IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Vancouver (City) v. Karuna Health Foundation,* 2018 BCSC 2221

Date: 20181213
Docket: S176912
Registry: Vancouver

Between:

City of Vancouver

Petitioner

And

Karuna Health Foundation, Weeds Glass & Gifts Ltd., James McManus (dba Medicanna), Centretown Medicinals Inc. (dba Bloom Dispensary)

Respondents

And

Attorney General of Canada and Attorney General of British Columbia

Respondents pursuant to the *Constitutional Question Act*

Before: The Honourable Chief Justice Hinkson

Reasons for Judgment

Counsel for the Petitioner:	I. Dixon
Counsel for the Attorney General of British Columbia:	M.B. Rankin K.J. Hamilton
Counsel for the Attorney General of Canada:	M.A. Nicolls A. Gatti A. Patel
Counsel for the Respondents, Karuna Health Foundation:	R.W.E. Laurie A. Huynh

Counsel for the Respondents James McManus:	J. Lloyd J.W. Conroy, Q.C. M. Jackson
Counsel for the Respondents Weeds Glass & Gifts Ltd., and Canadian Weed Cannabis Society	D.P. Davison D.R. North
Place and Date of Hearing:	Vancouver, B.C. September 4-7, 10-14, 17, 2018
Place and Date of Judgment:	Vancouver, B.C. December 13, 2018

I. INTRODUCTION

[1] This proceeding was initiated by the City of Vancouver ("City"), who filed several petitions beginning in July 2017 against respondents in this and other actions who operate medical cannabis dispensaries ("non-government respondents"). The City argues that these respondents are carrying on business in contravention of its *Licence Bylaw* No. 4450 and seeks injunctive relief against them.

[2] The non-government respondents contend that ss. 3(1) and 24.5 of the City's *Licence By-law* and s. 11.28 of its *Zoning and Development By-law* No. 3735 [*Zoning Bylaw*] (together the "Impugned Bylaws") are *ultra vires* the City's jurisdiction because they are a colourable attempt to legalize the possession and sale of cannabis, and that the doctrines of constitutional doctrines of paramountcy and interjurisdictional immunity apply. They also argue that the Impugned Bylaws—as well as certain federal legislation—violate ss. 2(b), 7, and 15 of the of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [*Charter*], and should be declared of no force and effect. In the alternative, they argue that they should be granted an exemption from the Impugned Bylaws and any tickets issued to them should be declared void and struck.

[3] As will be evident from the dates of hearing set out above, the hearing of these petitions occurred prior to the coming into force of the *Cannabis Act*, S.C. 2018, c. 16, which:

- amended the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 [*CDSA*], by amending various sections and repealing the provisions that related to marihuana;

- amended the *Non-smokers' Health Act*, R.S.C., 1985, c. 15 (4th Supp.), to prohibit the smoking and vaping of cannabis in federally-regulated places and conveyances; and

- repealed Part XII.1 of the *Criminal Code*, R.S.C. 1985, c. C-46.

[4] Therefore, at the time that these petitions were commenced, cannabis was only legally available through the *Access to Cannabis for Medical Purposes Regulations*, SOR/2016-230 [*ACMPR*], as repealed by SOR/2018-147, s. 33.

II. THE PARTIES

[5] The petitioner City is a municipality incorporated pursuant to the *Vancouver Charter*, S.B.C. 1953, c. 55. In 2015, the City enacted amendments to the City's *Zoning Bylaw* and the *Licence Bylaw*, which created a bylaw regime referred to as Medical Marijuana Related Use ("MMRU"). In 2018, certain bylaw provisions were repealed and others amended, leaving only, as relevant to these proceedings, s. 3(1) of the *Licence Bylaw* and s. 11.28 of the *Zoning Bylaw* and their related definitions ("Cannabis Regulations"). These bylaws are outlined in more detail below.

[6] The respondent Karuna Health Foundation ("Foundation") is a society incorporated pursuant to the *Societies Act*, S.B.C. 2015, c. 18. The respondent Sacha Canow is a director of the Foundation and has operated two medical cannabis dispensary businesses in Vancouver at 4510 Victoria Drive and 3636 West 4th Avenue since 2009 and 2014, respectively.

[7] The Foundation applied for a development permit from the City under the MMRU in 2015. In October 2015, its application was denied with the advice that the dispensary would either have to close or be relocated. After the denial, the Foundation continued to operate dispensaries at the same locations, despite the fact that neither the Foundation nor Mr. Canow held business licences issued by the City. In August 2017, the City issued a business licence to the Foundation's Victoria Drive location pursuant to the MMRU, one of only 11 such licences issued up to that date.

[8] The respondents Weeds Glass and Gifts Ltd. ("Weeds Glass") and Canadian Weed Cannabis Society ("Society") are a corporation and a society, respectively,

which operate three marijuana dispensaries in Vancouver, located at 1108 Richards Street, 104-1807 Burrard Street, and 6657 Main Street. The Society applied for a development permit in 2015 for its business operation at 1108 Richards Street under the MMRU. In October 2015, it was advised that its application was denied and it was to relocate or close altogether.

[9] Despite this advice, the Society has continued its operations at the same address with what it asserts is the implied or actual consent of the City, despite its concession that beginning in April 2016 it began to receive tickets from the City. Neither the Society nor Weeds Glass have business licences for any of the three locations, nor do any of the locations comply with the City's *Zoning Bylaw*.

[10] The respondent James McManus, who does business as Medicanna, operates a dispensary located at 3673 East Hastings Street in Vancouver. Medicanna operates as a sole proprietorship. In the summer of 2015, Medicanna applied to the City for a development permit. Its application was denied in October 2015 with the advice that the business would have to close or relocate. The business did neither and has remained in operation since.

[11] The other non-government respondents also operate medical marijuana dispensaries.

[12] All of these respondents are registered companies or societies under the laws of British Columbia, with the exception of Mr. McManus and Centretown Medicinals Inc., which is a company incorporated under the laws of Canada, doing business as Bloom Dispensary. They all operate businesses without business licences. None of the non-government respondents' dispensary locations comply with the City's *Zoning Bylaw*. None have a regulatory relationship with Health Canada.

[13] Four of the non-government respondents appeared before me. Those who did not appear before me have agreed to be bound by the outcome of these

proceedings wherein the Foundation, Mr. Canow, the Society, and Mr. McManus represent them.

[14] The Attorney General of Canada and the Attorney General of British Columbia ("government respondents") are respondents to these proceedings by virtue of questions posed pursuant to the *Constitutional Questions Act*, R.S.B.C. 1996, c. 68.

III. THE PETITIONS AND PROCEDURAL BACKGROUND

1. Orders Sought by the Parties

[15] The petitioner City seeks an order directing that the non-government respondents, and all other persons having knowledge of the order, if granted, cease carrying on business at named locations without holding a subsisting licence for that business issued by the City, together with the costs of the proceedings.

[16] The non-government respondents contend that due to the City's prior actions, the petitioner is estopped from enforcing the Impugned Bylaws. In the alternative, they contend that the City's petitions should be dismissed and seek orders that the Impugned Bylaws are *ultra vires* the City, and violate the doctrines of paramountcy and interjurisdictional immunity. They further argue that the *ACMPR* and the *CDSA* (the "Impugned Federal Legislation") and the Impugned Bylaws unduly restrict access to medical marijuana and therefore violate ss. 2(b), 7, and 15 of the *Charter*. To that extent, they say, the legislation should be declared of no force and effect. If this Court finds that the Impugned Bylaws violate the *Charter* but are saved under s. 1, the non-government respondents argue that they should be exempt from the application of the Impugned Bylaws and federal legislation, and that any tickets issued to them by the City be declared void and struck. They also seek special costs in this action.

2. Procedural Steps and Agreements

[17] Beginning in July 2017, the City filed a number of petitions to enforce its *Licence Bylaw*.

[18] On February 26, 2018, the non-government respondents proposed that the proceedings involving the Foundation, Mr. Canow, Mr. McManus, Weeds Glass, and the Society be heard together. I granted a consent order that included a term that any order on the constitutional issues in these proceedings would be binding on all of the petition respondents.

[19] During the course of the hearing of the petitions, I ruled that Mr. McManus had a private interest standing to advance his own rights under ss. 7 and 15 of the *Charter* with regard to the Impugned Federal Legislation, and that the Foundation and Weeds Glass had public interest standing for the same purpose.

[20] As I granted public interest standing to the Foundation and Weeds Glass, those entities are entitled to advance the *Charter* rights of their customers, if they are relevant to these proceedings: see e.g. *R. v. Smith*, 2015 SCC 34 at para. 12.

3. Opinion Evidence

[21] The non-government respondents filed a voluminous record to support their assertions that the provisions of the *ACMPR* and the *CDSA* relating to access to and use of cannabis and cannabis related products violate their *Charter* rights as set out above.

[22] The admissibility of some of this evidence was challenged by the City and the Attorney General of Canada. The petitions before me are focussed on the City's bylaws, and in my view, it is neither necessary nor prudent for me to delve into the constitutionality of the Impugned Federal Legislation. If that legislation is valid, that does not deprive the City of its ability to pass bylaws aimed at zoning and business activities within its jurisdiction. The constitutionality of the federal legislation does not effect the constitutionality of the City's bylaws, absent a finding that the doctrine of federal paramountcy applies. Indeed, the non-government respondent's argument with respect to this doctrine rests on the premise that the Impugned Federal Legislation is valid. Moreover, the bylaws in question cannot make legal that which is illegal. Even if the Impugned Federal Legislation is invalid, that does

not constrain the City's ability to pass bylaws to regulate zoning and business activities within its jurisdiction, provided that is what the bylaws are aimed at.

[23] I have therefore concluded that it is unnecessary for me to resolve the question of the admissibility of the challenged evidence. Where the admissibility is challenged, I have concluded, as I will explain below, that it is both unwise and inappropriate for me to determine the *vires* or *Charter* compliance of the impugned parts of the *ACMPR* and the *CDSA*, and therefore unnecessary to resolve the question of the admissibility of the challenged evidence with respect thereto.

IV. LEGISLATIVE BACKGROUND

1. Authority to Enact Bylaws

[24] Municipalities only have the powers that are given to them by statute: *R. v. Greenbaum,* [1993] 1 S.C.R. 674. In this case, the Province of British Columbia delegated its powers under s. 92 for land-use and business regulation to the City through the *Vancouver Charter*.

[25] The City's *Licence Bylaw* is enacted pursuant to the City's bylaw-making authority under ss. 272 and 273 of the *Vancouver Charter*. The City's *Zoning Bylaw* falls within the City's jurisdiction under s. 565 of the *Vancouver Charter*, which, in part, authorizes the City to enact bylaws which regulate the use of land, buildings, and structures.

[26] The City's authority to enforce its bylaws is found in section 334(1) of the *Vancouver Charter*. That section provides:

> 334(1) A by-law of the Council or of the Board of Parks and Recreation may be enforced, and the contravention of such a by-law may be restrained, by the Supreme Court in a proceeding brought by the city or by the Board of Parks and Recreation, as the case may be.

2. Legislative History of the Bylaws

A. Pre-MMRU

[27] Prior to 2015, when the MMRU was enacted, the City did not explicitly regulate marijuana dispensaries in the City through its bylaws. Sections 3(1) and 4(12), however, were in force and remained so at the hearing of these petitions.

[28] Section 3(1) of the *Licence Bylaw* prohibits a business from operating within Vancouver without a valid licence. That section provides:

> No person shall carry on within the City any business, trade, profession or other occupation without holding a subsisting City license therefor.

[29] Section 4(12) of the *Licence Bylaw* states:

> Every licence holder must comply with all federal and provincial laws, and the issuance by the City of a licence is not representation of any kind that a business is compliant with any federal, provincial or other laws, including by-laws.
>
> [Emphasis added.]

B. MMRU

[30] In 2015, the City amended its *Licence Bylaw* and *Zoning Bylaw* to create the MMRU. At this time, the *Licence Bylaw* was amended to add the following definition to s. 2:

> Retail Dealer - Medical Marijuana-related" means any person not otherwise herein defined who carries on a retail business in which the use of marijuana for medicinal purposes is advocated.

[31] It also added s. 24.5, a comprehensive regulatory regime for "Retail Dealer – Medical Marijuana-related", which included, but was not limited to, the following mandatory operational rules:

- a prohibition on carrying on a business as a "Retail Dealer - Medical Marijuana-related", without having first obtained a licence to do so from the Chief Licence Inspector (s. 24.5(2));
- a requirement to submit a security plan, including a police information check for the owner and all employees, proof of a security alarm contract that provides for monitoring at all times, and

a list of names and photos of all staff members (s. 24.5(7), (9), (22));

- a prohibition against mailing any products from a business licensed under the MMRU (s. 24.5(11));
- a prohibition against allowing minors in the premises (s. 24.5(13));
- a prohibition against advertising or promoting "the use of marijuana to a minor, in or from the business premises of a Retail Dealer-Medical Marijuana-related" (s. 24.5(14));
- a prohibition against "display[ing] items related to the consumption of marijuana in any manner by which the display may reasonably be seen by a minor who is outside the business premises" (s. 24.5(15));
- a prohibition against advertising or promoting the use of marijuana in any manner that may be seen or heard by a minor outside the business premises (s. 24.5(16)); and
- a prohibition against having an ATM on the premises (s. 24.5(19)).

[32] In 2015 the City amended its *Zoning Bylaw* by adding "Medical Marijuana-related Use" under "Retail Uses" to s. 2, defined as follows:

> …[A] retail use in which the use of marijuana for medicinal purposes is advocated, and includes a Compassion Club as defined in the License By-law

[33] It also added the following to section 11, which set out additional regulations for specific uses of land:

> **11.28 Medical Marijuana-related Use**
>
> **11.28.1** Before granting a development permit, the Director of Planning shall:
>
> (a) notify surrounding property owners and residents and have regard to their opinions;
>
> (b) have regard to the liveability of neighbouring residents; and
>
> (c) consider all applicable Council policies and guidelines.
>
> **11.28.2** A Medical Marijuana-related Use is not permitted:
>
> (a) within 300 metres of the nearest property line of a site containing another Medical Marijuana-related Use;
>
> (b) within 300 metres of the nearest property line of a site containing a School - Elementary or Secondary, Community Centre or Neighbourhood House;

> (c) within the area outlined on Figure 1 below [omitted], except for sites with a property line on Hastings Street or Main Street;
>
> (d) on any site with a property line on Granville Street between Robson Street and Pacific Boulevard;
>
> (e) on any site other than a site adjacent to a street that has a painted center line;
>
> (f) in conjunction with any other use; or
>
> (g) in conjunction with an automated banking machine.

[34] The process for acquiring an MMRU business licence was explained in a report provided to Council of the City of Vancouver ("City Council") in 2015. That report provides that persons wishing to conduct a business under the MMRU category would be allowed to do so, provided they first apply for a development permit and a business licence. The policy outlined that a proposed MMRU dispensary was required to find a location that it believed met the City's zoning requirements.

[35] In considering whether to grant the proposed application, the City was to consider:

> a) the Preliminary Application provided by the proposed MMRU that included the required information, including a development permit application, sample drawings of the premises, and proof of satisfaction of the operational requirements; and
>
> b) the location of the proposed MMRU in order to be able to determine if it met the zoning and distancing requirements.

[36] If the proposed MMRU otherwise met the distancing requirement in s. 11.28.2 of the *Zoning Bylaw*, but was within 300 meters of another MMRU, the City would apply its de-clustering process by applying a demerit point system and special inspection.

[37] Once past the initial stages, the proposed MMRU applicant would then submit a full application for a development permit from the City, and ensure compliance with all building and licensing bylaw requirements, including such

required details as the security plan requirements, signage regarding potential health risks, a property use inspection, a good neighbour agreement, and police information checks.

[38] If the development permit was granted, the applicant paid a licencing fee and the City would then issue a business licence.

C. The Cannabis Regulations

[39] In the summer of 2018, the City amended the MMRU regime, through repealing some provisions of the MMRU and amending others, to create the Cannabis Regulations.

[40] On July 11, 2018 the City amended the *Licence Bylaw* to replace the definition of "Retail Dealer – Medical Marijuana-related" with "Retail Dealer – Cannabis", defined as:

> [A]ny person not otherwise herein defined who carries on business of selling cannabis, including any products containing cannabis, directly to the public.

[41] This change was approved at a public hearing on June 26, 2018.

[42] On July 24, 2018, the City further amended the *Licence Bylaw* to remove section 24.5 which contained the operational rules, listed above, for the "Retail Dealer – Cannabis" category.

[43] These amendments to the *Licence Bylaw* also allowed for the issuance of a municipal business licence to locations that satisfy the requirements of Section 11.28 of the *Zoning Bylaw*.

[44] The definition "Medical Marijuana-related Use" in the *Zoning Bylaw* was replaced with:

> **Cannabis Store**, which means the use of premises for the sale of cannabis, including any products containing cannabis, for consumption off premises, and includes a Compassion Club as defined in the Licence By-law.

D. Current Bylaw Regime

[45] Clearly, there have been some amendments to the City's *Licence Bylaw* and *Zoning Bylaw* regarding cannabis retailing since the issuance of the various petitions concerning the non-government respondents. As at the date of the hearing of these petitions, the City's regulations respecting cannabis consisted of the distancing requirements found in s. 11.28 of the *Zoning Bylaw* and the general requirement pursuant to s. 3(1) of the *Licence Bylaw*. The *Zoning Bylaw* allows for the retail sale of any cannabis product in retail locations that meet the requirements set out in Section 11.28 of that bylaw.

[46] Section 4(12) of the *Licence Bylaw*, which requires licence holders to comply with all provincial and federal legislation, was also in force.

[47] As of August 29, 2018, the City had issued 51 development permits and 19 business licences for MMRU or "Cannabis Store" uses. A further 20 business licence applications and seven development permit applications were under review.

V. ISSUES

[48] The critical facts in this proceeding are not in dispute: the non-government respondents each admit that they operate a retail store selling cannabis products, do not currently hold a business licence as required by s. 3(1) of the *Licence Bylaw*, and that each operate a business that does not comply with s. 11.28 of the City's *Zoning Bylaw*. Therefore, pursuant to s. 344(1) of the *Vancouver Charter*, the City is entitled to enforce its bylaws, provided they are constitutional.

[49] The City submits that the issues raised in the current application regarding the validity of the Impugned Bylaws have already been decided in *Abbotsford (City) v. Mary Jane's Glass and Gifts Ltd.* 2017 BCSC 237 (the "*Abbotsford case*"), in which Madam Justice Gropper considered bylaws that were very similar to those in the present case. The City and the Attorney General of British Columbia submit, therefore, that the *Abbotsford case* is dispositive as the doctrine of horizontal *stare decisis* means this Court is bound by Gropper J.'s conclusions. However, the

operators in the *Abbotsford case* made no submissions on the constitutional issues raised therein. The only submissions where those made by the City and the Attorney General. Further, although the Impugned Bylaws and the bylaws in the *Abbotsford case* are similarly worded, the circumstances in which they were enacted or the effects of them may be distinct. Therefore, I consider the decision in the *Abbotsford case* to be non-binding and *nisi prius* on the issues raised in this proceeding, as that term was explained by Mr. Justice Wilson, as he then was, in *Re Spruce Hansard Mills*, [1954] 4 D.L.R. 590 at 592:

> The judgment was unconsidered, a *nisi prius* judgment given in circumstances familiar to all trial Judges, where the exigencies of the trial require an immediate decision without opportunity to fully consult authority.

[50] Therefore, the issues that must be determined are as follows:

a) Are the Impugned Bylaws *ultra vires* the City on the basis that they relate in pith and substance to an exclusive federal power?

b) Are the Impugned Bylaws inapplicable by reason of the doctrine of interjurisdictional immunity?

c) Are the Impugned Bylaws inoperative by reason of the doctrine of federal paramountcy?

d) Are the Impugned Bylaws unconstitutional under any of ss. 2(b), 7, or 15 of the *Charter*? If so, are they saved under s. 1 of the *Charter?*

e) Is the City estopped from enforcing its bylaws?

VI. DISCUSSION

1. Division of Power Arguments

[51] In *Rogers Communications Inc. v. Chateauguay (City)*, 2016 SCC 23 at para. 34 [*Rogers Communications*], Mr. Justice Wagner, as he then was, and Madam Justice Côté, writing for the majority of the Supreme Court of Canada, stated that the first step in a division of powers analysis is to determine the pith and

substance of the legislation in question. This analysis involves asking whether the level of government possesses the authority under the Constitution to enact the impugned legislation.

[52] The pith and substance analysis must be conducted before determining whether the doctrines of interjurisdictional immunity and federal paramountcy apply, as both these doctrines are predicated on the constitutional validity of the impugned legislation: *Rogers Communication* at para. 35.

A. Validity

[53] To determine the pith and substance of legislation, the court must consider its purpose and effects: *Reference re Assisted Human Reproduction Act*, 2010 SCC 61 at para. 20–21. The purpose is determined by examining "both intrinsic evidence, such as the preamble or the general purposes stated in the resolution authorizing the measure, and extrinsic evidence, such as that of the circumstances in which the measure was adopted": *Rogers Communication* at para 36. As for the effects of legislation, they are determined by "considering both the legal ramifications of the words used and the practical consequences of the application of the measure": *Rogers Communication* at para. 46, citing *R. v. Morgentaler*, [1993] 3 S.C.R. 463, at 482–83 [*Morgentaler*].

[54] Once the pith and substance of the legislation has been identified, the next step is to classify that "matter" with reference to the "classes of subjects" listed in ss. 91 and 92 of the *Constitution Act, 1867* to determine whether the law comes within the jurisdiction of the enacting legislature: *Morgentaler* at 481.

[55] Consistent with the principle of co-operative federalism, a court must not approach the division of powers as "watertight compartments": *Rogers Communication* at para. 37. The Supreme Court has made clear that "merely incidental effects on an exclusive head of power of the other level of government" is insufficient to find a piece of legislation *ultra vires*: *Rogers Communication* at para. 38; *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39 at para. 18 [*COPA*]. Where possible, the concurrent

operation of statutes enacted by governments at both levels should be favoured: *Rogers Communication* at para. 38; *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53 at para. 22; *Canadian Western Bank v. Alberta*, 2007 SCC 22 at para. 37 [*Canadian Western Bank*].

i. Pith and Substance

a. Purpose

[56] The non-government respondents contend that it is apparent from the MMRU bylaws, in the context of the history of dispensaries in Vancouver and the timing of the creation of the bylaws, that City Council's decision to regulate dispensaries was motivated by the desire to continue to allow dispensaries to operate and effectively "legalize the sale of medical cannabis". They say that City Council was not concerned that illegal businesses were selling cannabis, but rather that there were too many of them.

[57] The non-government respondents point to the fact that on or about June 24, 2015, the City enacted amendments to its *Licence Bylaw* and *Zoning Bylaw* to create a regulatory regime to approve and licence medical marijuana dispensaries, and that until then, there were no municipal bylaws in place regulating the siting, operation or licencing of such dispensaries in the City. That would appear to be the case. However, that does not mean that the City's purpose was to legalize or authorize non-medical cannabis sales.

[58] In support of this submission, the non-government respondents rely upon the initial staff memo to City Council in April 2015, in which the author stated:

> In developing the regulatory framework, it is clear that the City has no authority to regulate the sale of marijuana, but has clear jurisdiction in the area of running a business and appropriate land use decisions. In considering an appropriate approach, we have built on best practice from other jurisdictions and endeavoured to achieve a careful balance between ensuring adequate availability for those in need and ensuring community health, safety, security, aesthetics, equity and enjoyment of property.
>
> …

> The rapid growth of marijuana-related businesses over the last few years presents a significant problem for the City. Continuing to have a proliferation of unregulated businesses poses a significant risk to youth, public health and general quality of life as well as an impact on the local economy and health of our community. If, however, they are carefully managed and regulated, these businesses can play a role in ameliorating health conditions that affect numerous people. Accordingly, a carefully balanced and transparent approach is recommended to regulating the location and operations of businesses that are related to the consumption of marijuana.

[59] The City contends that the bylaws are concerned with business regulation, land-use, crime prevention, and public safety, which are valid municipal purposes under the *Vancouver Charter*. The government respondents agree.

[60] The City further submits that this case is on all fours with prior decisions of this Court in which injunctions were issued to restrain the operation of cannabis dispensaries without business licences: *Abbotsford case*; *Abbotsford (City) v. Weeds Glass & Gifts Ltd.*, 2016 BCSC 135; *Delta (Corporation) v. WeeMedical Dispensary Society,* 2016 BCSC 1566; and *Francis v. Vancouver (City),* [1999] B.C.J. No. 1303 (S.C.).

[61] In my view, the MMRU Regulations neither regulated nor legalized the sale of cannabis. What the MMRU Regulations did was to create a land use where 'marijuana advocacy use' could occur. The definition of MMRU is silent as to the sale of cannabis.

[62] In examining the definitions of MMRU in the *Zoning Bylaw* and *Licence Bylaw*, I note that they refer to advocacy, not the sale of cannabis:

> "Medical Marijuana-related Use, means a retail use in which the use of marijuana for medicinal purposes is advocated, and includes a Compassion Club as defined in the License Bylaw"
>
> "Retail Dealer - Medical Marijuana-related" means any person not otherwise herein defined who carries on a retail business in which the use of marijuana for medicinal purposes is advocated."

[63] The MMRU *Licence Bylaw* has provisions that prevent children from entering MMRU dispensaries (s. 24.5(13)), and prevent children from seeing "display items" sold at the dispensary (s. 24.5(14)), or prohibiting "advertising the use of marijuana"

(s. 24.5(15)). I find that these sections were designed to ensure that children did not see products used to partake of cannabis, have access to them, or be exposed to advertising of cannabis products available for sale at the MMRU licensed dispensaries.

[64] While the same cannot necessarily be said of the security regulations of the MMRU *Licence Bylaw* (s. 24.5(2), (7), (8), (9) & (22)), those security measures do not, and cannot permit the sale of cannabis products if such sale is impermissible due to federal or provincial legislation. This applies equally to the provision in the Impugned Bylaws that regulates the sale of "edibles", food products containing cannabis, especially candies and baked goods that are attractive to children in s. 24.5(12):

> No person shall sell food on the business premises of a Retail Dealer - Medical Marijuana-related, except that this provision does not apply to the sale of tinctures, capsules or edible oils, in sealed containers.

[65] In 2015 when the MMRU regime was enacted, it is clear that the City was aware of a proliferation of medical marijuana dispensaries in Vancouver, that these businesses were operating outside of the City's business licence and zoning framework, and that they were dispensing cannabis. I accept the City's contention that it restricted its treatment of marijuana retail to the anticipatory zoning of land for potential business-use should the desired activity eventually become legal.

[66] It is also clear from the materials that the City was aware that it had no jurisdictional ability to regulate the actual sale of cannabis products and therefore turned to its business licencing and land-use powers. Indeed, in the debate that led to the bylaw changes of June 24, 2015, several City Council members were critical of what they perceived as inadequacies in the federal government's proposed legislation to decriminalize the use of recreational cannabis, and some spoke about the parameters of the City's jurisdiction with respect to the zoning for the sale of medical cannabis. Councillor Jang, who moved the proposed amendments, made the following comments:

> … we're not regulating product, we're simply regulating the business itself to help change, to help modify where they can be located.
>
> …
>
> … it not only provides access, a reasonable access to medical marijuana, which is what we should be doing, but at the same time making sure the character of our neighbourhoods remain the same or enhanced. And this is the balance we're trying to achieve.
>
> …
>
> … we are not regulating product, let's make that very, very clear. We're simply regulating land use as best we can to help distance things, places, medical marijuana shops from sensitive areas in our city.

[67] Councillor Carr commented:

> … it's about a level playing field, a fair playing field around businesses in terms of licencing, adhering to the business regulations within this city, not concentrating, because that's not good for any area to have a concentration of any one business.

[68] Councillor Jang's motion passed by a vote of eight in favour, and three opposed.

[69] The MMRU was amended in 2018 to create the Cannabis Regulations, which are concerned with regulating cannabis dispensaries after the federal government legalized cannabis. These amendments were enacted so as to regulate businesses that sold non-medical cannabis. Despite this change, the purpose of the legislation remained the same: to regulate businesses and manage land-use in the City. While these amendments allowed businesses to sell cannabis, s. 4(12) of the *Licence Bylaw* still required licence holders to comply with federal and provincial law.

[70] While the City was aware that the federal government was expected to repeal the legislation that criminalized the sale of cannabis, the City was clear in its memorandum of May 29, 2018, that it was not decriminalizing such sales itself:

> In general approach and structure, the City of Vancouver's MMRU Regulations align with the impending Federal and Provincial legislation, in that the MMRU regulations leverage zoning and licensing. However the scope of the City's current by-laws are focused on medical marijuana and not non-medical cannabis retail.

[71] This is also clear as far back as June 19, 2015 in a memorandum to Council which stated:

> It is beyond the City's jurisdiction to regulate the sale or possession of marijuana and, as a result, the City's proposed regulations do not regulate the sale or possession of marijuana. The City's proposed regulations prevent any medical marijuana-related business from selling any edible products, except oils, regardless of whether they contain cannabis or not.

[72] The City contends that it is not purporting to authorize or legalize a currently prohibited activity. Prior to the hearing of these petitions, the City had only licensed cannabis-related business to carry out activities such as advocacy activities or providing information about cannabis. It has stated that the business of cannabis retail could not be carried out unless or until it became legal.

[73] Therefore, in my view neither the MMRU nor the Cannabis Regulations were enacted for the purpose of legalizing cannabis.

b. Effect

[74] With respect to the effect of the Impugned Bylaws, the non-government respondents argue that the effect of the MMRU and the Cannabis Regulations was to allow the sale of cannabis.

[75] I do not agree. First, I do not accept that, read in the context, the dispensaries existing at the time the MMRU bylaws were proposed were seen by the City as retail businesses selling medical cannabis products to the public. The MMRU created a category of zoning and licensing that applied to and regulated existing and future medical cannabis stores, if such were permitted by federal legislation.

[76] Second, the City's zoning and licencing power does not and cannot permit an activity that is contrary to federal and provincial legislation. Indeed, the City's bylaws explicitly required dispensaries be in compliance with federal and provincial laws. The fact that some were not does not mean that the effect of the bylaws was to allow the sale of cannabis. The *Zoning Bylaw* regulated MMRU dispensaries by

limiting—but allowing—the location and operation of medical marijuana stores in particular areas of the City, if otherwise compliant with the law. The 300-meter distancing rule, read in the context of the operational requirements of the *Licence Bylaw* that address protection of children, and in the context of the proliferation of cannabis dispensaries that the by-laws were created to address, does not mean that the City permitted the sale of cannabis products if such sale was illegal. The MMRU precluded the sale of products related to the use of cannabis.

[77] I also reject the submission that the effect of the July 2018 amendments to the *Zoning Bylaw* was to create a land-use category for businesses wishing to sell cannabis, unrestricted, in the City of Vancouver. The land-use restrictions for "Medical Marijuana-related Use" under the *Zoning Bylaw* were carried over into the new "Cannabis Store" use and all existing development permits were to be converted to Cannabis Store from MMRU upon the expiry of the time limited development permits. While the bylaw's language was broadened, the federal and provincial legislation continued to constrain use pursuant to s. 4(12) of the *Licence Bylaw*. Therefore, the effect of the bylaw was the same.

[78] I find that the effects of the MMRU and Cannabis Regulations are to regulate businesses and land-use, and to facilitate community planning.

[79] Overall, I find that the essential character or "pith and substance" of the Impugned Bylaws is "land-use control" and "regulation of business". The *Licence Bylaw* and *Zoning Bylaw* are ordinary municipal land-use and business regulation bylaws that impose conditions similar to those that apply to liquor stores.

ii. Applicable Head of power

[80] Once the "pith and substance" of the law has been identified, the next step is to classify that "matter" by reference to the "classes of subjects" listed in ss. 91 and 92 of the *Constitution Act*, *1867*, to determine if the law comes within the jurisdiction of the enacting legislature: *Chaterjee v. Ontario (Attorney General)*, 2009 SCC 19 at para. 24.

[81] Laws governing land-use and business regulation fall within provincial jurisdiction with respect to “Property and Civil Rights in the Province” (s. 92(13)) and “Matters of a Merely Local or Private Nature in the Province” (s. 92(16)): *West Kelowna (District) v. Newcombe*, 2013 BCSC 1411 [*West Kelowna*], aff’d 2015 BCCA 5 [*West Kelowna BCCA*]; *Salt Spring Island Local Trust Committee v. B & B Ganges Marina Ltd.,* 2007 BCSC 892, aff’d 2008 BCCA 544; *British Columbia (Attorney General) v. Lafarge Canada Inc*., 2007 SCC 23 at para. 41. Therefore, the Impugned Bylaws are within provincial jurisdiction.

[82] Any effects or overlap with federal legislative authority under s. 91(27) are merely incidental and do not render the City’s bylaws invalid in this case. The *Zoning Bylaw* allows for the retail sale of cannabis as a conditional use in any retail zone of the City subject to the restrictions set out in s. 11.28, which include, *inter alia*, that a “Medical Marijuana-related Use” or “Cannabis Store” is not permitted within 300 metres of the nearest property line of a site containing a school, community centre or neighbourhood house. Fundamentally this bylaw is concerned with land-use, not criminal law, and therefore within the jurisdiction of the province.

[83] Retail cannabis dispensaries may well raise issues that touch upon health, safety, public nuisance, and youth exposure, but like every other business operating in a municipality, the operation of cannabis dispensaries may result in land-use conflicts, which will impact upon the local economy and character of a neighbourhood. As found by Gropper J. at para. 58 in the *Abbotsford case*, these are matters that legitimately raise regulatory issues that engage the Province’s jurisdiction over land-use (being regulation of properly and civil rights, as well as matters of a merely local or private nature). In that case, Gropper J. found at para. 53 that the provisions of the zoning bylaw that specifically prohibited the use of land and buildings for the cultivation, storage, or sale of marihuana were, in “pith and substance”, the regulation of land and building use and therefore within provincial jurisdiction. In my view, the same conclusion follows in this case.

[84] Therefore I am satisfied that the bylaws fall within the province's traditional and longstanding jurisdiction under ss. 92(13) and 92(16) of the *Constitution Act, 1867.* I am satisfied that the City has not exceeded the grant of jurisdiction legitimately conferred upon it to legislate with respect to land-use control and regulation of business found in the *Vancouver Charter*. Both of those matters are matters within the jurisdictional competence of the provinces and their municipalities: see *West Kelowna BCCA* at paras. 28–29, 36, and are therefore, *intra vires* the City.

iii. Colourability

[85] Legislation is said to be "colourable" when it appears to deal with a matter within the enacting government's jurisdiction but in essence it is concerned with a matter outside its jurisdiction: *Morgentaler* at 496.

[86] The non-government respondents argue that that Impugned Bylaws are attempting to regulate matters that are within federal jurisdiction and are therefore "colourable". The non-government respondents argue that even if the Impugned Bylaws appear to relate to land-use and business regulation, they are actually legislating with respect to the federal government's criminal law jurisdiction under s. 91(27).

[87] Prior to the enactment of s. 11.28 of the *Zoning Bylaw* and s. 24.5 of the *Licence Bylaw* in June 2015, there were City bylaws with respect to retail zoning, but no specific bylaws prohibiting the operation of a medical cannabis dispensary or mandating setting specifications for such dispensaries.

[88] The non-government respondents concede that the City staff knew the City did not have jurisdiction to create bylaws that regulate the sale of cannabis, as they explicitly and repeatedly stated in memoranda to City Council that the City did not have jurisdiction over the sale of cannabis. They say, however, that the City specifically framed the bylaws to appear to relate to zoning and business regulation while actually intending to legalize the illegal sale of cannabis.

[89] I reject this submission. I cannot find that the City staff were careful not to specifically mention that dispensaries sell cannabis products because they were aware that creating the MMRU bylaws—which in practical effect would allow dispensaries to operate and sell cannabis under authority of a City business licence—was outside the City's jurisdiction and a colourable attempt to regulate or legalize cannabis.

[90] I conclude that the Impugned Bylaws are not *ultra vires* on this basis. Provincial governments—and therefore municipalities—have broad powers to legislate regarding matters that have incidental effects on federal criminal law power, such as the power to legislate in order to suppress crime: see e.g. *Attorney General for Canada and Dupond v. City of Montreal*, [1978] 2 S.C.R. 770 at 792; *Chatterjee v. Ontario (Attorney General)*, 2009 SCC 19 at paras. 26–29 [*Chatterjee*]; *Smith v. St. Albert (City)*, 2014 ABCA 76 at para. 48.

[91] The fact that there may be some overlap with a subject matter regulated through criminal law is not determinative. In *Smith v. St. Albert (City)*, 2014 ABCA 76 at para. 42, the Alberta Court of Appeal held that "[p]rovincial and federal offences can exist alongside each other and deal with the same type of conduct, as is the case with respect to motor vehicle offences." There, the Court upheld municipal bylaws which restricted the sale and display of items associated with illicit drug consumption.

[92] There is no evidence that the City enacted the Impugned Bylaws with the purpose of invading federal jurisdiction. Indeed, the evidentiary record suggests the City was attentive to its limited jurisdiction and simply sought to regulate businesses and land-use. Given the debate that led to the Impugned Bylaws, I reject the submission that the City had an ulterior motive to legalize cannabis rather than Councillor Jang's expressed motivation to regulate land-use and business operation in relation to medical cannabis dispensaries.

[93] The fact that the Cannabis Regulations, as they now are, allow the sale of cannabis, with an appropriate provincial or federal licence, does not make them

criminal. The Impugned Bylaws focus on hours of operation, permitted locations, and necessary security measures and represent no appreciable difference from the City's Bylaws that control the location and physical conditions of liquor stores or pawn shops. They regulate business and the use of land, buildings, and business premises and are a routine example of a municipal business regulation and land-use bylaw of the same kind that regulate every other business operating in the City.

[94] I find that, contrary to the applicants' submissions, the Impugned Bylaws are not a "colourable" attempt to authorize the sale of cannabis products.

B. Interjurisdictional Immunity

[95] The next question is whether the Impugned Bylaws, having been found valid, are applicable in this case.

[96] While the non-government respondents argue that the doctrine of interjurisdictional immunity makes the Impugned Bylaws invalid, interjurisdictional does not impugn the validity of legislation. Where the doctrine is found to apply, the law enacted by the other level of government remains valid but is "inapplicable" with respect to the identified "core" of power: *PHS* at para. 58.

[97] Interjurisdictional immunity is premised on the idea that there is a "basic, minimum and unassailable content" to the federal and provincial heads of power in ss. 91 and 92 of the *Constitution Act, 1867* that cannot be impaired by the other level of government: *Canada (Attorney General) v. PHS Community Services Society,* 2011 SCC 44 at para. 58 [*PHS*]; *Bell Canada v. Quebec (Commission de la santé et de la sécurité du travail)*, [1988] 2 S.C.R. 749 at 839. Interjurisdictional immunity can apply regardless of whether or not the two laws conflict. Indeed, the government who benefits from immunity need not be exercising its exclusive authority: *Canadian Western Bank* at para. 34; *PHS* at para. 59.

[98] While laws enacted by both levels of government can validly address the same subject, the doctrine of interjurisdictional immunity protects the "core" of a legislative head of power from being impaired by a government at the other level:

COPA at para. 26. Its application involves two steps. The first is to determine whether a statute enacted or measure adopted by a government at one level trenches on the "core" of a power of the other level of government. If it does, the second step is to determine whether the effect of the statute or measure on the protected power is sufficiently serious to trigger the application of the doctrine: *COPA*, at para. 27.

[99] The same principles apply to the jurisdiction of a municipality to legislate within its delegated authority.

[100] In the context of a constitutional framework built upon co-operative federalism, courts have properly been reluctant to allow areas of legislative immunity to proliferate and the doctrine of interjurisdictional immunity has been narrowed. This is so because the doctrine runs against the “dominant tide” of Canadian jurisprudence, which allows for a comingling of federal and provincial spheres of legislative authority. Mr. Justice Binnie and Mr. Justice LeBel, for the majority of the Court, explained this in *Canadian Western Bank* as follows at paras. 77–78:

> 77 … As we have already noted, interjurisdictional immunity is of limited application and should in general be reserved for situations already covered by precedent. This means, in practice, that it will be largely reserved for those heads of power that deal with federal things, persons or undertakings, or where in the past its application has been considered absolutely indispensable or necessary to enable Parliament or a provincial legislature to achieve the purpose for which exclusive legislative jurisdiction was conferred, as discerned from the constitutional division of powers as a whole, or what is absolutely indispensable or necessary to enable an undertaking to carry out its mandate in what makes it specifically of federal (or provincial) jurisdiction. If a case can be resolved by the application of a pith and substance analysis, and federal paramountcy where necessary, it would be preferable to take that approach, as this Court did in *Mangat*.
>
> 78 In the result, while in theory a consideration of interjurisdictional immunity is apt for consideration after the pith and substance analysis, in practice the absence of prior case law favouring its application to the subject matter at hand will generally justify a court proceeding directly to the consideration of federal paramountcy.

[101] In *Rogers Communication* at para, 42, the Court emphasized that the doctrine of interjurisdictional immunity must be applied with restraint, since a broad

application of interjurisdictional immunity appears to be "inconsistent... with the flexible federalism that the constitutional doctrines of pith and substance, double aspect and federal paramountcy are designed to promote." Indeed, at para. 47 the Court commented that it “does not favour an intensive reliance on the doctrine” and that it should not be “a doctrine of first recourse in a division of powers dispute”. This concern about over-reliance on the doctrine of interjurisdictional immunity was echoed by Chief Justice McLachlin in *PHS* at paras. 62–64.

[102] In this case, the non-government respondents argue that the doctrine of interjurisdictional immunity applies because the City is regulating a substance of which any attempt to regulate lies exclusively with the federal government. These respondents note, quite properly, that the legislation with respect to the sale and possession of cannabis falls under federal government’s criminal law power under s. 91(27) of the Constitution Act, 1867 and is expressed primarily in the *CDSA, ACMPR*, and the *Narcotic Control Regulations*, C.R.C., c. 1041 [*NCR*].

[103] That said, I am not satisfied that the Impugned Bylaws touch upon an immutable or unassailable core of the federal jurisdiction over criminal law. In *Canadian Western Bank,* the Court made clear that cases of interjurisdictional immunity should be limited to situations already covered by precedent. There is no such precedent for the “core” of the federal criminal law power. Nor have the non-government respondents meaningfully tried to identify such a core. While they point to “drug policy”, I am unable to find that the Impugned Bylaws trench upon this broad and amorphous area of jurisdiction.

[104] The non-government respondents have not discharged their burden to demonstrate that the Impugned Bylaws impair some unassailable aspect of federal government’s authority over the criminal law. I find that the Impugned Bylaws do not trench on the federal criminal law power and the doctrine of interjurisdictional immunity does not apply.

C. Federal Paramountcy

[105] Provincial legislation that is otherwise *intra vires* may be held to be inoperable due to the doctrine of federal paramountcy. The doctrine is premised on the existence of two valid statutes, one enacted by the federal government and one enacted by the provincial government.

[106] The doctrine of federal paramountcy applies in two situations. First, the application of the doctrine of federal paramountcy will arise when there are valid provincial and federal laws pertaining to the same subject matter but there is an inconsistency or conflict between the laws: *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161. In *Multiple Access,* Dickson J. (as he then was) commented, at 191:

> In principle, there would seem to be no good reasons to speak of paramountcy and preclusion except where there is actual conflict in operation as where one enactment says "yes" and the other says "no"; "the same citizens are being told to do inconsistent things"; compliance with one is defiance of the other.

[107] In *British Columbia Lottery Corp. v. Vancouver (City)*, 1999 BCCA 18 at para. 19, Mr. Justice Lambert explained that:

> [19] It is no longer the key to this kind of problem to look at one comprehensive scheme, and then to look at the other comprehensive scheme, and to decide which scheme entirely occupies the field to the exclusion of the other. Instead, the correct course is to look at the precise provisions and the way they operate in the precise case, and ask: Can they co-exist in this particular case in their operation? If so, they should be allowed to co-exist, and each should do its own parallel regulation of one aspect of the same activity, or two different aspects of the same activity.

[108] Second, federal paramountcy applies where dual compliance is possible, but the provincial legislation is incompatible with the purpose of the federal legislation: *COPA* at para 66, citing *Bank of Montreal v. Hall*, [1990] 1 S.C.R. 121, at 155; *Law Society of British Columbia v. Mangat*, 2001 SCC 67. For federal paramountcy to apply with respect to federal “purposes”, the party advancing the doctrine must first establish the purpose of the relevant federal statute, and then prove that the provincial statute is incompatible with this purpose: *COPA* at para 66. Chief Justice

McLachlin noted in *COPA* that the party advancing the federal paramountcy under this branch has a difficult burden to discharge:

> [66] …The standard for invalidating provincial legislation on the basis of frustration of federal purpose is high; permissive federal legislation, without more, will not establish that a federal purpose is frustrated when provincial legislation restricts the scope of the federal permission

[109] The non-government respondents contend that the doctrine of paramountcy applies in this case. They say the Impugned Bylaws conflict with federal legislation governing medical cannabis, specifically the *CDSA* and the *ACMPR*. These respondents argue that contrary to these statutes, s. 24.5 of the *Licence Bylaw* and section 11.28 of the *Zoning Bylaw* legalize the possession and sale of medical cannabis regardless of the federal prohibition, making it impossible to comply with the federal law if one is operating as a medical cannabis retail business in the City of Vancouver or if one is shopping at such a business. In the alternative, they argue that the Impugned Bylaws frustrate the purpose of the federal legislation, being to criminally prohibit medical dispensaries.

[110] The *ACMPR* provides for legal access to cannabis for medical purposes and the federal *Cannabis Act* and the *Cannabis Control and Licensing Act*, S.B.C. 2018, c. 29, control the access to non-medical cannabis. The three pieces of legislation also regulate the production and distribution of different types of cannabis products.

[111] In *Qterra Properties Ltd. v. Delta (District)*, 2016 BCCA 504 at para. 43, the Court commented that permitted uses in a zoning bylaw do not “compel” any particular use of the land:

> [43] Where the statutory enactments of two bodies appear to conflict, they are permitted "to co-exist, and each ... do its own parallel regulation of one aspect of the same activity" unless there is a "true ... conflict", meaning that "one enactment compels what the other forbids": *British Columbia Lottery Corp. v, Vancouver (City)*, 1999 BCCA 18 at paras. 17-20. Permitted uses under a zoning bylaw or a land use contract do not compel any use.

[112] At para. 48, Mr. Justice Savage further reasoned:

> [48] … While it might have been ineffective for the municipality to grant a business licence for private liquor sales in 1976, as the granting of such a

> permit would purport to allow an activity governed and prohibited by provincial law, enacting a broad definition of retail trade that *could* encompass such a use is not *ultra vires*, i.e., enacting a definition with broadly defined terms is not a matter outside municipal jurisdiction. Likewise, agreeing to a definition of "use" within a LUC that could embrace private liquor sales is not *ultra vires* the municipality.

[113] In this case, there is no conflict between federal and provincial legislation because the Impugned Bylaws do not compel operators to act inconsistently with federal legislation, they simply regulate the operational conditions and location of a cannabis dispensary. Indeed, the *Licence Bylaw* specifically provides that the licence holder must comply with all federal laws.

[114] Therefore, I am satisfied in the present case, that compliance with the Impugned Bylaws does not amount to defiance of the *CDSA* or the *ACMPR* and there is no operational conflict. The Impugned Bylaws and these federal statutes can coexist.

[115] With respect to the second branch of the paramountcy doctrine, frustration of purpose, the question is whether the operation of the Impugned Bylaws is incompatible with the purpose of federal legislation: *COPA* at para. 66.

[116] In the present case, the non-government respondents have failed to meaningfully identify any federal purpose that is frustrated by the Impugned Bylaws. As explained in *R. v. Malmo-Levine; R. v. Caine,* [2003] 3 S.C.R. 571 at para. 65 [*Malmo-Levine*], the purpose of the prohibitions against cannabis has been, since their enactment, to protect public health and safety.

[117] The Impugned Bylaws do not frustrate or undermine health, public safety, or any other federal purpose that is advanced through the *CDSA* or the *ACMPR*. Rather, the Impugned Bylaws are consistent with the federal purposes. Through the Impugned Bylaws, the City has enacted legislation that serves the same objectives that have traditionally animated Parliament's concern regarding the unregulated access to medical or non-medical cannabis.

[118] These finding are consistent with Gropper J.'s conclusion in the *Abbotsford case*, who after considering the second branch of the doctrine, concludes at para. 69:

> There is no issue of paramountcy here. The provincial law does not conflict with an existing federal law or a specific federal purpose. The operators concede that current federal law does not allow access through retail dispensaries.

[119] The doctrine of paramountcy has no application in this case. There is no operational conflict between the Impugned Bylaws and any federal law or enactment. The Impugned Bylaws do not command, condone or demand the sale or consumption of cannabis in contravention of the *CDSA* or the *ACMPR*. There is no irreconcilable collision between the purpose or effects of the Impugned Bylaws and this federal legislation.

2. Reasonableness of City Council's Decision

[120] The non-government respondents also suggest that the City's decision to enact the bylaws was unreasonable. While this proceeding is not a judicial review, I accept that the City's legislative decisions are reviewable on a standard of reasonableness. The Supreme Court of Canada outlined the applicable test to determine whether municipal decisions are reasonable in *Catalyst Paper Corporation v. North Cowichan (District)*, 2012 SCC 2 at para. 24: only if the bylaw is one no reasonable body informed by these factors could have taken will the bylaw be set aside.

[121] This has clearly been met in this case. The City's decision to enact the Impugned Bylaws was a reasonable exercise of legislative power to ensure the health and safety of the community and to ensure that land-use was managed properly.

3. *Charter* Arguments

[122] The non-government respondents contend that the Impugned Bylaws and the Impugned Federal Legislation contravene ss. 2(b), 7, and 15 of the *Charter* and are therefore unconstitutional and of no force and effect.

[123] As discussed above, I have concluded that it is inappropriate for me to determine the constitutionality of the *ACMPR* and the *CDSA*, and therefore I will only address the *Charter* compliance of the Impugned Bylaws.

A. Section 2(b)

[124] Section 2(b) of the *Charter* protects individuals' expressive rights. That section provides:

> Everyone has the following fundamental freedoms:
>
> … (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication…

[125] In *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 at 978 Chief Justice Dickson, for the majority, outlined how to approach an alleged violation of the guarantee of freedom of expression:

> …[T]he first step is to determine whether the plaintiff's activity falls within the sphere of conduct protected by the guarantee. Activity which (1) does not convey or attempt to convey a meaning, and thus has no content of expression, or (2) which conveys a meaning but through a violent form of expression, is not within the protected sphere of conduct. If the activity falls within the protected sphere of conduct, the second step is to determine whether the purpose or effect of the government action in issue was to restrict freedom of expression. If the government has aimed to control attempts to convey a meaning either by directly restricting the content of expression or by restricting a form of expression tied to content, its purpose trenches upon the guarantee. Where, on the other hand, it aims only to control the physical consequences of particular conduct, its purpose does not trench upon the guarantee… If the government's purpose was not to restrict free expression, the plaintiff can still claim that the effect of the government's action was to restrict her expression. To make this claim, the plaintiff must at least identify the meaning being conveyed and how it relates to the pursuit of truth, participation in the community, or individual self-fulfillment and human flourishing.

[126] Commercial expression is not excluded from the protection of s. 2(b): *Irwin Toy* at 971.

[127] The non-government respondents argue that they do not only sell medical cannabis to their customers but also provide valuable information to them about the medical benefits of cannabis, as well as information about the political and legal aspects of medical cannabis in Canada. They say this expression is beneficial to

their customers and therefore the Impugned Bylaws, which limits these expressive abilities, violates s. 2(b).

[128] In my view, there is no basis for finding a violation of s. 2(b). The Impugned Bylaws are principally directed at land-use and regulating business and not restricting expression: see e.g. *613742 NB Inc. c. R. & L. Holding Ltd.*, 2009 NBBR 16 at para. 30. The purpose of the Impugned Bylaws is not to restrict content. Zoning and licensing bylaws, by their very nature, impede the rights of individuals to do certain things in certain places. In *Rosen v. Ontario (Attorney General)* (1996), 131 D.L.R. (4th) 708 at 713–714, the Ontario Court of Appeal held that prohibitions against the sale of particular products from certain retail outlets is a regulatory action that cannot be said to infringe freedom of expression. Likewise, regulating where a business may operate and requiring such a business to be licensed does not restrict expression. Here, the government is regulating land-use, the physical consequences of commercial activity.

[129] With respect to the effect of the Impugned Bylaws, under the test in *Irwin Toy,* the non-government respondents must establish that the expressive activity in question promotes one of the three values underlying s. 2(b): seeking and attaining truth, participation in social and political decision-making, or individual self-fulfillment: *Irwin Toy* at 978. They have not done so. They have not provided evidence to support such a claim.

[130] Ultimately, the limitation on the ability to operate certain businesses in certain locations does not infringe s. 2(b) as it does not infringe the ability of individuals to express the purported medical benefits of cannabis or medical, legal, and political issues related to cannabis. Therefore, I find that the non-government respondents have not demonstrated that their s. 2(b) rights have been breached by the Impugned Bylaws.

B. Section 7

[131] To demonstrate a violation of s. 7 of the *Charter,* the claimant must first show that the law interferes with, or deprives them of, their “life, liberty or security of the

person": *Carter v. Canada (Attorney General)*, 2015 SCC 5 at para. 55 [*Carter*]. Once the party has established that s. 7 is engaged, it must demonstrate that the deprivation in question is not in accordance with principles of fundamental justice, namely arbitrariness, overbreadth, and gross disproportionality: *Carter* at para. 55.

[132] Legislation interferes with an individuals "life" when "state action imposes death or an increased risk of death on a person, either directly or indirectly": *Carter* at para 62.

[133] A statute interferes with "liberty" when state action infringes the individual's right to make fundamental choices free from state interference: *Carter* at para. 64, citing *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 at para. 54.

[134] Finally, with respect to "security of the person", the Court in *Carter* summarised that this aspect of s. 7 is concerned with:

> "[A] notion of personal autonomy involving . . . control over one's bodily integrity free from state interference" (Rodriguez, at pp. 587-88, per Sopinka J., referring to R. v. Morgentaler, 1988 CanLII 90 (SCC), [1988] 1 S.C.R. 30) and it is engaged by state interference with an individual's physical or psychological integrity, including any state action that causes physical or serious psychological suffering [citations omitted].

[135] The non-government respondents' submissions on s. 7 were almost exclusively focussed on the *ACMPR* and the *CDSA*; they did also argue, however, that the Impugned Bylaws engage s. 7. This is so, they say, because the City limits access to medical marijuana by prohibiting dispensaries unless they have been approved by the City, which restricts the number and location of dispensaries. As many of their clients are disabled and impoverished, such individuals may be forced to go without medical cannabis, turn to prescription medication that is either harmful or less effective, or obtain cannabis from the black market. This, the non-government respondents say, infringes their clients' liberty and security interests.

[136] In support of their argument, the non-government respondents have submitted a number of affidavits from individuals who obtain cannabis from one of

their dispensaries. The affiants attest to their need for cannabis to relieve medical symptoms, their experience in obtaining cannabis from storefront dispensaries, and, in some cases, difficulty in obtaining cannabis from the *ACMPR*. Overall, the affidavits suggest that the City enforcing its bylaws will curtail the affiant's access to cannabis.

[137] The City submits that the evidence tendered by the non-government respondents does not establish that 'limiting' access to cannabis in this way will create a serious psychological or physical impact. The City points out that the affiants can access medical cannabis at alternative locations, that some of the affiants' preference for certain strains of cannabis is not actually regulated by the Impugned Bylaws, and some of the affiants' evidence relates to locations that are zoning compliant and whose access to cannabis is therefore unaffected by the Impugned Bylaws. The City says that allegations relating to convenience or preference do not engage s. 7. Ultimately, the City says that the non-government respondents have not provided any evidence that anyone is prevented from accessing medical cannabis because of the Impugned Bylaws.

[138] While I concluded that it was neither appropriate nor necessary for me to consider the constitutionality of the Impugned Federal Legislation, the evolution of the jurisprudence under this legislation is instructive as to what access to medical cannabis demands in the s. 7 context. That jurisprudential history includes the decisions in *R. v. Parker* (2000), 188 D.L.R. (4th) 385 (Ont. C.A.) [*Parker*]; *R. v. Krieger*, [2000 ABQB 1012, aff'd 2003 ABCA 85, leave to appeal to SCC refused [2003] 3 S.C.R. viii; *Hitzig v. R.*, [2003] O.J. No. 12 (Sup. Ct. J.) [*Hitzig*], rev'd in part (2003), 231 D.L.R. (4th) 104 (C.A.), leave to appeal to SCC refused [2004] S.C.C.A. No. 5; *Malmo-Levine*; *Sfetkopoulos v. Canada (Attorney General)*, 2008 FC 33, aff'd 2008 FCA 328, leave to the SCC refused [2009] 1 S.C.R. v; *R. v. Beren*, 2009 BCSC 429; and *R. v. Mernagh*, 2013 ONCA 67; *Allard v. Canada*, 2016 FC 236 [*Allard*].

[139] The Supreme Court of Canada recently commented on the access to medical marijuana in *R. v. Smith*, 2015 SCC 34. In that case, the Court held that forcing a person to choose between a legal but inadequate treatment and an illegal but more effective one, infringes security of the person under s. 7. The Court held that those limits were contrary to the principles of fundamental justice because they were arbitrary and in contradiction to the objective of protecting health and safety.

[140] In *R. v. Boehme*, 2016 BCSC 2014, Mr. Justice Baird cited the Ontario Court of Appeal in *R. v. Mernagh,* 2013 ONCA 67, in which the court held that there is no constitutional right for people to use cannabis for therapeutic reasons of their own conception. At para. 29, Baird J. summarized the authorities as follows:

> 29 The constitution recognises no free-standing right to use or supply marihuana. The government has the authority and is bound by international obligation to control the circulation of this substance except for medical or scientific purposes. It may do this by recourse to its criminal law power. The government must ensure, by whatever means it deems suitable, that there is an adequate exemption for authorised medical marihuana patients, but otherwise criminal prohibition is constitutionally acceptable. A legal framework that incorporates a reasonable medical exemption will accord with the principles of fundamental justice. One that does not will violate those same principles by depriving patients of medicine or forcing them to break the law to get it.
>
> [Emphasis added.]

[141] The non-government respondents also rely on the recent decision in *Allard*, where Mr. Justice Phelan considered the constitutionality of the *Marihuana for Medical Purposes Regulation*, SOR/2013-119 repealed SOR/2016-230, s. 281. That regime authorized the possession of dried cannabis for medical purposes, the regulated production of dried cannabis, and the sale and distribution of dried cannabis by licensed producers and authorised individuals. In *Allard,* Phelan J. found an infringement of s. 7 for those holding authorizations to possess cannabis for medical purposes because they faced the prospect of imprisonment if they purchased their marihuana from outside the only permitted source for any reason: at para. 188. Further, he found that it affected their right to make decisions of fundamental personal importance because if they could not access a licensed producer for any reason, their “security of the person” would be engaged as “there

would be no access to their medication resulting in physical or psychological suffering": at para. 203

[142] In August 2016, the federal government introduced the *ACMPR*. The *ACMPR* regime provided access to cannabis for medical purposes by enabling individuals who have the support of an authorized health care practitioner to access cannabis in three ways: (1) by purchasing cannabis from a licensed producer; (2) by registering with health Canada to produce cannabis for the patient's own personal use; or (3) by registering with health Canada and designating another person to produce cannabis on the patient's behalf.

[143] The *ACMPR* regime did not permit medical cannabis to be sold by a storefront operation. Like the previous medical marijuana regimes enacted by the federal government, the *ACMPR* allowed individuals to possess certain forms of cannabis, it regulated commercial production, and allowed delivery from licensed producers.

[144] Patients were permitted to purchase cannabis for medical purposes from one or more licensed producers while simultaneously growing their own cannabis or designating a producer, subject to the personal possession and storage limits. Patients who required cannabis for medical purposes outside the parameters of the *ACMPR* Regime could apply to the Minister under section 56 of the *CDSA* for an authorised discretionary exemption to recognize their specific circumstances. Patients and designated producers were permitted to convert their cannabis into cannabis derivatives, provided they did not use any organic compound that is highly flammable, explosive, or toxic.

[145] Distilled down, the case law suggests that while legislation must allow sufficient access to medical marihuana, the courts have also repeatedly emphasized that such access is subject to government limits and government regulation: see e.g. *Malmo-Levine*; *Hitzig*; *Sfetkopolous*; *R. v. Voss*, 2013 ABCA 38 at para. 7.

[146] Furthermore, as the non-government respondents repeatedly submit (and these cases make clear), is that access to and regulation of cannabis is in the jurisdiction of the federal government. While I accept that the City's bylaws could violate s. 7 by unreasonably restricting access to medical cannabis, I cannot conclude it has done so in this case. The non-government respondents have not demonstrated that the Impugned Bylaws engage s. 7.

[147] While the Impugned Bylaws limit the number and location of cannabis dispensaries, there is no indication that they cause serious psychological or physical suffering. Cannabis is accessible through other locations and other means. Nor is there evidence that individuals' liberty is engaged. There is no risk of criminal prosecution or incarceration.

[148] Access to cannabis under s. 7 does not mean access on every corner of a city. It does not mean access to a particular store or particular strain. Section 7 demands that individuals be given *reasonable* access to medical cannabis not *unrestricted* access. Individuals may be inconvenienced, but such inconvenience does not engage s. 7.

[149] Therefore, I find that the Impugned Bylaws do not infringe section 7 rights to life, liberty, or security of the person.

C. Section 15

[150] In *Lovelace v. Ontario*, 2000 SCC 37, Mr. Justice Iacobucci outlined the proper approach to determinations whether s. 15 has been violated at para. 53:

> 53 …The synthesized approach requires that the determination of a discrimination claim be grounded in three broad inquiries (Law, supra, at para. 39). First, we must examine whether the law, program or activity imposes differential treatment between the claimant and others. Secondly, we must establish whether this differential treatment is based on one or more enumerated or analogous grounds. And finally, we must ask whether the impugned law, program or activity has a purpose or effect that is substantively discriminatory.

[151] The non-government respondents argue that the Impugned Bylaws have a disproportionate impact on medical cannabis patients who require treatment for

chronic conditions and are of limited physical mobility. They say this amounts to discrimination because it "demeans medical cannabis patients' human dignity" by imposing a disproportionate burden on them due to their physical and mental disabilities.

[152] The City argues that the non-government respondents' claims are without merit or legal foundation. The Impugned Bylaws, they say, restrict the location of cannabis retail stores and do not discriminate in any way.

[153] The burden of proof to demonstrate a breach lies on the claimant and in this case, the non-government respondents have not persuaded me that the Impugned Bylaws violate s. 15 of the *Charter*. There is no evidence before me that the Impugned Bylaws impose differential treatment based on ability. Even if the non-government respondents had persuaded me as such, they have not demonstrated that their effect is substantively discriminatory. As discussed, the purpose of the Impugned Bylaws is land-use and business regulation. These bylaws do not, in purpose or effect, breach principles of substantive equality because they do not regulate the supply of cannabis. Indeed, as the non-government respondents repeatedly argue, regulating the supply of cannabis is within federal jurisdiction.

[154] Therefore, I conclude that the Impugned Bylaws do not violate s. 15.

[155] As I have found no violations of the *Charter*, I will not address whether the alleged violations constitute reasonable limits that are justified in a free and democratic society under s. 1.

4. Estoppel

[156] As I have determined that the Impugned Bylaws are *intra vires* and constitutional, the only remaining issue is whether the City should be estopped from enforcing them.

[157] The non-government respondents contend that the petitions should be dismissed on the basis of the legal doctrine of estoppel. They assert that the City

reached a policy decision in or about 2012 to cease police enforcement against medical cannabis dispensaries that began to proliferate at about that time, although the first medical cannabis dispensary had opened around 1997. They argue that the effect of this policy was to permit medical cannabis dispensaries to operate in the City without business licenses. They say the City chose in 2015 to regulate these illegal businesses under the MMRU and decided, separately and in consultation with the Vancouver Police Department ("VPD"), to engage in a policy of non-enforcement.

[158] While I question whether such a policy decision was indeed taken by the City in 2012, the evidence is clear that a number of medical cannabis dispensaries did operate in the City in 2012 and have done so since then, and there is no evidence of efforts on the part of the VPD to enforce any laws or bylaws with respect to those dispensaries until sometime in 2016.

[159] The non-government respondents therefore argue that the City explicitly or implicitly condoned, authorized, and encouraged the operation of the medical cannabis dispensary operated by the non-government respondents when it suspended any police enforcement or prohibition against the operation of medical cannabis dispensaries. In September 2015, the VPD released a Report to the Vancouver Police Board regarding a public complaint about lack of police enforcement of the federal criminal law against dispensaries. The Report summarized the VPD's policy of non-enforcement of the criminal law against dispensaries and was summarized as follows:

> Marihuana dispensaries are illegal; however, the issue of enforcement against marihuana dispensaries is a complicated one because of intersecting legal, social and political factors. The City of Vancouver ("the City") has decided to regulate rather than close all marihuana dispensaries using its bylaw powers. Using the criminal law to close marihuana dispensaries is generally ineffective, raises concerns about proportionality, and is a significant drain on valuable police resources that is difficult to justify in the absence of overt public safety concerns. When those concerns exist, the VPD has regularly taken action, including the execution of 11 search warrants and multiple charges recommended to Crown since 2013 - these actions have been generally ineffective at closing the dispensaries involved. In fact, some of the dispensaries reopened for business shortly after the police

> executed search warrants; at one location, search warrants were executed on three separate occasions. Bylaw enforcement, however, is an effective tool to shut down a business that isn't compliant with municipal bylaws, as has been demonstrated in those Metro Vancouver municipalities without marihuana dispensaries.

[160] The non-government respondents further contend that it is unfair and unjust for the City to implement new zoning and licensing bylaws forcing their businesses to close down after they have invested significant time and resources into establishing them.

[161] The non-government respondents have referred me to the decision of the Supreme Court of Canada in *Ryan v. Moore*, 2005 SCC 38 where Mr. Justice Bastarache, for the Court, stated at para. 51:

> 51 The state of law of estoppel was articulated by Lord Denning in *Amalgamated Investment & Properly Co. (In Liquidation) v. Texas Commerce International Bank Ltd.*, [1982] 1 Q.B. 84 (C.A.), at p. 122, as follows:
>
> > ... When the parties to a transaction proceed on the basis of an underlying assumption — either of fact or of law — whether due to misrepresentation or mistake makes no difference - on which they have conducted the dealings between them — neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands.

[162] I find, however, that the non-government respondents have not established that when they began or later conducted their businesses, they did so on the basis of an underlying assumption in their dealings between shared by the City that they did not and would not be obliged to comply with the City's bylaws.

[163] As of June 25, 2018, the City had issued 3,244 tickets for a total amount of $2.42 million in fines (average of $755 per ticket) to medical marijuana related businesses operating without a development permit for not having business licenses. Many of the non-government respondents in this case have received such tickets.

[164] In any case, the issue of estoppel with respect to the enforcement of a municipal bylaw was dealt with by the British Columbia Court of Appeal in *Langley (Township) v. Wood,* 1999 BCCA 260, at paras. 11–15 as follows:

> 11 The appellant also argues that despite any breach of the Township's Bylaws, she should be entitled to maintain the two dwelling units as a result of past behaviour on the part of Township staff at the time the house was relocated to the lands. In response, the Township submits that it is entitled to rely on the provisions contained in its Zoning Bylaws, regardless of any such allegations against the Township, such as condonation or acquiescence on its part in permitting the appellant to relocate the house on the lands.
>
> 12 As a general rule, municipal rights, duties and powers, including the duty to carry out the provisions of a statute, are of such public nature that they cannot be waived, lost or vitiated by mere acquiescence, laches or estoppel. See *Re: Cartwright School Trustees and the Township of Cartwright*, [1903] 5 O.L.R. 699 (Ont. C.A.); *Crossroads Community Council v. Vanbeek* (1987), 64 Nfld. & P.E.I.R. and 197 A.P.R. 61 (P.E.I.S.C.); and *Regina v. Kelly Landscape Contractors Ltd.* (1980), 13 M.P.L.R. 67 (Ont. County Ct.).
>
> 13 The right of a Municipality to carry out its bylaws and policies is well established. As early as 1859, the Courts have held that:
>
> > ... the doctrine of estoppel can never interfere with the proper carrying out of the provisions of Acts of Parliament.
> >
> > [*Counties of Peterborough and Victoria v. Grant Trunk R.W. Co*. (1859), 18 U.C.R. 220 at 224.]
>
> In 1903, the Ontario Court of Appeal upheld that ruling, noting that "There could be no estoppel or waiver of the public right." See *Re: Cartwright School Trustees and the Township of Cartwright*, *supra*, at 702.
>
> 14 Counsel for the Township submits that it is now accepted law that the appropriate remedy for a breach of a bylaw is statutory and not equitable.
>
> 15 In *Nelson (City) v. Kranz* (1990), 3 M.P.L.R. (2d) 258 (B.C.S.C.), the Court said the following at 264:
>
> > An injunction sought under s. 751 of the Municipal Act is a purely statutory remedy, and not one based on equity. It is therefore no objection to the granting of the injunction that there has been a failure to enforce the by-law for many years: see *Shaughnessy Heights Property Owners' Assn. v. Northup* (1958), 1958 CanLII 289 (BC SC), 12 D.L.R. (2d) 760 (B.C.S.C.). Nor can it be an objection that the City officials have permitted or even approved the breach. For the same reasons, the circumstance that the tenants are willing to condone or accept the respondent's failure to comply with the by-law for safety requirements cannot affect the right of the petitioner to the injunction sought.

> [Emphasis added.]

[165] Therefore, I find that the doctrine of issue estoppel cannot, in this case, interfere with the proper carrying out of the Impugned Bylaws.

5. Enforcement of Bylaws

[166] In *Vancouver (City) v. Maurice*, 2005 BCCA 37, Madam Justice Rowles summarized how a public authority, such as the City, could enforce its bylaws through the courts at paras. 33–34:

> 33 It is true that it was open to the City to enforce its By-law by prosecution under the *Offence Act*, R.S.B.C. 1996, c. 338. It is also true that the decision whether to prosecute or to seek injunctive relief was one for the City to make. In this case, City officials were apparently of the view that the injunction process would be more effective in restraining continuing contravention of the By-law than would be a prosecution under the Offence Act.
>
> 34 Contrary to the submissions made by the appellants, where a public authority, such as the City, turns to the courts to enforce an enactment, it seeks a statutory rather than an equitable remedy, and once a clear breach of an enactment is shown, the courts will refuse an injunction to restrain the continued breach only in exceptional circumstances: *Maple Ridge (District) v. Thornhill Aggregates Ltd*. (1988), 47 M.P.L.R. (2d) 249 (B.C.C.A.), and *British Columbia (Minister of Forests) v. Okanagan Indian Band* (2000), 187 D.L.R. (4th) 664 (B.C.C.A.).
>
> [Emphasis added.]

[167] Therefore, it is clear that the City is permitted to enforce its bylaws by seeking injunctive relief. The non-government respondents concede that they are in breach of the *Zoning Bylaw* and the *Licence Bylaw*. I am satisfied that there are no exceptional circumstances in this case. Therefore, the injunction to restrain the continued breach of the City's bylaws is granted.

VII. CONCLUSION

[168] Sections 3(1) and 24.5 of the City's *Licence Bylaw* and s. 11.28 of the *Zoning Bylaw* are *intra vires* and constitutional. The Impugned Bylaws are validly enacted municipal bylaws under the jurisdiction of the province. The doctrines of federal paramountcy and interjurisdictional immunity do not apply. The Impugned Bylaws

also do not unduly restrict access to medical cannabis nor do they infringe sections 2(b), 7, or 15 of the *Charter*.

[169] To resolve the issues raised by the petitions before me, it is unnecessary and inappropriate to resolve the constitutionality of either the *ACMPR or the CDSA* that pertain to medical cannabis, and the constitutional question posed with respect to them by the non-government respondents. I have declined to do so.

[170] The non-government respondents are in breach ss. 3(1) and 24.5 of the City's *Licence Bylaw* and s. 11.28 of the City's *Zoning Bylaw*.

[171] Absent exceptional circumstances, a municipality is entitled to a statutory injunction to enforce its bylaws: *Maurice*. Therefore, I order that that the non-government respondents, and all other persons having knowledge of my order, who do not hold a subsisting licence for their business issued by the City of Vancouver with respect to the locations named in the petitions with which I have dealt, cease carrying on business at such locations.

[172] Any tickets issued by the City against the non-government respondents for alleged violations of the Impugned Provisions will not be declared void and struck on the evidence adduced before me.

[173] The matter of costs can be the subject of further submissions, based upon my findings set out above. If any party wishes to address costs, they are to advise me through the Registry (and other counsel by copy of their advice through the Registry) within two weeks of the publication of these reasons for judgment. When advising the Registry, counsel wishing to make submissions should also advise if they wish to make written or oral submissions, in which case I will either set a date for the hearing of those submissions or direct dates for the filing of written submissions.

The Honourable Chief Justice Hinkson