may prevent a collector from publicly revealing the name of the owner who has allowed their taxes to become delinquent, the fact that a property within the municipality has delinquent taxes is not private information. Indeed, statute requires that such information be published in a newspaper or be publicly disclosed through other authorized means of publication.

E. Providing additional information to bidders at the auction

Bidders at a tax sale auction sometimes request that the collector provide information regarding a property offered for sale that is more than just the property's civic and legal description and the property's upset price. This additional information might include a title search for the property that the bidders can review. This practice should be discouraged as it could expose the municipality to undue risk if the bidder relies on information presented by the collector that turns out to be inaccurate or incomplete.

A municipal collector is not in a position to speak authoritatively with regard to the condition of the property, the nature of the charges registered against the property or whether a charge will stay on title in the case of non-redemption. Even municipal government matters such as the zoning and development potential for a property can be challenging for a collector to describe accurately and concisely. How a particular property may be used and developed can be complicated by land use bylaw interpretation, lawful non-conforming status and restrictive covenants. A collector should consider including disclaimers regarding "no representations" in their municipality's advertisements of the tax sale auction or in the collector's explanatory comments made at the beginning of the tax sale auction.

A potential exception to the practice of not providing bidders with additional information would be to advise bidders of an amount outstanding in relation to utility charges, a remedial action requirement or other municipal action in default under section 17 of the *Community Charter*. These are amounts owing that, if unpaid by the end of the year, will be added to the taxes for the property next year. These are also amounts that the collector should be able to report with precision.

F. Municipal bid authorization

Although not a matter for the collector, section 648 of the *Local Government Act* provides: "A person authorized by the council may bid for the municipality at the annual tax sale up to a maximum amount set by the council." If this option is to be pursued, the council must adopt a resolution prior to the tax sale and the amount to be bid should be duly accounted for within the municipality's financial plan.

G. Dealing with last minute payments

Collectors are often uncertain about what to do with people who seek to pay overdue taxes by uncertified cheque in the days or hours before the tax sale. If the municipality accepts the cheque and, after the tax sale, the cheque is returned for insufficient funds, the collector will have failed to either collect the delinquent taxes or to sell the property at the tax sale.

Some municipalities require owners paying at the last minute to pay by bank draft, certified cheque or electronic transfer because this guarantees the municipality's receipt of the funds. There is, however, no statutory authority for imposing such a restriction solely because the taxes are being paid at the last minute.

The collector's practical options when faced with an uncertified cheque are not ideal:

- The collector can, if time allows, seek to have the cheque certified by the bank (at the municipality's expense) prior to presenting it for payment;
- The collector can refuse the uncertified cheque, which may expose the municipality to liability for the owner's additional costs of redeeming the property;
- The collector can accept the uncertified cheque as payment and withdraw the property from the auction (e.g. proceed on the assumption that the cheque will clear); or
- The collector can accept the uncertified cheque and seek to cash it but nevertheless proceed with the tax sale of the property (e.g. proceed on the assumption that the cheque will not clear due to insufficient funds).

A collector is likely obliged to accept an uncertified cheque. A collector might only consider the last option of proceeding with the sale of the property despite accepting the cheque if the collector has a strong suspicion that the cheque will not clear. If the cheque clears to the collector's surprise, the collector should promptly ask the municipality's council to cancel the tax sale of that particular property for manifest error (*Local Government Act,* s. 668).

Some collectors have engaged in the practice of not selling the property at issue on the first day and adjourning the tax sale under section 645(3) of the *Local Government Act*

until it is known whether an uncertified cheque tendered for delinquent taxes has cleared. This practice of waiting until the cheque bounces to sell the property is not conducive to a competitive auction and the owner may legitimately complain that such a sale occurring after repeated daily adjournments is unfair.

III. CONDUCTING THE ANNUAL MUNICIPAL TAX SALE

The tax sale requirement imposed on British Columbia municipalities by section 254 of the *Community Charter* means that there is the potential for 160 different tax sales to be conducted simultaneously in council chambers across the province. This invites significant variation in:

(a) the size of the tax sale;

(b) the experience of the collector in conducting the auction; and

(c) the local practice for conducting sales, including receiving and confirming payment of the purchase price.

Concurrent sales also mean that prospective bidders must pick which municipality's tax sale to attend.

Although municipal collectors remain best-suited for collecting delinquent taxes from their local assessed owners, readers may wonder whether a single Province-wide auctioneer would be preferred for selling those properties for which the delinquent taxes are not paid in time. Such an online auction could provide a consistent sales process that involves both bidders and properties from across the province while also involving an efficient method of confirming immediate payment of the purchase price by the highest bidder.

A. Person who conducts the tax sale

Section 645(1) of the *Local Government Act* requires the "collector" to conduct the tax sale by public auction. The collector "means the municipal officer assigned responsibility as collector of taxes for the municipality" and includes the deputy collector (*Community Charter*, Schedule, s. 4).

Section 645(4) provides that the collector may act as auctioneer at the tax sale. This suggests that the collector may appoint someone else to conduct the auction of the properties.

B. Timing and location of the tax sale

The tax sale must be held in council chambers at 10 a.m. on the last Monday in September. "Council chambers" is not a defined term but should refer to the "regular council meeting place" as determined by council for the purpose of section 127 of the *Community Charter*.

If the last Monday in September is a holiday, the annual tax sale must instead be held on the next Monday that is not a holiday (*Local Government Act*, s. 645(2)). In 2024, the annual tax sale was held on October 7, because Truth and Reconciliation Day (September 30) fell on a Monday.

The COVID-19 pandemic resulted in some unique considerations regarding the holding of a tax sale. Temporary emergency legislation was adopted to give municipal councils the opportunity to postpone the annual tax sale by a year. For municipalities that did hold auctions, some municipal collectors were concerned that their respective council chambers would not accommodate many bidders once pandemic-related social distancing measures were imposed. Although pandemic-related regulations may have reduced the permitted capacity of the council chambers below the capacity permitted under fire regulations, there was no emergency legislation that authorized moving the tax sale to a larger meeting space.

C. Method of selling properties and the upset price

The annual tax sale utilizes an auction to sell the properties with delinquent taxes. If the property liable for tax sale consists of two or more parcels under a single assessment roll folio, those parcels should be offered together. The form of auction is typically an "English auction" (with ascending bids). Some improvement districts conduct their tax sale by accepting sealed bids. Although a "first-price sealed bid auction" is technically an auction, there is some uncertainty as to whether an "auction" in section 645 of the *Local Government Act* permits an auction with sealed bids, even if those bids opened in public. In any event, statute requires the auction to be conducted "fairly and openly" (*Local Government Act*, s. 666(2)(e)).

If at the end of the auction for a property, one or more bids exceeds the "upset price", the highest bidder is declared the purchaser at the highest bid price. The upset price is the price calculated by totalling the amounts set out in section 649(1) of the *Local Government Act.* This amount includes a 5% charge applied to the total amount of taxes, interest and penalties owing on the date of the tax sale (including current year taxes and penalties). This 5% charge may be viewed as offsetting some of the municipality's administrative costs and as further discouraging owners from allowing their properties to go to tax sale. The cost to a municipality in administering tax sales must otherwise be funded from general revenue.

The upset price is usually far less than the market value of the property. This may create an opportunity for a purchaser, depending on the bidding, to purchase the property for an amount that is at or just above the upset price. Such a purchase price will leave little to no surplus for the owner and equitable charge holders.

For an owner who ultimately redeems, a low purchase price at tax sale is actually a benefit. A low purchase price means that less interest must be paid at the time of redemption. However, for a non-redeeming owner, a low purchase price means receiving little to no surplus from the tax sale. This was criticized as unfair in the Ombudsperson's report. Questions of fairness aside, there are many reasons why one should expect the purchase price for a property at tax sale to be much lower than the price that a realtor would obtain through marketing the property and negotiating a standard form purchase and sale agreement. Unlike a typical real estate transaction, at tax sale a purchaser is buying a property:

- using all cash that is paid a year before transfer of title;
- with no opportunity to reconsider the purchase;
- sight unseen;
- as-is, where-is and with no representations by the owner as to quality or fitness of the property, including with regard to potential environmental contamination;
- with the risk of no transfer and a return of the purchase price without interest over a year later (*Local Government Act*, s. 664); and

- with no assurance of vacant possession on the transfer date.

For these reasons many purchasers strongly prefer that the properties they buy at tax sale be redeemed so that the purchasers can simply collect the interest on the purchase price.

The highest bidder at auction must be declared the purchaser and must: "immediately pay the collector the amount of the purchase price" (*Local Government Act*, s. 650(4)). The purchaser or purchaser's agent must also complete a statement under section 651 authorizing "the collector to make an application to register, at the appropriate time [if it occurs], the purchaser's title to the real property." This statement must include the purchaser's full name, occupation and address. If the purchaser is more than one person, the collector should obtain the signature, the full name, occupation and address of each person. If those people wish to be registered as joint tenants, or tenants in common with unequal shares, the signed statement that they provide to the collector must state that. Ideally the purchaser(s) will have received legal and accounting advice before taking such a step.

The collector likely does not have any authority to scrutinize the highest bidder before recording them as purchaser. Although certain non-Canadians are prohibited from purchasing land in Canada under the *Prohibition on the Purchase of Residential Property by Non-Canadians Act*, SC 2022, c 10, that Act does not impose any obligation on the collector to check a purchaser's citizenship or residency status. A collector is similarly not obliged to confirm whether a corporate purchaser is in fact a registered company or society. The person paying the purchase price should nevertheless ensure that the authorizing statement names a real legal person as the purchaser. This is because the municipality may only pay money to that named person if the municipality must later refund the purchase price.

Except to rectify a mistake by the collector, the name of the purchaser on the authorizing statement cannot be changed after the tax-sale. If an individual purchaser dies during the redemption period, the property would still be registered in that individual's name following non-redemption and the executor or administrator of the estate would be obliged to pay the property transfer taxes and deal with the property.

Once the purchaser has paid the purchase price and provided the required statement, the collector must sign and give the purchaser a certificate under section 652 of the *Local Government Act* that:

(a) describes the parcel sold,

(b) states the sale price, and

(c) states that an indefeasible title will be applied for on the purchaser's behalf at the end of one year from the date of sale unless the property is redeemed or the sale is cancelled under section 668 of the *Local Government Act*.

This is an important document for the purchaser as it is effectively evidence of an entitlement to registration of title unless the property is redeemed or the sale is cancelled under section 668 of the *Local Government Act*. Collectors should also note that there are circumstances in which the tax sale of the property, including the issuance of the certificate, will be declared invalid by the court.

Paying "immediately" means that the highest bidder provides full payment before the next property is offered for sale. If the highest bidder fails to pay the purchase price immediately, the collector must offer the property again for tax sale (*Local Government Act*, s. 650(4)). Following this process ensures that a property has actually been sold before the next property is offered for sale. If the collector does not obtain immediate payment, several issues could arise. These include a potential complaint from the owner that the purchase price was far lower than it should have been. The owner might complain that many bidders had either left the council chambers or had spent their funds on other properties by the time the collector discovered that the highest bidder for the owner's property was unable to pay such that the owner's property must be reoffered for sale.

D. Forms of payment provided by the purchaser

A collector is likely permitted to specify which methods of payment the highest bidder must use to purchase the property. These specified methods can be more limited than the methods by which someone can pay property taxes. This is because a ratepayer must pay, and must be allowed to pay, taxes, whereas a person may choose whether to participate in a tax sale auction on the terms and conditions set by the collector. The collector's rules must be conducive to an open and fair auction, but must also be consistent with the collector's statutory obligation to confirm immediate payment by the highest bidder.

A prudent collector will announce at the commencement of the auction, and ideally with previous warning in public notices, that only bank drafts, certified cheques or other means of payment satisfactory to the collector will be accepted and that payment using these methods must be made immediately after the bidder wins the auction. In practice, this requires bidders to bring one or more prepared bank drafts in varying amounts which are to be presented at the time of purchase.

The collector should be very careful in calculating the upset price and confirming that payment equal to or exceeding the upset price is actually received. In the Ontario decision of *Carrocci v. McDougall (Township)* (2004), 71 OR (3d) 41 (Sup Ct J), the court set aside a tax sale on the basis that the purchaser had, on the date of the tax sale, delivered a payment to the municipality that was one penny ($0.01) less than the amount that the applicable statute required the purchaser to provide.

E. Insufficient bids

If no bid for a property equals or exceeds the upset price, the municipality is declared the purchaser (*Local Government Act*, s. 650(2)). The collector may, however, offer the property again for sale later at the very same tax sale (s. 650(3)) and potentially find greater interest from bidders once other properties have been sold.

IV. AFTER THE TAX SALE: THE REDEMPTION PERIOD

The redemption period is one year from the day the annual tax sale began, or two years from that day if a municipality was declared the purchaser at tax sale and the municipality's council later adopts a bylaw extending the redemption period for a year. Assuming no such extension, for a tax sale that began on Monday September 29, 2025, the redemption period ends on September 29, 2026, even if an adjournment by the collector resulted in a property being sold on October 1, 2025 (due to September 30, 2025 being a holiday). The redemption period is a critical time for owners and charge holders of property sold at tax sale because they should take positive action within the redemption period if they want to retain their interest in the land.

A. Filing notice that the property has been sold at tax sale

Section 656 of the *Local Government Act* requires the collector to file a notice in the land title office "promptly after selling property for taxes". Fulfillment of this step is intended

to provide a warning to anyone who acquires title or a registered interest in land that their interest is subject to the risk of non-redemption. In practice, the filed notice may also cause the land title office to refuse to transfer title into anyone else's name until the notice is discharged. The slower the collector is to file the notice, the greater the risk that a person might purchase title to, or register an interest in, the property without being aware that the property was sold at tax sale.

B. Giving notice of the tax sale and the date the redemption period ends

Section 657(1) of the *Local Government Act* imposes a strict requirement on collectors to give notice to certain persons that a particular property was sold at tax sale and the date the redemption period ends for that property:

> 657(1) Not later than 3 months after the sale of property at an annual tax sale, the collector must give written notice of the sale and of the day the redemption period ends, either by serving the notice or by sending it by registered mail, to persons registered in the land title office as
>
> (a) owner of the fee simple of the property, or
>
> (b) owner of a charge on the property.

To determine who needs to be served, a prudent collector will perform a title search after filing a notice under section 656 of the *Local Government Act*. The title search will provide a list of all owners and charge holders whose interests were registered prior to the filing.

The requirement imposed on the collector is to give notice to the registered owner of the property and every owner of a registered charge within three months following the tax sale. Although section 657 of the *Local Government Act* does not make express mention of the surplus received by the municipality at the tax sale, it is prudent to advise the owner and charge holders of the amount of the surplus. This will give the owner and the charge holders a better understanding of how much of their equity is at risk.

The giving of notice under section 657(1) of the *Local Government Act* is limited to two methods of giving written notice: personal service and registered mail (*Martman v. Sidney*, [1994] BCJ No 210 (SC)). If neither of those options are practical or effective, substituted service under section 657(2) of the *Local Government Act* must be sought.

A registered owner may be multiple people. In the case of registered owners of a property who are joint tenants, the far safer course is to prepare and give a separate notice to each owner. Reasons for giving separate notice to each joint tenant include:

(a) Case law that supports the proposition that service on one joint tenant is sufficient to serve both joint tenants was considered in relation to notice given in a private commercial context (*Royal Bank v. Lee* (1987), 18 BCLR (2d) 240 (CA)). This proposition may not be accepted by the court as applicable to a statutory requirement to serve owners for the purpose of preventing an owner from unwittingly losing their property through tax sale;

(b) The municipality cannot rely on one joint tenant to advise the other joint tenant that they received a notice. Ensuring that both joint tenants receive the notice separately increases the chance that at least one of them recognizes the risk and seeks to redeem the property; and

(c) If a single notice intended to provide notice to both joint tenants is personally served on or signed for by a joint tenant who happens to lack capacity, then the municipality will have failed to give notice to either joint tenant even if the rule in *Royal Bank v. Lee* can in fact be relied upon.

Giving notice to registered owners and charge holders may prove more difficult than some collectors expect. Shortly after the tax sale, a prudent collector should take the steps set out below for each property sold at tax sale.

1. Obtaining a title search

As mentioned above, a collector should obtain a title search after the tax sale to identify the fee simple owner(s) and all the charge holders registered in the land title office. The names and addresses of such people registered in the land title office may not match what is shown on the assessment roll. Section 657(1) of the *Local Government Act* requires notice of the tax sale and the date the redemption period ends to be served on persons "registered in the land title office" as either the "owner of the fee simple of the property" or the "owner of a charge on the property". The collector should also check to see if the title search lists pending applications.

a) Identifying the owner(s) who should be served

For the fee simple title and for each charge, the title search should name a legal person or persons as the registered owner. Each of these people must be served with notice under section 657 of the *Local Government Act*. An individual or corporation named on title may personally own the fee simple or the charge. Alternatively, the named person may be the trustee or representative of the trust, estate or other beneficial owner of the fee simple or a charge. Sometimes trustees are identified as the registered owner, but without any person being specifically named as a trustee (e.g. for property held by the trustees of a congregation under the *Trustee (Church Property) Act*, RSBC 1995, c 465). In such cases legal advice should be sought regarding the investigations and steps necessary to identify and serve these trustees.

b) Selective service of charge holders

A "charge", as defined in the *Land Title Act*, RSBC 1996, c 250, is either an estate or interest in land that is less than fee simple or an encumbrance. "Encumbrance" is defined in that same act as including among other things "a judgment, mortgage, lien, Crown debt or other claim to or on land". An interest in land includes certain charges against land that are not financial in nature, such as a restrictive covenant, right of way or easement. These charges will survive non-redemption in a tax sale, and it is therefore a common practice among collectors to not serve registered owners of such non-financial charges. However, the *Local Government Act* does not expressly except owners of these surviving charges from the service requirement.

Some properties are encumbered with a statutory right of way owned by utility, which statutory right of way is encumbered by a mortgage. A collector should still seek to give notice to the registered owner of such a mortgage given the possibility that the land title office might discharge this mortgage even if it preserves the statutory right of way.

Collectors should avoid the common practice of choosing not to serve the provincial or federal government as registered owner of a financial charge. Although it may be reasonable for the collector to expect that a registered Crown lien or judgment will survive non-redemption, there is no statutory support for this practice of not serving provincial or federal government charge holders. Furthermore, being notified of a tax sale gives the provincial or federal government an opportunity to inquire after the surplus and to potentially make a claim against the surplus in the case of non-redemption. This

opportunity will be lost if the provincial or federal government first learns of the tax sale after the surplus has been paid out.

A person who is "registered in the land title office" as an "owner of a charge" likely does not include a person who benefits from a building scheme that applies to the land sold at tax sale. Although a "building scheme" is defined in the *Land Title Act* as a "a restrictive covenant constituting a special local law applicable to the defined land", the equally burdened neighbours under the scheme cannot claim to each be registered as an owner of a charge on the tax-sold property. Those neighbours will also not be identified as the registered owner of the building scheme on a title search or state of title certificate. Building schemes will also survive non-redemption following a tax sale.

2. Obtaining a company search for corporate owners and charge holders

A collector should obtain company and society searches for all corporate owners and charge holders as this will provide the collector with important information. The search will state the address of a registered office or, if it is an extra-provincial company, a registered attorney, at which personal service can be made or registered mail can be delivered. In most cases a company or society registered in British Columbia can be easily served by delivering the notice to the registered office. However, if the company or society search states that the company or society has been dissolved, the collector will need to seek a substituted service order. A collector should also be mindful of companies that are not in good standing and risk being dissolved before the collector can give the required notice of the tax sale.

3. Attempting delivery by registered mail

Seeking to deliver the notice through registered mail is usually the preferred first attempt at complying with section 657 of the *Local Government Act*. To be effective, the notice must not just be sent by registered mail, it must also be signed for on receipt (see *Gray v. Township of Langley*, (1986) 9 BCLR (2d) 1 (CA) and *Angled Enterprises Ltd. v. City of Quesnel* (1988), 39 MPLR 170 (BCCA) that considered an earlier version of BC's tax sale legislation). If the collector knows that both steps have not been completed, either because the mail has been returned undelivered or the collector knows that someone other than the owner has signed for the registered mail, notice has not been given.

The collector should keep a record of all attempts to give notice by registered mail, both successful and unsuccessful, and retain returned envelopes and delivery notifications.

4. Seeking personal service if registered mail ineffective

Typically, by the third week of October, a collector should know whether a notice has been delivered by registered mail. If the notice has not been delivered, the collector should promptly pursue personal service. Personal service is usually done through a process server but can also be done by a municipal employee. Personal service means that the requisite notice has been delivered into the hands of the owner or charge holder. Posting the notice on the property or leaving the notice with another adult at the owner or charge holder's residence is ineffective.

To facilitate service, the process server needs to be told the location or locations at which the person to be served is most likely to be found. If that person does not reside at the address on title, collectors should consider trying to locate the individual using internet searches, e-mail and telephone numbers on file, property visits and skip tracers. The collector should keep detailed records of the product of these searches. Process servers should provide the collector with an affidavit of service if their efforts are successful and an affidavit of attempted service if not.

5. Contacting legal counsel regarding substituted service

If by the beginning of November, a collector continues to have trouble giving notice to an owner or charge holder by personal service or registered mail, it is strongly recommended that the collector contact a lawyer experienced in tax sales. In some cases, the lawyer's experience means they are often able to provide additional recommendations that can help effect service or locate the person sought in challenging circumstances. More importantly, a lawyer can assist with applying for a substituted service order if that is the collector's only practical option to give notice under section 657 of the *Local Government Act* in the time required.

C. Substituted service

Section 657(2) of the *Local Government Act* provides that, in response to an application, the Supreme Court can order that notice of the tax sale and the day the redemption period ends may be served by substituted service. Substituted service, more commonly known as "alternative service", occurs when the municipality performs certain actions set out in

an order that the court identifies as a sufficient alternative method of giving notice of the tax sale and the date the redemption period ends. For owners or heirs whose whereabouts or contact information is unknown, these steps commonly include posting a notice together with the order on the property sold at tax sale, sending the notice and the order by regular mail or publishing a notice in the newspaper. In other instances, the court may simply authorize service by sending notice to a known email address if it appears that the recipient is avoiding registered mail or personal service.

1. Method of applying to court

Applications for substituted service orders are made by requisition. This means that a lawyer representing the collector and the municipality files a written request with the court for an order, together with a draft of the order and one or more affidavits that provide evidence in support of the order requested. These affidavits are usually sworn by the collector and the municipal employee who has been most involved in the attempts made by the municipality to give notice of the tax sale. In reading the affidavits, the court will be looking for evidence that the proposed method of alternative service can be reasonably expected to reach the person or persons who would benefit from notice.

Once the requisition is filed, the lawyer does not need to attend a court hearing but simply waits for the court to (hopefully) grant the order sought.

2. Timing of the application to court

The application for a substituted service order should be made sooner rather than later. The 3-month period to give notice ends around the Christmas holidays and is generally a busy time for everyone involved, including the court. The preparation of affidavits is often more time consuming than collectors expect. Furthermore, as much as the court makes great efforts to respond to such requisitions, substituted service orders are (too) often granted a few days before the deadline for giving notice, which leaves the collector with very little time to take the steps necessary to give notice in accordance with the order.

3. Carrying out substituted service

Once the municipality and its collector have obtained an order permitting substituted service, the steps set out in the order must be carried out precisely as ordered and must be completed within the 3-month notice period.

4. Situations in which substituted service is likely necessary

Collectors are sometimes slow to seek a substituted service order, because they maintain hope that either the owner or charge holder can be located and served personally or someone will pay to redeem the property during the 3 months following the tax sale thereby obviating the need to give notice. Such delay risks placing the municipality in a position in which there is no time left to obtain a substituted service order. The liability risk that arises from failing to serve the notice required under section 657 of the *Local Government Act* is discussed in the next section.

In some cases, the necessity for substituted service can be identified at an early stage. For example, a substituted service order will be necessary if the owner or charge holder who is required to receive notice is:

- a dissolved corporation or society – While dissolved, there is no legal person to accept notice by registered mail or personal service, but a dissolved corporation or society can later be restored. A municipality was caught out by this "resurrection" in *Saini v. Grand Forks (City)*, 2011 BCSC 320, because the corporate owner had been dissolved during the 3-month period in which notice needed to be given, but was later restored and made a claim. A substituted service order could seek to serve the owner of the property by seeking to give notice to both the Province and the known directors of the dissolved corporation.

- believed to be dead – A deceased person cannot sign for registered mail or personal service, and the practical response is to obtain a substituted service order that seeks to notify the executor and heirs, if known. The collector should also notify the Public Guardian and Trustee if it appears that no one is willing to administer a deceased person's estate. Although an executor or administrator of the deceased person's estate might become the registered owner of the property in the future, this change in registered ownership is neither a certainty nor something that should be expected to happen before the statutory deadline for service of the notice.

- incarcerated – Federal and provincial correctional services will very rarely reveal the location of an inmate without the inmate's consent. Even if the location of the inmate is known, arranging and confirming personal service on that inmate is usually very difficult.

- a person believed to lack capacity – A collector may be concerned that a person, because of illness or disability, does not understand the written notice of tax sale and date the redemption period ends even if they have personally received the notice. In such cases, seeking a substituted service order that includes the Public Guardian and Trustee and the person's appointed committee is appropriate. It is notable that in the case of *Bissett (Committee of) v. Sidney (Town)*, 1996 CarswellBC 2068 (SC), the court suggested that a substituted service order would rarely be appropriate if it was a certain fact that a person was mentally incompetent and that person also had no legal representative. Rather, the court suggested that a municipality could instead make a (more complicated and time-consuming) application to appoint a representative to accept service on that person's behalf. In practice, the Public Guardian and Trustee would likely take prompt steps to address the tax sale once informed of a person known to be mentally incompetent, unrepresented and living alone. Substituted service is normally sought when the municipality is uncertain about the mental capacity of the recipient of the notice and seeks to take steps to mitigate the risk that the recipient is later found to have been mentally incompetent.

Waiting for the above issues to resolve (e.g. company is restored, estate administrator becomes registered owner, owner released from custody, trustee becomes registered owner) before pursuing personal service is very risky given the limited time in which notice must be given.

D. Consequences of failing to give s. 657 notice of tax sale

At best, the failure of a collector to give the statutorily required notice under section 657 of the *Local Government Act* is of no ultimate consequence, because the property is redeemed before the redemption period ends. At worst, the municipality may be statutorily liable to indemnify an owner or charge holder for the financial loss they sustained on account of the property being sold at tax sale. Such loss could be in the millions of dollars. The question of when such a claim for an indemnity arises is discussed later in this paper regarding actions commenced by an owner after the redemption period.

A municipality's failure to give the statutorily required notice under section 657 of the *Local Government Act* creates a risk of legal liability for the municipality that should not be conflated with the personal consequences that befall an owner who fails to redeem.

Tax sales are a harsh remedy that is strictly applied, and a person may lose title to their property despite having options available to avoid non-redemption. In the Ombudsperson's report "A Bid for Fairness", the Ombudsperson expressed concerns regarding the adequacy of the tax sale notification period and the risk that an owner will lose significant equity if the purchase price for the property is little more than the upset price.

There is no doubt room for improvement in tax sale procedures. Nevertheless, it should be noted that the Ombudsperson's report focused on an owner for whom health issues, rather than a lack of funds, was the likely reason for non-payment of taxes and non-redemption. The report noted that:

> … health concerns had made it hard for [the owner] to understand the tax notices sent to her home, and to respond appropriately to the other communications she had with the City about her tax situation. [The owner's] health concerns also made it difficult for her to actively seek assistance from [the owner's sister] or take other steps to protect herself.

A registered owner who can be contacted, but who does not know what to do in response to notice of a tax sale, is different from an owner who cannot afford to redeem or an owner who cannot be found and is simply ignorant of the tax sale. Every owner of a tax-sold property is vulnerable to the harsh consequences of non-redemption. However, it is the owner who is unable to protect themselves that likely attracts the most sympathy.

E. Redemption and other events and actions

During the redemption period, several events and actions can occur:

1. The partial transfer of ownership rights

Section 665(1) of the *Local Government Act* provides that:

> 665(1) When real property is sold at an annual tax sale under this Act, all rights in it held by persons who at the time of the tax sale were an owner of the property or the registered owner of a registered charge on the property, immediately cease to exist, except as follows:
>
> (a) the property is subject to redemption as provided in this Act;

> (b) the right to possession of the property is not affected during the time allowed for redemption, subject to
>
> > (i) impeachment for waste, and
> >
> > (ii) the right of the purchaser at the tax sale to enter on the property sold to maintain it in a proper condition and to prevent waste;

This means that as of the tax sale, and for as long as the property goes unredeemed, the registered owner on the date of the tax sale ceases to have any ownership rights except a right to possession. In most cases this means that very little changes "on the ground" during the redemption period. Nevertheless, the purchaser has purchased rights, and the lingering question will be whether those rights will be surrendered back to the owner on redemption or will continue and later be expanded to include registered title and a right of possession after the redemption period ends.

2. Redemption

Redemption of the property sold at tax sale is what is expected to occur during the redemption period. The person who chooses to redeem the property is usually, but not always, the owner. Section 660(1) of the *Local Government Act* provides that the following people may redeem a property:

> (a) an owner or registered owner in fee simple of the parcel,
>
> (b) an owner of a registered charge against the parcel, or
>
> (c) another person on behalf of a person referred to in paragraph (a) or (b).

Charge holders such as mortgagee banks will usually redeem to protect the equity they hold in a mortgage, but a collector should not assume this will occur. Although a mortgage may be registered on title, that mortgage may be paid off meaning that there is no equitable interest in the property for the bank to protect through redemption.

Section 660(1)(c) of the *Local Government Act* effectively operates to provide that almost anyone can redeem a property if they purport to be doing it on behalf of a registered owner or charge holder. The collector should make clear that any money paid to redeem the property cannot be later refunded to the payee if the payee regrets making a payment for the benefit of another person. There are countless situations in which a person other than the registered owner or charge holder might seek to pay the property taxes. For

example: an expectant heir of a deceased owner may redeem even though they are not (or not yet) the appointed executor of the deceased's estate; a tenant under an unregistered lease may redeem on behalf of the tenant's landlord to prevent the landlord from breaking the lease through non-redemption; or a person who is the beneficial owner of a property may redeem once that person realizes that the nominee registered owner has not paid the property taxes. The collector's obligation is to recover taxes owed to the municipality, and a collector may be dangerously exceeding their jurisdiction if the collector starts passing judgment on whether a person seeking to redeem the property is entitled to pay on behalf of another person.

To redeem, a person must pay the amount owing on the date of the payment as calculated using the formula set out in section 660(3) of the *Local Government Act*. There is no legal basis for a collector to require that a redemption payment be paid using a particular method such as certified cheque or wire transfer. If timely payment is tendered by cheque, the collector should wait until the cheque has cleared before taking further action. A purchaser who is interested in acquiring the property will likely be content to wait to see if the cheque bounces (meaning non-redemption), even if that purchaser does not receive additional interest during this period.

Once the payment has been received (and for practical reasons, cleared), the collector must forward to the purchaser the total amount that the purchaser has paid plus interest to the date of redemption at the rate prescribed under section 11(3) of the *Taxation (Rural Area) Act*, RSBC 1996, c 448. If the purchaser consists of multiple people, the collector should divide the payment to reflect the share of ownership for each person shown on the statement issued under the *Local Government Act*, s. 651.

Upon redemption of the property, the collector must also file a notice of redemption with the land title office, together with the applicable fee (*Local Government Act*, s. 662). This step causes the cancellation of the notice of tax sale on title.

3. Redemption by instalments

With one exception, a collector should never accept part payment or instalments as payments towards redemption. In most cases, a person must pay the entire amount payable under section 660(3) of the *Local Government Act* to redeem. The purported receipt of instalment payments by a collector also creates multiple opportunities for confusion between the collector and the payor: confusion over how many instalment

payments are needed; confusion over whether a large partial payment prevents the owner from later losing title to the property (it does not); confusion over how to deal with any interest credit arising from paying some money early; and confusion over what to do with the money if the property is not redeemed, as a collector may seek to credit at least some of the money received towards current year taxes for which the (now former) owner is liable under section 658 of the *Local Government Act*.

The one statutory exception for part payment occurs when a person pays through two instalments as prescribed under section 661 of the *Local Government Act*. This option is only available to a person if the municipality was declared the purchaser of the land and if three other conditions set out in section 661(1) are met. If an entitled person pays exactly 50% of the upset price and interest owing during the one-year redemption period, the redemption period is extended by 11 months and 21 days to allow for a second and final payment within that time. The *Local Government Act* does not expressly set out what happens if a person makes the first payment, but fails to make the second. If that occurs, the collector is obliged to treat the property as not redeemed and to refund the first payment (likely without interest).

4. Imposition and payment of taxes during the redemption period

Section 658 of the *Local Government Act* provides:

> (1) During the period allowed for redemption, real property sold at an annual tax sale must continue to be assessed and taxed in the name of the person who at the time of the tax sale appeared on the assessment roll as owner and that person is liable for taxes accruing.
>
> (2) The accruing taxes continue to be a special lien on the property under section 250 [*taxes are a special charge on the land*] of the *Community Charter*.
>
> (3) The tax sale purchaser may pay the taxes that become due during the period of redemption, and the amount paid must be added to the amount required to redeem.

These subsections confirm that it is the owner who is liable to pay taxes accruing during the redemption period, but the purchaser may choose to pay those taxes. The purpose of such a payment by the purchaser would likely be to avoid exposure to penalties and interest charges if the owner neither redeems nor pays the accruing taxes and those taxes,

penalties and interest charges are later imposed on the purchaser as the new owner of the property.

5. Waste to the property

An owner who expects to lose title to a property at the end of the redemption period may allow the buildings or other improvements on the property to fall into significant disrepair or take other action that "wastes" the property. In response, a purchaser may apply to the court to evict such a wasteful owner or to confirm that they may enter onto the property to maintain it in a proper condition. The purchaser can add these maintenance costs to the redemption amount by giving notice to the collector (*Local Government Act*, s. 660(3)(b)). The collector does not have any discretion to assess whether the costs incurred by the purchaser are reasonable (*Woytowich v. Kitimat (District)*, 2012 BCPC 400). However, a prudent collector will promptly advise the owners and charge holders that the costs are being added. This dispute between the owner and the purchaser is otherwise unlikely to involve the municipality unless the owner's actions negatively impact municipal utilities and prompt the municipality to take remedial action.

6. Steps that may be taken by a municipality that purchased a property

If the municipality is the purchaser of a property sold at tax sale a few additional considerations will apply:

a) Insurance

As the purchaser, the municipality has a new and significant—if unregistered—interest in real property and should consider immediately insuring that interest. That said, the municipality's insurer may not be prepared to insure a property during the redemption period given the municipality's limited control of the property.

b) Resale of property

Unlike other purchasers, a municipality may offer to resell a property purchased by it at tax sale (*Local Government Act*, s. 655). The sale must occur within 9 months of the tax sale and must be for a price equal to or greater than the upset price plus interest accrued to date. The municipality will be required to give notice of the disposition in accordance with *Community Charter*, s. 94 and legal advice on the transaction is strongly recommended.

c) Extension of the redemption period

As discussed earlier, a municipal council may extend the redemption period by one year through a bylaw adopted under section 660(6) of the *Local Government Act*. The purpose of such an extension is presumably to give the owner or other interested parties more time to redeem.

7. Foreclosure or other forced sale of the property by a creditor

Owners who have failed to pay taxes owed to a municipality for a number of years are often behind on payments to other creditors. If another creditor seeks to force the sale of a property sold at tax sale through a separate court-ordered sale, such a creditor has a significant incentive to redeem the property and avoid the consequences of non-redemption. Legal advice should be sought in each case as the creditor may instead seek to obtain an order from the court that prevents the collector from taking any action if there is non-redemption.

8. Cancellation of sale by council for manifest error

Section 668 of the *Local Government Act* provides as follows:

> (1) During the period allowed for redemption, if the council finds a manifest error in the tax sale or in the proceedings before the sale, it may order that
>
> > (a) the purchase price be returned to the purchaser together with interest at the rate prescribed under subsection (2), and
> >
> > (b) the taxes be dealt with as the circumstances require, either
> >
> > > (i) by restoring the taxes as they were before the sale, or
> > >
> > > (ii) otherwise as directed by the council.
>
> (2) The Lieutenant Governor in Council may prescribe a rate of interest for the purposes of subsection (1)(a).

This section allows for a council to, by resolution, order the cancellation of a tax sale of a property before the redemption period ends. It is a remedy that, when available, will not involve the court unless the purchaser initiates a challenge. The interest paid to the purchaser for a cancelled tax sale is set out in section 2 of the *Municipal Tax Regulation*,

BC Reg 426/2003. Notably, this rate of interest is lower than the rate paid to the purchaser if a tax-sold property is redeemed.

Once council has cancelled the tax sale of a property, the collector will need to apply to the land title office to discharge the notice of tax sale filed under section 656 of the *Local Government Act*. Although, the notice of tax sale would have been filed using a "Form 17", the land title office may require it be discharged using a "Form C" because the notice is usually recorded on title as a charge rather than a notation.

With regard to when a council may cancel a tax sale, there is some lingering uncertainty as to what a council may consider a manifest error for the purposes of section 668 of the *Local Government Act*. In *McCready v. Nanaimo (City)*, a purchaser challenged a council's cancellation order and the court held that such an order by council can only be made in relation to an error in the tax sale or in proceedings before the sale. The court concluded that an error occurring after the tax sale, specifically a failure to provide the notice of tax sale required under what is now section 657 of the *Local Government Act*, is not eligible for cancellation by council.

In deciding the *Nanaimo* case, the court rejected earlier contrary rulings such as *Martman v. Sidney*, [1994] BCJ No 210 (SC) and held:

> The [*Local Government Act*] sets up a complete code that governs the sale of land for delinquent taxes. The code offers protections, both to owners and to tax sale purchasers. After the sale has taken place, council cannot act to the detriment of the purchaser. If council fails to properly notify the owner of the sale, the owner is given certain remedies against council. Council cannot rectify its failure to give notice by cancelling the sale to the prejudice of the purchaser.

This is a purchaser-favourable view because it recognizes that the purchaser's potential entitlement to the transfer of the property should not depend on how effectively an owner can evade service or how ineffectively a collector seeks to serve notice under section 657.

If similar facts arose again, it is doubtful that the court's decision would be so favourable to the purchaser. The cases involving the Village of Pemberton and the City of Maple Ridge discussed below suggest that the court might now decline to follow the decision in *Nanaimo* to spare an owner a harsh result. The purchaser will still receive their purchase price plus some interest (albeit less interest than would be paid upon redemption). The current law applicable to judicial review has changed significantly since the *Nanaimo* case

was decided, which is another reason why a court might not interfere with a council's decision to cancel a tax sale under section 668 because the municipality failed to give the required notice under section 657 of the *Local Government Act*.

In any event, the (now questionable) finding in *Nanaimo* that the error must occur at or before the tax sale does not affect a decision by a council to cancel a tax sale because of non-compliance with the required pre-tax sale notice under section 647.1 of the *Local Government Act*. If there is a failure to give such notice, and the property is nonetheless sold at tax sale, a collector should request council consider ordering the cancellation of the tax sale.

9. Owner/charge holder application to set aside the tax sale

Under section 666(1) of the *Local Government Act*, a registered owner or registered charge holder of property sold at tax sale may bring an action (a lawsuit) in the BC Supreme Court "to have the sale set aside and declared invalid." This type of action is subject to restrictions. First, the grounds for commencing the action are limited to the following under *Local Government Act*, s. 666(2):

> (a) the property was not liable to taxation during the years in which the taxes for which the property was sold were imposed;
>
> (b) the taxes for which the property was sold were fully paid;
>
> (c) section 647.1 [*owners must be given notice before tax sale*] or 657 [*notice of tax sale and redemption period*];
>
> (d) irregularities existed in connection with the imposition of the taxes for which the property was sold;
>
> (e) the sale was not fairly and openly conducted.

Second, such an action "must not be brought until one month after written notice has been given by the person to the council stating in detail the grounds of complaint" (*Local Government Act*, s. 666(3)). The purpose of such written notice is presumably to give council an opportunity to cancel the tax sale of the property for manifest error.

It is also notable that section 666(2)(b) only permits an action to be brought under that ground if the property taxes were "fully paid". This wording suggests that an owner cannot

apply to set aside a tax sale on the basis that the property was errantly sold when the taxes were only in arrear and not delinquent.

10. Application for judicial review by municipality

The 2020 decision *Maple Ridge (Re)* suggests that a municipality could apply to the court during the redemption period to declare a tax sale invalid because the municipality failed to provide notice of the tax sale and the date the redemption period ends as required by section 657 of the *Local Government Act*. That decision, which is discussed in the next part, involved a court application made after the redemption period ended. There does not appear to be a reason why such an application cannot be brought earlier, however a council authorizing such an application to the court has presumably decided that council cannot set the tax sale aside for manifest error.

V. AFTER THE REDEMPTION PERIOD ENDS AND NO ONE REDEEMS

If the redemption period ends with the property sold at tax sale not being redeemed, there are a few additional steps for the collector to take and events that may occur.

A. Registration of the purchaser (notice of non-redemption)

Section 663 of the *Local Government Act* provides:

> (1) If a parcel of land sold for taxes is not redeemed as provided in this Act, at the end of the redemption period, the collector must forward a notice to that effect to the registrar of land titles.
>
> (2) The notice under subsection (1) must
>
> (a) set out the full name, occupation and address of the purchaser, and
>
> (b) be accompanied by
>
> (i) the fees payable under the *Land Title Act*, and
>
> (ii) an application in the form approved under the *Land Title Act* for registration of title in fee simple in the name of the purchaser.

The forwarding of this notice by the collector is the act that causes the land title office to register title of the property in the name of the purchaser. Under the *Local Government Act*, the forwarding should occur "at the end of the redemption period". A collector may

face pressure to file from a purchaser who is anxious to obtain title to the property. The cases discussed later in this section regarding post-redemption period legal actions suggest that the speed with which the collector fulfils the duty under section 663(1) could have a significant impact on liability exposure. Delay may be to the owner's advantage because it gives the owner more time to have the tax sale declared invalid, as occurred in *521006 B.C. Ltd. v. Pemberton (Village)*, 2019 BCSC 526. However, if a collector fails to file a notice of non-redemption as required, the purchaser may commence a court proceeding seeking to compel the filing (*McCready v. Nanaimo (City)*).

Collectors may also want to be mindful of the possibility that an owner will obtain an order granting a stay under federal bankruptcy and insolvency legislation and will do so during the redemption period. Legal advice should be sought in this situation as the stay may prevent the collector from filing a notice of non-redemption without leave of the court. Nevertheless, if the purchaser paid for the property at tax sale before the stay was issued, then the likely result will be that the surplus (if any) will stand in place of the property unless someone makes a timely redemption.

B. Consequent extinguishment of some interests and charges

Not only does the filing of a notice of non-redemption transfer fee simple title away from the registered owner, it can also cause the cancellation of many charges that are registered on title. Section 663(5)(b) of the *Local Government Act* provides that the filing of the notice of non-redemption operates:

> (b) as a quit claim in favour of the purchaser of
>
> > (i) all right, title and interest of every previous owner in fee simple of the parcel, or of those claiming under any previous owner, and
> >
> > (ii) all claims, demands, payments, charges, liens, judgments, mortgages and encumbrances of every type, whether or not registered under the *Land Title Act*,
>
> subsisting at the time the application to register is received by the registrar, except the matters set out in section 276(1)(c) to (g) of the *Land Title Act*.

The list of excepted claims, rights and interests is lengthy and includes federal and provincial charges as well as non-financial rights and interests, such as easements and rights of way. The excepted matters also include rights of expropriation and escheat.

Aboriginal title is not expressly listed as a right or interest that is unaffected by non-redemption. However, the court in *Cowichan Tribes* confirmed that the Province lacks the authority to legislate away Aboriginal title through a tax sale.

There are many rights, claims and interests in land that are not excepted from the statutory quit claim. These rights, claims and interests, which include builders liens and strata liens, are consequently discharged at law upon non-redemption. There have been instances in which the land title office has declined to register the purchaser on title without a certificate of payment under section 256 of the *Strata Property Act*. In such a case, a purchaser may seek to appeal the registrar's decision on the basis that the strata corporation is deemed to have quit its claim against the purchaser. More commonly the registrar will treat the notice of non-redemption as being a deemed request from the strata to release the lien.

Anyone claiming a debt owed that was secured by a discharged lien may still seek to recover that debt by making a claim against any surplus funds held by the municipality. Strata corporations who decline to redeem a property and do not make a claim on the surplus (if available) before the surplus is paid out will be left with just a personal debt claim against the (former) owner.

The registrar should also remove all certificates of pending litigation (except potentially those filed by the Crown). A certificate of pending litigation is filed if someone claims that they have an interest in the property despite their interest not being registered against, or in place of, the owner's registered interest. Just as the (now former) registered owner loses all their interest in the land, so too does a person who makes a claim against that registered owner's interest.

Claims arising from an unregistered interest in the land, including unregistered leases, will also be extinguished when title to the land is transferred to the purchaser. This result will have a drastic legal effect on tenants who occupied the property under an unregistered lease with the (now former) owner, unless the purchaser voluntarily agrees to continue the lease. Although the *Residential Tenancy Act*, SBC 2002, c 78 provides a residential tenant with statutory protections against the sudden termination of a lease by their landlord, it does not appear that the risk of sudden termination through a tax sale has been addressed. Because only registered charge holders are entitled to notice of a tax sale under section 657 of the *Local Government Act*, a collector is unlikely to even know that a tenant under an unregistered lease will be affected by non-redemption.

Municipal taxes are not excepted from the quit claim provision and all claims for taxes imposed prior to the tax sale cease to attach to title. This is not surprising, because all of those taxes form part of the upset price and have either been paid by the purchaser or included in the value of the property if the purchaser is the municipality under section 650(2) of the *Local Government Act*. For taxes that are imposed after the tax sale, those taxes can be reattached to title under section 250 of the *Community Charter* through the purchaser becoming liable under section 251(1) to pay taxes unpaid in the previous year. This interplay between the quit claim and the liability of future assessed owners is discussed later in this part.

C. Property transfer tax

If a collector forwards a notice of non-redemption to the land title office, the "municipality must immediately notify the administrator under the *Property Transfer Tax Act* [RSBC 1996, c 378]" (*Local Government Act*, s. 663(4)). Ministry of Finance Tax Bulletin PTT 016 sets out the information that the Provincial administrator expects to receive from the municipality and how it can be communicated. The Ministry of Finance will then seek to collect the property transfer tax from the purchaser.

D. Federal goods and services tax

The federal Goods and Services Tax may apply to a purchaser's acquisition of a property through a tax sale. A collector should consider seeking legal advice if the property contains a building that was newly constructed or is part of a failed development.

E. Environmental liabilities

A purchaser of a property sold at tax sale may acquire contaminated land for which remediation is required under the *Environmental Management Act*, SBC 2003, c. 53. If a purchaser is ordered to remediate the property under section 48 of the *Environmental Management Act*, the purchaser may still seek to recover some or all of the cost from a previous owner in accordance with subsection 47(5) of the Act. There is obviously a risk that a previous owner who lost title to their property through tax sale does not have any assets against which the current owner can recover.

Section 46(g) of the *Environmental Management Act* operates to excuse a municipality from liability under that Act if the municipality was declared the purchaser at tax sale under section *Local Government Act*, s. 650(2) and the municipality did not cause or

contribute to the contamination. This protection is not provided if the municipality bid on and won the auction for the property such that the property was not involuntarily acquired by the municipality.

The fact that property is contaminated is still a problem for the municipality no matter how the municipality acquired the land. In some cases, Provincial funding may be available to assist with clean-up costs, but the tax sale process may cause contamination to be a burden that is imposed on the municipality and its ratepayers.

F. Refusal to register purchaser's title

Section 664 of the *Local Government Act* contemplates the possibility that a collector files a notice of non-redemption and the registrar of land titles refuses to register title in the name of the purchaser. Such an action may occur if the registrar identifies the land as escheated land and the Province refuses to waive its interest. Ministerial consent would also be required to transfer land subject to a lien under the *Land Tax Deferment Act*, RSBC 1996, c 249. The registrar may also decline to register a transfer of land subject to certain filed notices.

Section 311 of the *Land Title Act* provides that a dissatisfied person, most likely the purchaser, can appeal the registrar's decision not to register a transfer following non-redemption (*Local Government Act*, s. 664(1)). If the refusal to register the purchaser as the new owner is upheld by the court, the "municipality is deemed to have been declared the purchaser of the property at the tax sale and the municipality must refund the purchase price, without interest, to the purchaser" (*Local Government Act*, s. 664(2)). In this case, not only does the purchaser lose out on interest on the purchase price paid, but the purchaser may also be unable to recover taxes advanced and maintenance costs incurred to prevent waste, unless the purchaser can successfully sue the owner directly for those costs.

It is not clear whether non-registration by the land title office means the municipality can later file a fresh notice of non-redemption naming the municipality as the purchaser once the registrar's concerns are addressed (e.g. expropriation notice, escheat). Legal advice should be sought in this situation.

G. Access to, and use of, the transferred property

If the municipality becomes the registered owner of a property sold at tax sale, several legal issues may arise following the transfer of title. These include gaining physical access to the property, dealing with any persons still occupying the property, and dealing with personal items left on the property. A municipality should seek legal advice regarding these issues if it acquires title to property through tax sale.

In the case of property transferred to a private purchaser, that purchaser might seek the municipality's help or advice in dealing with these same post-transfer issues. Municipal staff should decline to assist in these cases and suggest that the purchaser seek independent legal advice. Although the municipal collector has the authority to conduct the tax sale, the collector has no authority to deal with private disputes that arise from the transfer of title. The safer course is to avoid becoming involved in such disputes.

A purchaser is entitled to contact the municipality to make inquiries related to the surplus and to potentially make a claim against the surplus as discussed below.

H. Distribution of the surplus

Section 659 of the *Local Government Act* sets out a very specific process for dealing with the surplus, being the amount above the upset price received by the collector. At the end of the redemption period, the collector should not immediately forward the money to the owner but instead wait for the owner to make a written application to council (*Local Government Act*, s. 659(1)). Legal advice should be sought if the property involved had multiple registered owners at the time of tax sale and the municipality has received an application from one owner, but not an application from every owner.

1. Single claim by (now former) registered owner

If the registered owner makes such an application, and the municipality receives no other claims, then the legislation provides that "money received by the collector at the annual tax sale above the upset price must be paid without interest to the person who was the owner at the time of the annual tax sale, on written application to the council."

Payment to the owner of all "the money received by the collector at the annual tax sale above the upset price" means that the municipality may not hold back money to cover

current year property taxes or other debts. If the municipality wishes to use the surplus for this purpose, it must make a claim against the surplus as discussed below.

2. Multiple claims against the surplus

If, before an application is made by the owner to council or before the money is paid out, the municipality receives notice from anyone else, written or otherwise, in which that person claims entitlement to the money, the collector must apply to pay the surplus into court. Section 659(3) of the *Local Government Act* provides that if "another person" other than the owner makes a claim against the surplus "the money must, without leave, be paid into the Supreme Court".

Such claims on the surplus by someone other than the owner may be received before the redemption period has ended. Although (most) financial charge holders lose their registered interest in the property upon the collector's filing of notice of redemption, they can still claim an interest in the surplus realized from the tax sale of the property (*Re M-B Industries Ltd.* (1987), 17 BCLR (2d) 197 (Co Ct)). Likely claimants would include holders of builders liens, as in *Re M-B Industries Ltd.*, strata corporations with unpaid strata liens, or registered judgment holders. Because there are competing claims, the collector is required to pay the surplus into court. Once that is done, the owner and the claimant(s) can apply to the court to receive their respective shares of the surplus. The court will decide how competing claims against the surplus will be resolved.

A purchaser who has advanced current year taxes under section 658(3) of the *Local Government Act* likely has a strong claim against the surplus. A purchaser who did not pay the current year taxes but foresees becoming liable for those unpaid taxes under section 251(1)(b) of the *Community Charter* might still attempt an anticipatory claim against the surplus, although the court would presumably be unprepared to pay out a portion of the surplus for this reason until after the purchaser has actually paid taxes that were imposed against the (now former) owner. In any event, the municipality should not decide whether a claim has merit and should instead apply to pay into the court if it receives competing claims.

The municipality itself might seek to claim against the surplus a set-off for debts owing by the owner to the municipality. These debts could include the current year taxes and unpaid utility fees imposed in the current year during the redemption period. These particular debts are special charges against the land that did not require registration on

title. Debts owed under a court judgment, a Certificate of Amounts Owing (Bylaw Notice) or an *Offence Act*, RSBC 1996, c 338 Certificate (Municipal Ticket Information), if registered, should be equally claimable against the surplus. The court may also allow the surplus to be applied to other provable, but unregistered, claims in debt made by the municipality against the former owner.

Section 659(3) of the *Local Government Act* provides that a surplus "must" be paid into court and does not provide for any deductions for taxes owing. This arrangement may be reflective of the fact that claiming against a surplus is not necessary for tax collection if unpaid taxes and utility fees imposed against the (now former) owner in the year the redemption period ends are statutorily added to next year's taxes under sections 251(1)(b) and 258(2)(b) of the *Community Charter*.

Also, by not giving the municipality an express right to make deductions from the surplus, the legislation accommodates the possibility that another creditor might have a higher priority claim against the surplus. The surplus should be used to pay such higher priority creditors in full before a payment is made towards the municipality's claim.

A municipality's claim against the surplus for unpaid property taxes may have "middle priority" if, for example, the (now former) owner of the property declares bankruptcy after the tax sale has been completed. In such a case, section 136 of the *Bankruptcy and Insolvency Act* operates to rank a number of creditor claims ahead of claims for "municipal taxes assessed or levied against the bankrupt, within the two years immediately preceding the bankruptcy, that do not constitute a secured claim against the real property or immovables of the bankrupt". A claim against the surplus can only be made after the bankrupt has lost title to their property through tax sale so the taxes owed to the municipality will not be secured against "the real property…of the bankrupt".

It is also possible that that an order made under federal legislation in relation to a former owner's bankruptcy or insolvency prevails over section 659(3) of the *Local Government Act*, such that the surplus must be paid to a receiver rather than into court. Legal advice should be sought if the collector becomes aware of bankruptcy and insolvency proceedings that might affect a former owner's claim to a surplus.

Although Crown liens survive non-redemption, the provincial or federal government might also make a claim against the surplus as a means of recovering directly from the person against whom the lien was originally imposed rather than the new owner.

The payment into court by a municipality is typically done through a requisition made in relation to ("re:") the amount of money held in surplus. The municipality's lawyers can assist with preparing the materials necessary for filing with the court. If the municipality is not claiming against the surplus, then the payment into court should be the last step of the tax sale process that the municipality takes for a non-redeemed property. If the municipality is claiming against the surplus, then the municipality will need to make an application to the court, with notice to the other known claimants, requesting a payout from the surplus (*Local Government Act*, s. 659(4)).

3. No one claims the surplus

If no one makes a claim on the surplus within 6 months after the redemption period, the municipality must publish a newspaper notice stating the name of the owner to whom the surplus is payable, the date it became payable and the amount of the surplus. There is no provision for an alternative method of providing notice of the surplus. The applicable definition of a "newspaper" is "a publication or local periodical that contains items of news and advertising" and there is no requirement that the newspaper used to publish the notice be distributed locally.

If no one claims the surplus 3 months after publication of the newspaper notice, the surplus must be transferred to the BC Unclaimed Property Society (*Local Government Act*, s. 659(6)).

I. Collection of taxes unpaid by the (former) owner

Assume a property is sold for taxes in September of Year 1. It is possible that all of the following occurs in Year 2, being the calendar year following the tax sale:

(a) the property taxes for Year 2 are imposed against the owner whose property was sold at tax sale Year 1;

(b) neither the owner nor the purchaser pay the property taxes that are imposed in relation to the property in Year 2;

(c) no one redeems the property during the redemption period; and

(d) title to the property is transferred to the purchaser in September of Year 2.

If this occurs, the purchaser will become the assessed owner of the property in Year 3 and will be liable for the unpaid taxes and penalties imposed in Year 2 as taxes in arrear. This occurs even though the former owner remains liable to pay the unpaid taxes during the redemption period.

Purchasers at tax sale will sometimes argue that they are not and can never be liable to pay taxes that were imposed during the redemption period against the former owner. Purchasers who take this position typically emphasize the following:

- That under section 658(1) of the *Local Government Act*: "during the period allowed for redemption, real property sold at an annual tax sale must continue to be assessed and taxed in the name of the person who at the time of the tax sale appeared on the assessment roll as owner and that person is liable for taxes accruing."

- That the quit claim under section 663(5)(b) is subject to an exemption for certain government charges, but municipal charges described in the *Land Title Act*, s. 23(2)(c) are not included.

The better view is that during the year that contains the end of the redemption period, the purchaser is not liable to pay property taxes imposed in that year. The purchaser is not the assessed owner of the property for that year even though non-redemption has resulted in the purchaser becoming the registered owner of the property before the year is out. However, if the taxes imposed in that year go unpaid by December 31, then the purchaser, as the assessed owner for the following year, will be liable to pay those taxes the following year by operation of section 251(1)(b) of the *Community Charter*. This view considers the following:

- The *Local Government Act* requires that taxes accruing during the redemption period be imposed against the owner but also permits the purchaser to pay these taxes (s. 658(1)-(3)). The legislation presumably contemplates the purchaser receiving a benefit for paying these taxes regardless of whether the property is redeemed or not. If the property is redeemed, the purchaser will be refunded the payment toward taxes plus interest. If the property is not redeemed, the purchaser avoids the penalty imposed for late payment being added to the taxes imposed against the purchaser the following year.

- The quit claim in favour of the purchaser is only for those claims "subsisting" at the time of the filing of notice of non-redemption. The quit claim does not operate to extinguish taxes that are not payable by the purchaser at the time but may be imposed against the purchaser in the future.

- The assessed owner of the property in the calendar year following the end of the redemption period will be the purchaser or someone who acquires title from the purchaser. Under section 251(1)(b) of the *Community Charter*, that person named as the assessed owner of the land is liable to pay "all unpaid taxes imposed in a previous year". Those should include taxes that the previous assessed owner of the land (the owner at the time of the tax sale) failed to pay by December 31 in the previous year and after the notice of non-redemption was filed.

In short, the purchaser's opportunity to pay taxes during the redemption period should be interpreted as being responsive to the possibility that the purchaser may eventually become liable to pay those taxes, plus penalties and interest accruing as result of late payment, if the property goes un-redeemed. This interpretation is more harmonious with the general scheme of municipal tax collection and tax sales. Not only does it confirm a purpose to granting the purchaser the right to pay property taxes during the redemption period, but it also supports a process in which unpaid taxes are always recoverable as a charge against the property. It would be strange for the Legislature to mandate a process that requires a collector to recover three consecutive years of unpaid property taxes through the sale of a property; but to also have that process place the collector in a much worse position to collect the subsequent year's property taxes. If the subsequent year's property taxes are only recoverable as a personal debt against the former owner, then the collector is left to sue someone who has proven themselves unable or unwilling to pay previous year's property taxes and who has also just lost valuable real property through tax sale.

J. Court action or application by the (former) owner or charge holder

The time following the redemption period is a time in which the municipality faces the risk of a legal action being brought by an owner or charge holder of the land at the time of the tax sale. A municipality may be subject to a court proceeding seeking an indemnity for loss or, in certain circumstances, seeking to invalidate the tax sale.

1. Action seeking indemnity

Section 669 of the *Local Government Act* provides for a claim for indemnity that may only be brought after the redemption period ends:

> 669 (1) After the end of the period allowed for redemption, no action may be brought to recover the property sold or to set aside its sale.
>
> (2) No action may be brought
>
> (a) against the registrar of land titles, the minister charged with the administration of the *Land Title Act*, the Land Title and Survey Authority of British Columbia or the collector in respect of the sale of the property or the registration of an indefeasible title to it, or
>
> (b) against the municipality in respect of any loss or damage sustained by reason of the sale, except as provided in this section.
>
> (3) A person who at the time of the tax sale was an owner of, a registered owner in fee simple of or an owner of a registered charge on the property must be indemnified by the municipality for any loss or damage sustained by the person on account of the sale of the property if the circumstances referred to in section 666 (2) (a), (b) or (c) [*property not liable for tax, tax paid or notice of tax sale not given*] existed.
>
> (4) As limits on subsection (3),
>
> (a) no action may be brought to recover indemnity or compensation under this section after the end of one year from the time allowed by this Act for redemption of the real property, and
>
> (b) there is no right to indemnity or compensation under subsection (3) if it is shown that the person claiming indemnity or compensation was aware at the time of tax sale that the property was offered for sale, or was aware during the period allowed for redemption that it had been sold.

Subsections 669(2)(b) and (3) of the *Local Government Act* operate to only permit the (now former) owner or charge holder to commence an action to recover a statutory indemnity for loss sustained. In other words, the plaintiff can only seek monetary

compensation and cannot seek to recover ownership of the property. Such an action can also only be commenced within one year of the end of the redemption period (*Local Government Act*, s. 669(3)). Furthermore, section 669(4)(b) provides that a person cannot claim a statutory indemnity if it is shown that person was aware at the time of the tax sale that the property was offered for sale or was aware during the period allowed for redemption that it had been sold.

The remedy for an owner under section 669 of the *Local Government Act* is to commence an action claiming an indemnity for loss from the municipality on the basis that the property was sold despite the property not being liable for taxation, the taxes being paid up, or the taxes being due but the owner not receiving a statutorily required notice. Because section 669(4)(b) of the *Local Government Act* precludes recovery if the claimant is shown to have had certain knowledge, there are effectively only three factual grounds supporting an action for an indemnity:

- The property was not liable for taxation but was still sold at tax sale and the claimant was neither aware at the time of tax sale that the property was offered for sale nor was aware during the period allowed for redemption that it had been sold.

- The taxes on the property were fully paid [which appears not to apply to properties sold with tax arrears, but not delinquent taxes] but the property was still sold at tax sale and the claimant was neither aware at the time of tax sale that the property was offered for sale nor was aware during the period allowed for redemption that it had been sold.

- The property was sold at tax sale, the collector failed to give either the statutory notice required under section 647.1 or 657 of the *Local Government Act* and the claimant was neither aware at the time of tax sale that the property was offered for sale nor was aware during the period allowed for redemption that it had been sold.

The combined effect of section 669 is that if no action is taken during the redemption period to either set aside the tax sale or to redeem the property, the claimant's interest in the property will be lost. Furthermore, the claimant has no claim under any ground if the claimant knew during the redemption period that the property was sold at tax sale. Questions of fairness may arise if such critical knowledge was only acquired at the last minute.

If an owner is entitled to an indemnity under section 669(3) of the *Local Government Act*, then the value of the sold property must be determined. The owner's damages will be the difference between the property's market value and the price paid by the purchaser at the tax sale. For example, in *Morgan v. Spallumcheen (Township)*, 2022 BCSC 752, the court found that this difference was $352,316.28 and ordered the municipality to pay the former owner this amount.

In making this order, the court determined that the property valuation date for calculating the amount payable will depend on the circumstances of the case. For the indemnity claim in the *Spallumcheen* case, the court found it appropriate to calculate damages using the market value of the property at the time of trial. This was because it was only after a trial that the owner received the indemnification payment and was "made whole". Consequently, if property values are rising, a municipality may want to consider whether admitting liability early and paying the indemnity promptly will reduce the amount of damages the municipality must pay.

The court in *Spallumcheen* also concluded that the entitlement to an indemnity under section 669 of the *Local Government Act* does not include an indemnity for the legal costs necessary to assert the claim. Absent a full indemnity, the expense of pursuing litigation almost always exceeds the amount of costs awarded by the court. This means that an owner who successfully claims an indemnity will likely still be financially worse off than if the tax sale never happened. In the *Spallumcheen* case that result was certain; the owner had entered into a contingency fee arrangement with his lawyers as that was the only way he could afford to pursue the lawsuit. Given that tax sales are most likely to involve owners with strained finances, owners may be more likely to accept a prompt indemnification payment to avoid the cost of challenging the amount offered through a court claim.

a) Impact of section 647.1 of the *Local Government Act*

Newly enacted section 647.1 of the *Local Government Act* may complicate claims by an owner for an indemnity. This is because there may be instances in which an owner was given the required pre-tax sale notice but was not served with the required post-tax notice or vice-versa. These permutations will affect the court's assessment of whether there is no right to an indemnity because it can be "shown that the person claiming indemnity or compensation was aware at the time of tax sale that the property was offered for sale, or

was aware during the period allowed for redemption that it had been sold" (*Local Government Act*, s. 669(4)(b)).

It is difficult to justify how an owner who did not receive a pre-tax sale notice should still be entitled to a full indemnity if that owner was actually served (rather than deemed to be served through substituted service) with a timely post-tax sale notice. That owner would have known that they have at least nine months to redeem the property and would have had time to take the steps necessary to avoid losing the property. The owner's losses arising from not knowing about the tax sale until after it happens are arguably limited to the extra fees added to the upset price under section 649(1)(c) and (d) of the *Local Government Act*. An owner might also complain that being obliged to redeem post-tax sale requires more cash be paid now than just paying the delinquent taxes pre-tax sale and delaying the payment of the other taxes owing.

A failure to provide the required pre-tax sale notice is nevertheless "a liability" that rests with the municipality (*Local Government Act*, s. 657(3)), so a collector should not assume that an owner or charge holder has no claim because they have been subsequently served under section 657(1) of the *Local Government Act*.

2. Action or application seeking to invalidate sale after redemption period ends

At first glance, an action for compensation and indemnity under section 669 of the *Local Government Act* would appear to be the only legal proceeding that can be commenced after the redemption period ends. However, the recent cases of *521006 B.C. Ltd. v. Pemberton (Village)* and *Maple Ridge (Re)* are examples of the court issuing declaratory relief that have the effect of setting aside a tax sale after the redemption period ends.

In the *Pemberton* case, the court struggled with the harsh application of section 669 of the *Local Government Act* to circumstances in which the owner's failure to redeem on time might be excused. The key facts in that case were:

- Lands belonging to a corporate owner were sold at tax sale on September 29, 2014.
- The deadline to redeem the lands under the *Local Government Act* was September 29, 2015. However, the owner's principal was misinformed by the collector in the notice of tax sale and was told the property could be redeemed up until September 30, 2015.

- The owner tendered the amount needed to redeem the lands on September 30, 2015, and the Village initially accepted the money, but later sought to return it on the basis that the collector would be filing a notice of non-redemption.

- The owner threatened and later commenced legal action on November 19, 2015 for the purpose of preserving its title to the land, and the Village agreed not to file a notice of non-redemption until the claim was resolved.

The owner in *Pemberton* commenced an action under section 666 of the *Local Government Act* rather than making a claim for an indemnity under section 669. The court held that the owner could still commence an action for declaratory relief. The court then declared the tax sale of the lands to be invalid and the transfer of the lands to the purchaser at tax sale to be illegal and invalid. Because the purchaser at tax sale had not yet received registered title, no action to recover the lands was necessary.

It is also notable that in the *Pemberton* decision, the presiding judge expressly rejected an interpretation of the *Local Government Act* that left the owner in that case with no remedy whatsoever. The court referenced the lingering uncertainty over whether an owner could ever recover title registered in the name of the purchaser that had been suggested in tax sale cases such as *Gray v. Langley (Township)* and *Standard Trusts Co. v. Municipality of Hiram*, [1927] SCR 50 that involved earlier and slightly different legislation.

The court's owner-favourable interpretation of the legislation in the *Pemberton* case deviates from the stricter application of the legislation that occurred in *McCready v. Nanaimo (City)*, discussed earlier. The finality of tax sales after the redemption period ends was upheld in *Sun Wave Forest Products Ltd. v. Prince Rupert (City),* 2012 BCSC 1908 and 2013 BCSC 1235.

The *Nanaimo* case and the court's consideration of the prejudice to the purchaser was not discussed in the reasons for judgment in the *Pemberton* case. It is worth noting that the purchaser was named as a defendant in the *Pemberton* case but did not attend the trial to argue in opposition of the relief sought by the owner. The court did order the refund of the purchase price to the purchaser but did not make an order that expressly awarded the owner any interest on that amount. A case involving both an owner and a purchaser vigorously championing their respective interests may be necessary to conclusively determine the scope of remedies available to an owner who did not redeem a property during the redemption period.

K. Judicial review application by the municipality

Consistent with the owner's claim for relief in the *Pemberton* case, the decision in the *Maple Ridge* case provides an example of a municipality using judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c 241 to invalidate a tax sale and avoid the consequences of an owner losing title to their land despite the owner not receiving notice of tax sale and the date the redemption period ends. In the *Maple Ridge* case, two different properties were sold at tax sale and the municipality failed to deliver written notice of the tax sale and the date the redemption period ends in accordance with section 657 of the *Local Government Act*. Both properties went unredeemed and, rather than file a notice of non-redemption, the municipality applied for a declaration that the tax sale itself was invalid.

The municipal council in *Maple Ridge* sought to achieve what the council in *Nanaimo* failed to do—reverse the tax sale on the basis that proper notice was not given. In the *Maple Ridge* case, the deemed purchaser at tax sale was the municipality, placing the municipality in the advantageous position of not having a private purchaser complain that they were being prejudiced, as occurred in *Nanaimo*. The application for judicial review in *Maple Ridge* relied heavily on the *Pemberton* decision and the court found that:

> the failure to deliver the written notice in accordance with s. 657—that is by personal service, registered mail, or pursuant to a substituted service order—constitutes a failure to fulfill an essential procedural requirement that is a condition precedent to a lawful transfer of title under the [*Local Government Act*].

The reasons for judgment in the *Maple Ridge* case do not mention either the *Nanaimo* or the *Prince Rupert* decisions. In the *Prince Rupert* case, the court cancelled a certificate of pending litigation that an owner had filed as part of an attempt to recover land that the owner said was sold at an *ultra vires* (invalid) tax sale. The court in *Prince Rupert* recognized that an application for a declaration that the sale was invalid was a remedy that the owner could, in principle, seek through judicial review. However, the court found in the *Prince Rupert* case that by the time such an application was made, the owner was statutorily barred from recovering the land.

Despite declaring the tax sale invalid in the *Maple Ridge* case, the court notably declined to issue a declaration that the unpaid taxes and interest from the date of the tax sales form a lien on the properties as if the tax sales had not taken place, with such unpaid

amounts deemed to be delinquent taxes. The court found that there was no statutory basis to make such a declaration. This type of relief is something the court could give under *Local Government Act*, s. 667 if the court sets aside a tax sale in response to an application made during the redemption period in relation to specific problems that do not include problems with giving notice. The lack of statutory authority to make such declarations in other circumstances reveals a legislative gap that has arguably been expanded by the court invalidating tax sales in response to judicial review applications made after the redemption period ends.

In the *Maple Ridge* case, the court did not need to deal with the question of whether the purchaser was entitled to interest on the purchase money held by the municipality between the date of the tax sale and the day the sale was declared invalid. Presumably, the court would have followed *Pemberton* and not awarded interest. This potential outcome leaves purchasers at the tax sale auction with some uncertainty regarding whether they will receive interest on their purchase money if they do not ultimately acquire title to the property at the end of the redemption period. A purchaser will receive interest if the owner redeems (*Local Government Act*, s. 660). A purchaser will also receive interest, but at a lower rate, if the Province refuses to accept the tax sale purchaser under sections 653 and 654 of the *Local Government Act* or the municipal council cancels the tax sale for manifest error (*Local Government Act*, s. 668). A purchaser will not receive any interest if the sale does not go through because the land title office refuses to register the purchaser (*Local Government Act*, s. 664) or because the court declares the tax sale invalid in response to an application made by the owner or the municipality.

VI. CONCLUDING COMMENTS

Tax sales have been a remedy for unpaid property taxes in British Columbia for over a century (*North Vancouver (District) v. Tracy*, (1903) 34 SCR 13, provides an example of historic legal pitfalls). The remedy is based on the principle that if an owner will not pay the property taxes, then the collector can sell the property, or a chance to acquire the property, to someone who can. The proceeds from such a sale are used to immediately cover the overdue taxes, even if the purchaser is not guaranteed title because the owner is still given a year to redeem the property.

The applicable legislation and practical realities regarding tax sales create several risks and complications. Owners may not know or understand that they may lose their property

for unpaid taxes. The method of sale discourages a high purchase price, exposing the owner and charge holders to potential significant financial loss. Also, the purchaser must decide to buy the property, sight unseen, a year before the potential transfer date and without any certainty of acquisition.

The significant consequences of tax sales to owners have recently come under increased scrutiny and have resulted in owner-favourable findings in the *Pemberton* and *Maple Ridge* decisions as well as a 2021 BC Ombudsperson's report. This has prompted the Legislature to change tax sale legislation and provide recommended best practices that focus on giving owners and charge holders better notice. Whether these changes will provide effective protection to the most vulnerable owners remains to be seen. There is also a lingering question as to the impact of these changes on the interests of purchasers, especially given the recent shift by the courts towards an owner-favourable interpretation of tax sale legislation. It may be that purchasers will start making claims that seek to tip the balance in the other direction.