- Other document(s) to support principal residency for six months of the 2022 period (ex recurring bills/statements, credit card statements, telephone invoices, delivery receipts, pay stubs etc)

If we do not hear back from you by November 15 2024 we will proceed with determining your complaint on the basis of the information that we have received to date.

The Owners engaged legal counsel to respond to the November 1, 2024 letter from the Review Officer and to represent them in the Notice of Complaint process. The Owners' counsel emailed the Review Officer on November 8, 2024 and requested an extension of the deadline to December 1, 2024. s.22(1) advised that they wanted to get evidence from s.22(1) but that, as s.22(1) had set out (presumably referring to the October 30, 2024 letter noted above) s.22(1) s.22(1) s.22(3)(d)

The Review Officer extended the deadline to December 1, 2024, as requested.

On November 29, 2024, the Owners' counsel emailed the Review Officer and asked for a further extension to December 16, 2024. s.22(1) s.22(1) Could you please have a further extension to December 16, 2024, for the purpose of obtaining evidence from s.22(1) The Review Officer agreed to extend the deadline to December 16, 2024, as requested.

The Owners' counsel responded to the Review Officer with a letter dated December 16, 2024. It attaches two affidavits, one from s.22(1) made December 2, 2024 and the other from s.22(1) s.22(1) made December 2, 2024.

The Owners' counsel sets out therein that:

(a) s.22(1)

(b) s.22(1) s.22(3)(d)

s.22(3)(d)

The Owners' counsel goes on to advise the Review Officer that "In response to your question concerning the signing of the two residential lease agreements submitted on s.22(1) We are advised that the agreements were originally signed on s.22(1) respectively. However, the original copies were lost, and so the parties signed replacement copies in the summer of 2023 using the updated Residential Tenancy Agreement form. Further details are set out in the affidavit of s.22(1) , with respect to the lease agreement to which s.22(1) was a party (see paragraph 4 and Exhibit "A")."

The Owners' counsel then submits "that the evidence submitted in support of this complaint is more than sufficient to demonstrate that the Property was occupied for more than six months during 2022, and the Empty Homes Tax is not applicable. Put simply, the evidence makes clear that s.22(1) and then s.22(1) were living at the Property – as arm's length tenants under a tenancy agreement – for approximately 11 months of the year."

s.22(3)(d)

The following highlights some of those concerns:

(c) s.22(1)

(d) s.22(1)

(e) s.22(1)

(f) s.22(3)(d)

s.22(3)(d)

(g) s.22(3)(d)

(h) s.22(1)

(i) s.22(3)(d)

(j) s.22(3)(d)

(k s.22(3)(d)

(l) s.22(3)(d)

(m s.22(3)(d)

(n) s.22(3)(d)

(o) s.22(3)(d)

(p) s.22(3)(d)

(q) s.22(3)(d)

(r) s.22(3)(d)

(s) s.22(3)(d)

s.22(3)(d)

(a) s.22(3)(d)

(b)

(c)

(d)

(e)

(f)

(g)

The Review Officer was clearly not persuaded by the Owners' submissions or evidence. In a letter dated February 18, 2024, the Review Officer advised the Owners' counsel that the claim for exemption was not allowed and that the Vacancy Tax applied to the Property for the 2022 Vacancy Reference Year:

> Based upon a review of your submitted information and evidence to support your complaint, the Vacancy Tax Review Officer has determined that your property remains subject to the Vacancy Tax.
>
> The reasons for the determination are as follows:
>
> The Vacancy Tax Review Officer considers that the evidence provided was not sufficient to determine that the property was occupied for residential purposes by an arm's length tenant under a tenancy agreement, for a term of at least 30 consecutive days, for at least six months in the vacancy reference period, and is considered vacant under Section 2 the Vacancy Tax By-Law.
>
> Having reviewed the documents submitted by the owner and their representatives, and the relevant sections of the By-Law, the Review Officer is not persuaded the property was tenanted for residential purposes and entitled to exemption from the tax.

Panel Review

The Owners were dissatisfied with the determination of the Review Officer and decided to seek review by this Panel. The lawyer for the Owners sets out the following as a summary of his clients' position on this Panel Review:

> The City's determination of February 18, 2025, was incorrect and did not provide any meaningful explanation as to why the evidence submitted by s.22(1) was not sufficient to establish that the Property was occupied during the vacancy reference period.

The Review Officer's reasons are terse, but it is clear enough that the Review Officer rejected the Owners' claim for an exemption based on the evidence put before the Auditor and their changed position and new documentation that had the appearance of being designed to avoid the Vacancy Tax. The Review Officer's letter of November 1, 2024 alerted the Owners and their counsel of concerns that existed about the evidence presented. Further evidence was requested. The Review Officer determined that overall the evidence was insufficient to justify an exemption.

The Panel has reviewed all of the materials and has concluded that the Review Officer came to the correct determination. The exemption claimed by the Owners is not supported by credible and reliable evidence. The Property is subject to the Vacancy Tax for the 2022 Vacancy Reference Year.

The Burden of Proof

It is important to remember that the Panel is dealing with a taxing provision in a bylaw. The law used to be that such provisions were construed strictly against the taxing authority when they involve the imposition of a tax. See, for example, the comments by Estey, J., in *Stubart* at p. 577 about that part of

legal history: "any ambiguities in the charging provisions of a tax statute were to be resolved in favour of the taxpayer; the taxing statute was classified as a penal statute."

But equally so, with claims for exemptions, taxpayers were accorded no favors:

> "Where the taxpayer sought to rely on a specific exemption or deduction provided in the statute, the strict rule required that the taxpayer's claim fall clearly within the exempting provision, and any doubt would there be resolved in favour of the Crown. See *Lumbers v. Minister of National Revenue* (1943), 2 OTC 631 (Ex.Ct.), affirmed 1944 CanLII 52 (SCC), [1944] S.C.R. 167; and *WA. Sheaffer Pen Co. v. Minister of National Revenue,* 1953 CanLII 758 (CA EXC), [1953] Ex. C.R. 251. Indeed, the introduction of exemptions and allowances was the beginning of the end of the reign of the strict rule."

In the result in the *Stubart* case, the Supreme Court rejected the " literal" approach to construing tax statutes and shifted interpretation somewhat so as to allow for a somewhat more liberal approach. That approach involved looking at the words in question in the total context of the taxing statute. The purpose of doing so was to ensure that the objective and spirit of the statute were applied.

In the recent case of *Deans Knight Income Corp. v. Canada,* 2023 SCC 16, however, the Supreme Court noted that what remained was a general principle drawn from a decision of the House of Lords:

> [46] .... In *Commissioners of Inland Revenue v. Duke of Westminster,* [1936] A.C. 1 (H.L.), Lord Tomlin recognized the foundational principle that "[e]very man is entitled ifhe can to order his affairs so as that the tax attaching under the appropriate Acts is less than it otherwise would be" (p. 19). The principle that taxpayers can order their affairs to minimize the amount of tax payable has been affirmed by this Court on numerous occasions (see, e.g., *Stubart,* at p. 552; *Trustco,* at para. 11; *Copthorne,* at para. 65).

Further, the law provides that a taxpayer seeking an exemption from tax is usually deemed to have the burden of proving factual matters required to establish the exemption. Of course, that applies to factual matters and not to interpretation of the law. There is no burden on any party with respect to interpreting the law. That is the role of the adjudicator.

The Supreme Court of Canada confirmed those principles to be generally applicable in *Ontario (Minister of Finance) v. Placer Dome Canada Ltd., 2006* SCC 20. At para. 26, the court noted that "The fundamental rules on the allocation of evidentiary burden in this matter remain valid .... The taxpayer bears the burden of displacing the Minister's factual assumptions, but the concept of burden of proof is not applicable to the interpretation of a statute, which is necessarily a question of law. At para. 29, the court added that: "the meaning of the relevant provision is a question of law, and there is no onus on either party in respect of it - the duty to ascertain the correct interpretation lies with the court."

Here, there is no specific issue of legal interpretation that the Owners or Review Officer have raised. Instead, the matter comes to be decided based on an evaluation of the evidence and whether the facts proven satisfy the requirements of the Vacancy Tax Bylaw for exemption from the tax for the Property for the 2022 Vacancy Tax Reference Year.

Law Relating to Evaluation of Evidence

All evidence must be subjected to appropriate scrutiny. O'Halloran, J.A., in the oft-cited B.C. Court of Appeal decision in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, explains how an evaluation of the credibility of evidence given by interested parties should be made:

> In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

Winteringham, J., referred to that passage in her decision in *Latif v Nair*, 2024 BCSC 398 at para. 51. There, she dealt with a case where one party alleged an agreement to sell property at a certain price, but the other denied there was certainty about the terms. She noted the plaintiff bore the burden of proof. She reviewed different components of the claim and the evidence. At para. 130, she commented that, "First, and despite the plaintiffs' position throughout the proceedings that the parties agreed on price, property and parties, I am not so convinced." After reviewing inconsistencies and oddities about the evidence, she concluded that the plaintiff had failed to prove agreement as to the price.

Next, at para. 148, she says "The plaintiffs have not sufficiently demonstrated that a *consensus ad idem* was reached amongst the parties." She addressed whether the payment of money said to be a deposit allayed concerns whether there was a contract, but found they did not. Payments did not cure the underlying flaws in the plaintiff's case about whether there was a contract or not. At para. 150, she finds that "the plaintiffs' payment of the deposits to him did not resolve any uncertainties in respect of terms of the transaction. To this extent, this case is similar to others where the payment of the deposits did not resolve uncertainties in contractual relations."

The Supreme Court of Canada recently reiterated in *R. v. Kruk*, 2024 SCC 7 that evaluating credibility and reliability is grounded in common sense:

- "It is widely recognized that testimonial assessment *requires* triers of fact to rely on common-sense assumptions about the evidence." (para 72);

- "…common-sense assumptions necessarily underlie *all* credibility and reliability assessments. Credibility can only be assessed against a general understanding of "the way things can and do happen"; it is by applying common sense and generalizing based on their accumulated knowledge about human behaviour that trial judges assess whether a narrative is plausible or "inherently improbable" (para. 73);

- "Common sense underpins well-established principles guiding credibility assessment — including the now-universal idea that witnesses who are inconsistent are less likely to be telling the truth — and assists in assessing the scope and impact of particular inconsistencies. Reliability also requires reference to common-sense assumptions about how witnesses perceive, remember, and relay information, invoking generalizations about how individuals tend to present information that they are remembering accurately and completely, as opposed to matters about which they are unsure or mistaken. A trial judge may, for example, infer that a witness was credible yet unreliable because they appeared sincere but displayed indicia that tend to suggest an unclear or uncertain memory (e.g., equivocation, phrases such as "hmm . . . let me see", long pauses, or failure to provide much detail). (para. 74).

Finally, in their footnote 4, the court set out factors on which credibility and reliability determinations are properly made:

> Credibility assessments engage factors such as: the internal consistency and coherence of the witness's testimony and the incidence of inconsistencies with prior statements, especially those made under oath ….; consistency with other accepted facts and probable circumstances ….; the plausibility of the narrative presented by the testimony ….; evidence of a motive to fabricate; and demeanour, though courts should not rely exclusively on this consideration and should be conservative in according it weight …. Reliability assessments engage factors such as: the conditions under which the witness made the material observations; the level of detail in their testimony; the amount of time that elapsed between the observations and the testimony; and whether any intervening factors may have tainted the witness's memory …., discussing reliability in relation to eyewitness identifications).

Some of those considerations are inapplicable here (e.g., this was not a trial with witness testimony given in person where a direct evaluation of demeanour and the manner and delivery of spoken evidence can be made), but many are and reflect the importance of carefully reviewing the evidence in context and as a whole.

Equitable Principles Against Recasting Transactions To Avoid Tax Consequences

Before getting into any further analysis of the materials put before the Auditor or Review Officer, it is worthwhile considering what the Supreme Court of Canada set out in *Canada (Attorney General) v. Fairmont Hotels Inc.*, 2016 SCC 56 (CanLII), [2016] 2 SCR 720, *Canada (Attorney General) v. Collins Family Trust*, 2022 SCC 26 (CanLII), [2022] 1 SCR 747 and cases referred to therein.

In the *Fairmont Hotels* case, Brown, J., wrote the majority judgment. He starts in para. 1 by observing what the case was about:

> This appeal concerns the conditions under which a taxpayer may ask a court to exercise its equitable jurisdiction to rectify a written legal instrument, where the effect of that instrument was to produce an unexpected tax consequence.

He notes in para. 2 that the lower courts in Ontario had accepted that the parties to the contract had intended it to be "tax neutral", but that in the result it had been found to attract tax, so the parties sought to undo that by way of having their agreement rectified. The lower courts had gone along with that.

In para. 3, Brown, J., says this about trying to use rectification in that context:

> [3] Without disputing that tax neutrality was the parties' intention, for the reasons that follow it is my respectful view that both courts below erred in holding that this intention could support a grant of rectification. Rectification is limited to cases where the agreement between the parties was not correctly recorded in the instrument that became the final expression of their agreement: A. Swan and J. Adamski, *Canadian Contract Law* (3rd ed. 2012), at §8.229; M. McInnes, *The Canadian Law of Unjust Enrichment and Restitution* (2014), at p. 817. It does not undo unanticipated effects of that agreement. While, therefore, a court may rectify an instrument which inaccurately records a party's agreement respecting what was to be done, it may not change the agreement in order to salvage what a party hoped to achieve. Moreover, these rules confining the availability of rectification are generally applicable, including where (as here) the unanticipated effect takes the form of a tax liability. To be clear, a court may not modify an instrument merely because a party has discovered that its operation generates an adverse and unplanned tax liability. I would therefore allow the appeal.

The facts in the *Fairmont Hotels* case are complex. The parties entered into a "complex financing transaction" in 2002 and 2003. Part of those involved reciprocal loans: "With the goal of ensuring foreign exchange tax neutrality, Fairmont — through its subsidiaries FHIW and FHIS — entered into reciprocal loan agreements with Legacy, all of which were transacted in U.S. currency." They adjusted that in 2006 when Fairmont was acquired by other parties and the possibility of there being a "a deemed foreign exchange loss, without corresponding foreign exchange gains" arose. The revised agreement "allowed Fairmont (but not its subsidiaries) to realize both its gains and losses in 2006, thereby fully hedging it against exposure to prospective foreign exchange tax liability."

In 2007, when the sale of the hotels involved with these agreements was sought, leaving out the Fairmont subsidiaries from the 2006 revised agreement proved to be an error. As Brown, J., explains it, "… on the incorrect assumption that the matter of the subsidiaries' foreign exchange tax neutrality had been secured, Fairmont complied with Legacy's request by redeeming its shares in its subsidiaries via resolutions passed by the directors of FHIW and FHIS. This resulted in an unanticipated tax liability, discovered only after the Canada Revenue Agency ("CRA") audited the 2007 tax returns of FHIW and FHIS and questioned Fairmont on those returns."

Fairmont Hotels sought a way around that by having those resolutions rectified. In para. 7 of his reasons, Brown, J., characterizes it thus:

> The respondents now seek to avoid that liability to Fairmont by asking the Court to rectify the 2007 resolutions passed by the directors of FHIW and FHIS. Specifically, they wish to convert Fairmont's share redemption into a loan whereby FHIW and FHIS will loan to Fairmont the same amount that they paid to Fairmont for the share redemption.

Brown, J., noted that the lower courts had followed an Ontario Court of Appeal decision that, in his view, did not conform to prior Supreme Court of Canada judgments on when rectification was available. At para. 19, he explained that:

> [19] I agree with this observation. As I have stressed, rectification is available not to cure a party's error in judgment in entering into a particular agreement, but an error in the recording of that agreement in a legal instrument. Alternatively put, rectification aligns the instrument with what the parties agreed to do, and not what, with the benefit of hindsight, they should have agreed to do. The parties' mistake in *Juliar*, however, was not in the recording of their intended agreement to transfer shares for a promissory note, but in selecting that mechanism instead of a shares-for-shares transfer. By granting the sought-after change of mechanism, the Court of Appeal in *Juliar* purported to "rectify" not merely the instrument recording the parties' antecedent agreement, but that agreement itself where it failed to achieve the desired result or produced an unanticipated adverse consequence — that is, where it was the product of an error in judgment. As J. Berryman observed (in *The Law of Equitable Remedies* (2nd ed. 2013), at p. 510):
>
> > In *Juliar*, the applicants had acted directly on the advice of their accountant. The accountant made a mistake as to the nature of the business ownership and the taxes that were paid prior to the arrangement he advised his clients to pursue. This is not a case for rectification. The clients intended to use the instrument given to them by their accountant. Their motive may have been to avoid tax but that is different from their intent which was to use the very form in front of them.

He adds to that by noting English authorities on whether a parties "fiscal objectives" in entering into a transaction should be permitted to allow for rectification if the desired tax result was not obtained. At paras. 22-23, he rejects the view that that should be permitted:

> [22] Subsequent English authorities confirm that *Re Slocock's Will Trusts* created no distinct threshold for granting rectification in the tax context. In *Racal Group Services Ltd. v. Ashmore* (1995), 68 T.C. 86 (C.A.), the English Court of Appeal made clear that a mere intention to obtain a fiscal objective is insufficient to ground a claim in rectification: ". . . the court cannot rectify a document merely on the ground that it failed to achieve the grantor's fiscal objective. The specific intention of the grantor as to how the objective was to be achieved must be shown

> if the court is to order rectification" (p. 106). Similarly, the court in *Ashcroft v. Barnsdale*, [2010] EWHC 1948, [2010] S.T.C. 2544 (Ch. D.), held that it could not rectify an instrument "*merely* because it fails to achieve the fiscal objectives of the parties to it": para. 17 (emphasis in original). See also D. Hodge, *Rectification: The Modern Law and Practice Governing Claims for Rectification for Mistake* (2nd ed. 2016), at para. 4-145:
>
> > A mere misapprehension as to the tax consequences of executing a particular document will not justify an order for its rectification. The specific intention of the parties (or the grantor or covenantor) as to how the objective was to be achieved must be shown if the court is to order rectification. [Emphasis deleted.]
>
> [23] Finally, *Juliar* does not account for this Court's direction, in *Shell Canada Ltd. v. Canada*, 1999 CanLII 647 (SCC), [1999] 3 S.C.R. 622, at para. 45, that a taxpayer should expect to be taxed "based on what it actually did, not based on what it could have done". While this statement in *Shell Canada* was applied to support the proposition that a taxpayer should not be denied a sought-after fiscal objective merely because others had not availed themselves of the same advantage, it cuts the other way, too: taxpayers should not be judicially accorded a benefit based solely on what they would have done had they known better.

This comment at para. 30 reinforces the point that rectification does not extend to recasting agreements that parties entered into just because the results are not as expected:

> The point, again, is that rectification corrects the recording in an instrument of an agreement (here, to redeem shares). Rectification does not operate simply because an agreement failed to achieve an intended effect (here, tax neutrality) — irrespective of whether the intention to achieve that effect was "common" and "continuing".

At para. 38, he refers to what appears to be argued to be the situation in this review – one where both parties to the agreement say it does not reflect what they intended.

> [38] To summarize, rectification is an equitable remedy designed to correct errors in the recording of terms in written legal instruments. Where the error is said to result from a mistake common to both or all parties to the agreement, rectification is available upon the court being satisfied that, on a balance of probabilities, there was a prior agreement whose terms are definite and ascertainable; that the agreement was still in effect at the time the instrument was executed; that the instrument fails to accurately record the agreement; and that the instrument, if rectified, would carry out the parties' prior agreement.

In the *Fairmont Hotels* case, the parties could not prove that there was such a prior agreement, so their claim for rectification failed.

A similar situation arose in *Canada (Attorney General) v. Collins Family Trust*, 2022 SCC 26 (CanLII), [2022] 1 SCR 747. At para. 1, Brown, J., wrote the following summary of what that case was about:

> [1] This Court has barred access to rectification where sought to achieve retroactive tax planning (*Canada (Attorney General) v. Fairmont Hotels Inc.*, 2016 SCC 56, [2016] 2 S.C.R. 720, at para. 3). Taxpayers should be taxed based on what they actually agreed to do and did, and not on what they could have done or later wished they had done (*Fairmont Hotels*, at paras. 23-24, citing *Shell Canada Ltd. v. Canada*, 1999 CanLII 647 (SCC), [1999] 3 S.C.R. 622, at para. 45). At issue in this appeal is whether taxpayers are also barred from obtaining other equitable relief — here, rescission of a series of transactions — sought to avoid unanticipated adverse tax consequences arising from the ordinary operation thereon of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). As I explain below, they are.

The British Columbia courts had held that rescission was possible on the basis that the parties' objectives would be thwarted otherwise. The Supreme Court of Canada held that the principle explained in *Fairmont Hotels* (that rectification was not available for that purpose) applied to other forms of equitable relief (such as rescission). That was because, as is stated at para. 7:

> [7] It suffices to dispose of this matter by allowing the appeal on the first ground. For the reasons that follow, a limiting principle of equity and, relatedly, principles of tax law stated in *Fairmont Hotels* and *Jean Coutu* are irreconcilable with the conclusion in *Pitt v. Holt*. Equity has no place here, there being nothing unconscionable or otherwise unfair about the operation of a tax statute on transactions freely undertaken. It follows that the prohibition against retroactive tax planning, as stated in *Fairmont Hotels* and *Jean Coutu*, should be understood broadly, precluding *any* equitable remedy by which it might be achieved, including rescission.

At para. 12, Brown, J., states clearly that "taxpayers are to be taxed, in accordance with the applicable tax statute's ordinary operation, based on what they actually agreed to do, and not on what they could have done." In para. 15, he quotes from what Chief Justice Wagner had written in the *Jean Coutu* case, that "allowing the amendment of the written documents in the instant appeal would amount to retroactive tax planning."

From para. 16, the court summarizes its ruling and the effect of the law stated in *Fairmont Hotels* and *Jean Coutu*:

> [16] From *Fairmont Hotels* and *Jean Coutu*, taken together, I draw the following interrelated principles relevant to deciding this appeal:
>
> (a) Tax consequences do not flow from contracting parties' motivations or objectives. Rather, they flow from the freely chosen legal relationships, as established by their transactions (*Jean Coutu*, at para. 41; *Fairmont Hotels*, at para. 24).
>
> (b) While a taxpayer should not be denied a sought-after fiscal objective which they should achieve on the ordinary operation of a tax statute, this proposition also cuts the

> other way: taxpayers should not be judicially accorded a benefit denied by that same ordinary statutory operation, based solely on what they would have done had they known better (*Fairmont Hotels*, at para. 23, citing *Shell Canada*, at para. 45; *Jean Coutu*, at para. 41).
>
> (c) The proper inquiry is no more into the "windfall" for the public treasury when a taxpayer loses a benefit than it is into the "windfall" for a taxpayer when it secures a benefit. The inquiry, rather, is into what the taxpayer agreed to do (*Fairmont Hotels*, at para. 24).
>
> (d) A court may not modify an instrument merely because a party discovered that its operation generates an adverse and unplanned tax liability *(Fairmont Hotels*, at para. 3; *Jean Coutu*, at para. 41).

Application of the law stated in Fairmont Hotels and Collins Trust to the present case

s.22(3)(d)

There are many reasons that that does not work, some of which Brown, J., sets out in *Fairmont Hotels* and in *Collins Trust*. If there is a general bar on courts granting any equitable relief such as rectification and rescission so that taxpayers may obtain better tax outcomes than the agreements they freely entered into result in, then it is difficult to see how taxpayers and their contractual counterparts may unilaterally do so by terminating one agreement and retroactively purporting to enter into others so to as demand such tax outcomes.

Indeed, the courts have held that is the rule. In *Collins Trust* case at para. 21, the court held:

> [21] *Canada Life* also relied on *771225 Ontario Inc. v. Bramco Holdings Co.* (1995), 1995 CanLII 745 (ON CA), 21 O.R. (3d) 739, where the Ontario Court of Appeal had declined to relieve a taxpayer of a mistake that left her company liable for a land transfer tax, saying: ". . . courts do not look with favour upon attempts to rewrite history in order to obtain more favourable tax treatment" (p. 742). This conclusion flowed from the principle that tax liability is based on what was actually agreed upon and done, not on what, in retrospect, a taxpayer should have done or wished it had done.

At para. 23, it was put more bluntly: "legal instruments cannot be undone or otherwise modified to avoid a tax liability arising from the ordinary operation of a tax statute."

s.22(3)(d)

s.22(3)(d)

s.22(3)(d)

Panel's Findings and Conclusion

The Panel agrees with the Review Officer's determination that the evidence provided by the Owners here is insufficient to support the exemption from the Vacancy Tax for the Property for the 2022 Vacancy Reference Year.

The Panel will not repeat here the comments and observations it has made throughout these reasons. It is apparent that the Owners entered into a lease with s.22(1) . They were content, no doubt, to receive rent at the rates set out in that lease. The Panel does not accept that there was a termination agreement made between s.22(1) or at any time. The document that was proffered was created after the fact and for purposes of the Vacancy Tax audit and subsequent proceedings. s.22(3)(d)
s.22(3)(d) .

s.22(3)(d)

s.22(3)(d)

s.22(3)(d)

[redacted]

s.22(3)(d)

[redacted]

That is sufficient to dispose of this review. But there is another aspect of this matter that is troubling. Section 7.1 of the Vacancy Tax Bylaw provides as follows:

> 7.1 A parcel of residential property in respect of which a registered owner:
> (a) fails to make a property status declaration as required by this by-law;
> (b) makes a false property status declaration;
> (c) fails to provide information or to submit required evidence to the Collector of Taxes in accordance with this by-law, including, without limitation, the information or evidence that may be required pursuant to Sections 4.7, 4.8 or 4.9 of this by-law; or
> (d) provides false information or submits false evidence to the Collector of Taxes;
> is considered to be vacant property and is subject to the vacancy tax.

s.22(3)(d)

[redacted]

s.22(3)(d)

[redacted]

s.22(3)(d)

[redacted]

s.22(3)(d)	
s.22(3)(d)	
s.22(3)(d)	

For those and for the other reasons noted in the detailed analysis of this case set out above, the Panel finds that section 7.1 affords a further basis for finding the Property should be deemed vacant for the 2022 Vacancy Reference Year.

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property owner is entitled to an exemption from taxation of the Property for the 2022 Vacancy Reference Year.

The Panel has thus arrived at a final determination that Vacancy Tax should be imposed on the above noted property.

Review Determination: DENIED

Panel: Robert D. Holmes, K.C.
Date: April 2, 2025

The City of Vancouver Vacancy
Tax Review Panel Decision

Decision Date: March 28, 2025

File Number: RC-2025-00020

Requestor: s.22(1)
(the "Owner")

Vacancy Reference Year: 2022

Folio: s.22(1)

Civic Address: s.22(1)
(the "Property")

Introduction

At the request of the Owner, the Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the Owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Owner's Exemption Claim for the 2022 Vacancy Reference Year

The Owner owned the Property since s.22(1) It was declared owner-occupied for that year and for 2022. For the 2022 Vacancy Reference Year, the Owner clarified that declaration saying that the Property was occupied by s.22(1) as their principal residence for at least 6 months of the year and s.22(1)

Audit Process and Determination

By a letter dated October 4, 2023, an Auditor with the City's Vacancy Tax Office wrote to the Owner and advised that the declaration claiming an exemption of the Property for the 2022 Vacancy Reference Year was being audited. The Owner was advised of the online website and asked to provide documents and information set out there to support the exemption claim. A deadline of November 7, 2023 was set for doing that.

The Owner provided some documents, but not all those identified online (which sets out items from the Bylaw). The Owner's evidence included:

- A copy of a s.22(1) with a sticker having the Property address on it
- A BC Hydro bill for a period in 2023 addressed to the Owner at the Property
- s.22(1), not the Property's
- An ICBC letter to the Owner in 2023 with the Owner's address set out as that of the Property

- A copy of a s.22(1) s.22(1)
- ICBC Owner's Certificate and Certificate of Insurance s.22(1) listing the s.22(1) s.22(1) and with the Property as the address
- s.22(1) address and dated June 8, 2023 at the Property address
- s.22(1) and statements for 2023 showing the Owner's name at the Property address

The online responses of the Owner indicated that s.22(1)

The Owner provided a letter to the Auditor dated November 7, 2023 setting out the following information:

s.22(1)

s.22(1)

s.22(1)

s.22(1)

Unfortunately, documentary evidence as to s.22(1) actually residing in the Property in the Vacancy Reference Year was not provided. The Auditor noted that s.22(1) was provided, s.22(1)

s.22(1)

By a letter dated February 16, 2024, the Auditor advised the Owner that the documents provided to that point were insufficient, setting out reasons for that as follows:

> Thank you for providing the evidence submitted to date. Evidence reviewed as follows:
> • Evidence in the name of the homeowner cannot be accepted as they are not the declared permitted occupant and s.22(1) s.22(1) within the 2022 vacancy reference period.
> • s.22(1)
> for the permitted occupant spanning 1 of the 6 months required within the vacancy reference period.

The February 16, 2024 letter went on to set out the nature of the documentary evidence required, as follows:

> In order to support the declaration, please provide the following documents:
>
> A. Any one of the following primary documents for the permitted occupant:
>
> • BC Driver's Licence valid for at least six months of 2022;
> Note: If the BC Driver's Licence was valid for less than six months of 2022 or has been modified by a sticker, an ICBC residential address history is required. This document can be obtained for free online: https://onlinebusiness.icbc.com/clio/;
> • BC Services Card or BCID Card valid for at least six months of 2022;
>
> B. Any three of the following secondary supporting documents for the permitted occupant: *(Note: all documents must display the occupant's name, the property address, and the date of issuance.)*
>
> • Homeowners insurance naming the occupant as a named insured covering at least six months of 2022;
> • ICBC vehicle insurance and registration covering at least six months of 2022;
> • Correspondence from a government authority issued within 2022 (*Note: City of Vancouver, BC Speculation Tax and Land Title documents not accepted*);
> • CRA Notice of Assessment with date issued in 2022 (e.g. CRA Notice of Assessment for the 2021 tax year);
> • Bank statements issued in at least six months of 2022;
> • Cell phone bills issued in at least six months of 2022;
> • Cable or internet invoices issued in at least six months of 2022;
> • Employer-issued T4 for the 2021 tax year or paystubs issued in at least six months of 2022;
> • Delivery invoices/receipts issued in at least six months of 2022.

The February 16, 2024 letter set a deadline of March 4, 2024 for the requested documents to be provided.

No response was provided by the Owner. On March 5, 2024, the Auditor wrote the Owner and again sought the documents identified online and in the February 16, 2024 letter. A new deadline of March 19, 2024 was set.

By a letter dated March 22, 2024, the Auditor wrote the Owner and advised as follows:

> This property was declared as the principal residence of a permitted occupant. For the purposes of the Vacancy Tax bylaw, an individual can have only one principal residence and, if they have more than one, they cannot designate which one is their principal residence. According to the bylaw, a "principal residence" means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills.
>
> The owner or permitted occupant is not required to occupy the property for any period of time, as long as the property is their principal residence. A second home that is used occasionally or intermittently by the registered owner or his/her guests (i.e. it is not a principal residence), and is not occupied by a tenant or subtenant for at least six months of the year (in periods of 30 or more consecutive days), is considered vacant and subject to the vacancy tax, unless a specific exemption applies.

The Auditor added that the following documents provided by the Owner had been reviewed and were found to be insufficient for these reasons:

> During the course of the audit, you provided evidence in support of a principal residence declaration. The evidence received to date is reviewed as follows:
>
> • Documents in the name of the homeowner cannot be accepted as they are not the s.22(1) as their principal residence within the 2022 vacancy reference period.
>
> • s.22(1) for the permitted occupant spanning 1 of the 6 months required within the vacancy reference period.
>
> • s.22(1) cannot be accepted as primary evidence for the permitted occupant as the address does not match the civic address of the property under audit.
>
> • s.22(1) cannot be accepted as secondary supporting evidence for the permitted occupant as the address does not match the civic address of the property under audit.
>
> Based on the evidence provided to date, we do not consider that this property was the principal residence of a permitted occupant for at least six months in 2022.

A new deadline of April 5, 2024 was set for the delivery of documents described in earlier letters and repeated here.

Apparently, there were several efforts on each side to have a telephone discussion, but those did not succeed for a time. Finally, at some point in time (no date is set out in the Auditor's note), the Owner and s.22(1)
s.22(1)

By a letter dated April 2, 2024, the Auditor wrote the Owner and advised as to the results of the audit. The exemption claim was disallowed and the Property was found to be subject to the Vacancy Tax for the 2022 Vacancy Reference Year. The Auditor set out the following:

> The reason(s) for our non-compliant conclusion are as follows:
> ·Insufficient Evidence
> Based on the evidence provided, the City determines that this property was not the principal residence of an occupier in 2022, and is considered vacant per Section 2 of the Vacancy Tax By-Law (No.11674).

The Owner was dissatisfied with the Auditor's determination that the Property was not exempt from the Vacancy Tax and decided to file a Notice of Complaint seeking a Review by a Vacancy Tax Review Officer. s.22(1) wrote a letter dated June 20, 2024 in which s.22(1) .

The Owner's June 20, 2024 letter is notable in setting out that:

> s.22(1)

s.22(1)

Review Officer's Review and Determination

The Review Officer spoke by telephone with the Owner on July 11, 2024. The notes of that conversation s.22(1) [redacted]

By a letter dated July 11, 2024, the Review Officer confirmed that the Notice of Complaint process was underway and noted that the following materials had been submitted on behalf of the Owner, but advised that they did not support the claim for exemption based on s.22(1) [redacted] residence for the first 6 months or more in the 2022 Vacancy Reference Year. The Review Officers comments on that evidence were as follows:

Evidence provided at Notice of Complaint:

- Vacancy Tax reminder notice – does not support the 2022 declaration.
- Letter of explanation – does not support the 2022 declaration.
- s.22(1) [redacted] – does not support the 2022 declaration.
- s.22(1) [redacted] – does not support the 2022 declaration.

s.22(3)(d) [redacted]

Those documents listed were substantially the same as the ones set out in the Bylaw and that the Auditor had several times repeated to the Owner as being required to prove s.22(1) [redacted] s.22(1) [redacted].

Sections 4.8 and 4.9 of the Bylaw set out the requirement for providing evidence and spell out the "information or evidence" that Council regarded as important, as follows:

> 4.8 The Collector of Taxes may require a registered owner to submit evidence to verify a property status declaration and the status of the property.
>
> 4.9 The information or evidence required by the Collector of Taxes pursuant to this by-law may include but is not limited to:
>
> (a) copies or certified copies of:
>
> i. ICBC vehicle insurance and registration,

ii. government-issued personal identification, including, without limitation, driver's license, BCID card, British Columbia Services Card,
iii. utility bills,
iv. income tax returns and notices of assessment,
v. tenancy agreements,
vi. wills, grants of probate, or grants of administration,
vii. employment contracts, pay statements or records of employment,
viii. verification of residence in long term or supportive care,
ix. verification of educational enrolment form,
x. separation agreements,
xi. court orders,
xii. insurance certificates for homeowners or tenants insurance,
xiii. strata by-laws, minutes of strata meetings or records prepared or maintained by the strata; and

(b) statutory declarations or affidavits regarding the status of the property.

The Review Officer explained in the letter sent to the Owner what would be useful concerning the Property and the exemption claimed here, as follows:

Please provide as many documents from this list as you can s.22(1)

•s.22(1) :

Dates (dd/mm/yyyy to dd/mm/yyyy)s.22(1)

Reasons why primary and supporting documentation are not available.

• 2022 Home Insurance Policy or occupant's (tenant's) insurance or the occupant being listed on the home insurance policy as an additional insured (ensuring the policy covers 6 months or more in 2022)
• 2022 ICBC vehicle registration and insurance (ensuring the policy covers 6 months or more in 2022)
• 2021 tax year CRA T-Slips (T4/T5/T3)
• 2021 tax year CRA Notice of Assessment, issued in 2022
• Utility Bills for 6 months in 2022 (BC HYDRO / FORTIS BC) – each utility provider counts as 1 supporting document (if both BC Hydro and Fortis BC are submitted they count towards 2 supporting documents). Please provide the FULL invoice (all pages) not partial invoices or screenshots/screen snips.
• Any 2022 dated correspondence from a government authority (e.g. Canada Child Benefit, Canada Pension Plan (CPP), Old Age Security or Guaranteed Income Supplement (OAS/GIS), Employment Insurance (EI).
• Internet/cable bills to s.22(1) t in 2022. (Preferably spanning 6 months in 2022).
• Cellphone bills to s.22(1) in 2022. (Preferably spanning 6 months in 2022).
• Food delivery receipts to s.22(1) in 2022. (Preferably spanning 6 months in 2022).

• Online order receipts to s.22(1) in 2022. (Preferably spanning 6 months in 2022).
• Prescription receipts to s.22(1) in 2022. (Preferably spanning 6 months in 2022).
*Medical information can be redacted, please provide the name, address, and issuance date of the prescription.
• Dental or health insurance claim receipts/statements to s.22(1) in 2022. (Preferably spanning 6 months in 2022).
*Medical information can be redacted, please provide the name, address, and issuance date of the prescription.
• Investment statements to s.22(1) in 2022. (Preferably spanning 6 months in 2022).
• s.22(1) for 2022 (a sample of 6 months of history in 2022 is requested, not a year).
• s.22(1)
• s.22(1)
• Any property maintenance or service contracts done at s.22(1) name in 2022.
• Any strata infractions or parking tickets in 2022 with s.22(1) s.22(1)
Documents should display the permitted occupant's name, appropriate address, and should have been issued between January 1, 2022 and December 31, 2022.

A deadline of July 25, 2024 was set.

The Owner and s.22(1) provided some further materials. But they did not meet what was requested or provide confirmation of s.22(1)

For example, s.22(1)
s.22(1)

s.22(1)

s.22(1)

s.22(1)

By a letter dated March 6, 2025, the Review Officer advised the Owner that the Notice of Complaint was dismissed and the determination that the Property was subject to the Vacancy Tax for the 2022 Vacancy Reference Year was upheld.

The Review Officer set out reasons as follows:

> This letter is to inform you that the Vacancy Tax Review Officer has concluded their review of your
> submitted complaint and all supporting documents provided in support of your Property Status Declaration.
>
> Based upon a review of your submitted information and evidence to support your complaint, the Vacancy Tax Review Officer has determined that your property remains subject to the Vacancy Tax.
>
> The reasons for the determination are as follows:
>
> A "principal residence" means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence.
>
> The Vacancy Tax Review Officer considered the evidence provided was not sufficient to determine that this property was the principal residence of an occupier for at least six months in the vacancy reference period, according to section 2.2 (a) of the bylaw. The evidence provided did not demonstrate that the property was established as the principal residence of the occupant.
>
> If the property is not the principal residence of an occupier or tenanted to an arm's length tenant for at least six months of the vacancy reference period, and does not qualify for an exemption, it is considered vacant and the Vacancy Tax will apply.
> -

Based upon this determination, the Vacancy Tax Notice is due and payable.

s.22(3)(d)

[redacted]

The Burden of Proof

It is important to remember that the Panel is dealing with a taxing provision in a bylaw. The law used to be that such provisions were construed strictly against the taxing authority when they involve the imposition of a tax. See, for example, the comments by Estey, J., in *Stubart* at p. 577 about that part of legal history: "any ambiguities in the charging provisions of a tax statute were to be resolved in favour of the taxpayer; the taxing statute was classified as a penal statute."

But equally so, with claims for exemptions, taxpayers were accorded no favors:

> "Where the taxpayer sought to rely on a specific exemption or deduction provided in the statute, the strict rule required that the taxpayer's claim fall clearly within the exempting provision, and any doubt would there be resolved in favour of the Crown. See *Lumbers v. Minister of National Revenue* (1943), 2 OTC 631 (Ex.Ct.), affirmed 1944 CanLII 52 (SCC), [1944] S.C.R. 167; and *WA. Sheaffer Pen Co. v. Minister of National Revenue,* 1953 CanLII 758 (CA EXC), [1953] Ex. C.R. 251. Indeed, the introduction of exemptions and allowances was the beginning of the end of the reign of the strict rule."

In the result in the *Stubart* case, the Supreme Court rejected the " literal" approach to construing tax statutes and shifted interpretation somewhat so as to allow for a somewhat more liberal approach. That approach involved looking at the words in question in the total context of the taxing statute. The purpose of doing so was to ensure that the objective and spirit of the statute were applied.

In the recent case of *Deans Knight Income Corp. v. Canada,* 2023 SCC 16, however, the Supreme Court noted that what remained was a general principle drawn from a decision of the House of Lords:

> [46] .... In *Commissioners of Inland Revenue v. Duke of Westminster,* [1936] A.C. 1 (H.L.), Lord Tomlin recognized the foundational principle that "[e]very man is entitled ifhe can to order his affairs so as that the tax attaching under the appropriate Acts is less than it otherwise would be" (p. 19). The principle that taxpayers can order their affairs to minimize the amount of tax payable has been affirmed by this Court on numerous occasions (see, e.g., *Stubart,* at

p. 552; *Trustco,* at para. 11; *Copthorne,* at para. 65).

Further, the law provides that a taxpayer seeking an exemption from tax is usually deemed to have the burden of proving factual matters required to establish the exemption. Of course, that applies to factual matters and not to interpretation of the law. There is no burden on any party with respect to interpreting the law. That is the role of the adjudicator.

The Supreme Court of Canada confirmed those principles to be generally applicable in *Ontario (Minister of Finance) v. Placer Dome Canada Ltd., 2006* SCC 20. At para. 26, the court noted that "The fundamental rules on the allocation of evidentiary burden in this matter remain valid .... The taxpayer bears the burden of displacing the Minister's factual assumptions, but the concept of burden of proof is not applicable to the interpretation of a statute, which is necessarily a question of law. At para. 29, the court added that: "the meaning of the relevant provision is a question of law, and there is no onus on either party in respect of it - the duty to ascertain the correct interpretation lies with the court."

Here, there is no specific issue of legal interpretation that the Owner or Review Officer have raised. Instead, the matter comes to be decided based on an evaluation of the evidence and whether the facts proven satisfy the requirements of the Vacancy Tax Bylaw for exemption from the tax for the Property for the 2022 Vacancy Tax Reference Year.

Law Relating to Evaluation of Evidence

All evidence must be subjected to appropriate scrutiny. O'Halloran, J.A., in the oft-cited B.C. Court of Appeal decision in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, explains how an evaluation of the credibility of evidence given by interested parties should be made:

> In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

Winteringham, J., referred to that passage in her decision in *Latif v Nair*, 2024 BCSC 398 at para. 51. There, she dealt with a case where one party alleged an agreement to sell property at a certain price, but the other denied there was certainty about the terms. She noted the plaintiff bore the burden of proof. She reviewed different components of the claim and the evidence. At para. 130, she commented that, "First, and despite the plaintiffs' position throughout the proceedings that the parties agreed on price, property and parties, I am not so convinced." After reviewing inconsistencies and oddities about the evidence, she concluded that the plaintiff had failed to prove agreement as to the price.

Next, at para. 148, she says "The plaintiffs have not sufficiently demonstrated that a *consensus ad idem* was reached amongst the parties." She addressed whether the payment of money said to be a deposit allayed concerns whether there was a contract, but found they did not. Payments did not cure the underlying flaws in the plaintiff's case about whether there was a contract or not. At para. 150, she finds that "the plaintiffs' payment of the deposits to him did not resolve any uncertainties in respect of

terms of the transaction. To this extent, this case is similar to others where the payment of the deposits did not resolve uncertainties in contractual relations."

The Supreme Court of Canada recently reiterated in *R. v. Kruk*, 2024 SCC 7 that evaluating credibility and reliability is grounded in common sense:

- "It is widely recognized that testimonial assessment *requires* triers of fact to rely on common-sense assumptions about the evidence." (para 72);

- "…common-sense assumptions necessarily underlie *all* credibility and reliability assessments. Credibility can only be assessed against a general understanding of "the way things can and do happen"; it is by applying common sense and generalizing based on their accumulated knowledge about human behaviour that trial judges assess whether a narrative is plausible or "inherently improbable" (para. 73);

- "Common sense underpins well-established principles guiding credibility assessment — including the now-universal idea that witnesses who are inconsistent are less likely to be telling the truth — and assists in assessing the scope and impact of particular inconsistencies. Reliability also requires reference to common-sense assumptions about how witnesses perceive, remember, and relay information, invoking generalizations about how individuals tend to present information that they are remembering accurately and completely, as opposed to matters about which they are unsure or mistaken. A trial judge may, for example, infer that a witness was credible yet unreliable because they appeared sincere but displayed indicia that tend to suggest an unclear or uncertain memory (e.g., equivocation, phrases such as "hmm . . . let me see", long pauses, or failure to provide much detail). (para. 74).

Finally, in their footnote 4, the court set out factors on which credibility and reliability determinations are properly made:

> Credibility assessments engage factors such as: the internal consistency and coherence of the witness's testimony and the incidence of inconsistencies with prior statements, especially those made under oath ….; consistency with other accepted facts and probable circumstances ….; the plausibility of the narrative presented by the testimony ….; evidence of a motive to fabricate; and demeanour, though courts should not rely exclusively on this consideration and should be conservative in according it weight …. Reliability assessments engage factors such as: the conditions under which the witness made the material observations; the level of detail in their testimony; the amount of time that elapsed between the observations and the testimony; and whether any intervening factors may have tainted the witness's memory …., discussing reliability in relation to eyewitness identifications).

Some of those considerations are inapplicable here (e.g., this was not a trial with witness testimony given in person where a direct evaluation of demeanour and the manner and delivery of spoken evidence can

be made), but many are and reflect the importance of carefully reviewing the evidence in context and as a whole.

Panel Review and Determination of the Facts and Law

The basis for the claim for exemption here is that the Property was the principal residence of s.22(1) As was noted by the Auditor and the Review Officer, the evidence does not support that. Much of their attention and their reasons focus on whether documentary evidence to support the claimed exemption was provided. They conclude it was not. That is correct. But the conclusion that the claimed exemption is not valid is demonstrated by the evidence that the Owner and s.22(1) gave.

s.22(1)

s.22(1)

The Bylaw definition of principal residence is clear:

> "principal residence" means the usual place where an individual lives, makes their home and conducts their daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence;

s.22(1)

In short, there is nothing in this evidence that sets up a credible basis for concluding that the Property was ever the principal residence of s.22(1)

Section 2.2(a) of the Bylaw provides that:

> 2.2 Residential property is considered to be unoccupied in the following circumstances:
> (a) the residential property is not the principal residence of an occupier…

The only person whose name was put forward in relation to the claimed exemption as being the occupant of the Property s.22(1) . Given that the Property s.22(1) , the property is "considered to be unoccupied" for the 2022 Vacancy Reference Year.

Unoccupied property is property that is subject to the Vacancy Tax.

Section 2.1 provides that:

> 2.1 A vacancy tax shall be imposed on every parcel of taxable property in accordance with this By-law.

Taxable property is defined as follows in the Bylaw:

> "taxable property", in relation to a vacancy tax, means residential property that is all of the following:
> (a) vacant property;
> (b) not exempt from taxation under either section 373 or 396 of the Vancouver Charter; and
> (c) not exempt from the vacancy tax under this by-law;
> "tax year" means the calendar year in which the vacancy tax is imposed;

The Property was vacant property in 2022. It was not exempt under section 373 or 396 of the Vancouver Charter. It was not exempt under any provision of the Bylaw.

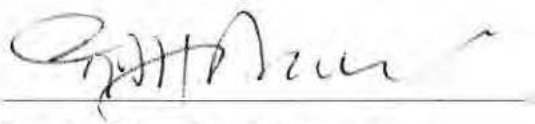
The facts here demonstrate that the Property s.22(1) in 2022, whether for 6 months or otherwise. s.22(1) s.22(1) Their failure to provide customary documentation evidencing that a property is the "principal residence" leads to an inference that the Property was not the "principal residence" of s.22(1) in 2022.

But even if there were some credible evidentiary basis for arguing otherwise, the Panel agrees with the Auditor and the Review Officer's determination that it was insufficient. For example, s.22(3)(d)

In conclusion, having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the Owner is entitled to an exemption from taxation for the Property for the 2022 Vacancy Reference Year.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. s.22(1) [redacted] Based on the policy of the Bylaw to minimize vacancies, alongside the analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax should be imposed on the above noted property.

Review Determination: DENIED



Panel: Robert D. Holmes, K.C.
Date: March 28, 2025