IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *F.C.R.A False Creek Residents Association v. Vancouver (City),* 2014 BCSC 1674

Date: 20140903
Docket: S143862
Registry: Vancouver

Between:

F.C.R.A False Creek Residents Association

Petitioner

And

The City of Vancouver

Respondent

Before: Master Taylor

Reasons for Judgment

Counsel for the Applicant, One West Holdings Ltd:	H. Poulus, QC A. Crimeni
Counsel for F.C.R.A.:	R. Kasting
Counsel for City of Vancouver:	I. Dixon
Place and Date of Hearing:	Vancouver, B.C. August 27, 2014
Place and Date of Judgment:	Vancouver, B.C. September 3, 2014

[1] This is an application by One West Holdings Ltd., also known as Concord, or more familiarly known as Concord Pacific to the residents of Vancouver, for an order that Concord be added to these proceedings as a party.

[2] The City of Vancouver supports the application by Concord to be added as a party.

[3] The F.C.R.A. False Creek Residents Association ("F.C.R.A.") is a society with the stated purpose of promoting the interests of residents who live in neighbourhoods adjacent to False Creek in Vancouver by:

> Sharing information on land use planning and development, the need for public amenities and related social, environmental and economic issues that impact on the livability of the community; and
>
> Ensuring that government decision makers are aware of the needs and concerns of residents by preparing briefs, writing letters, and organizing public meetings.

[4] The petition underlying this application seeks to quash a decision of the City to grant Concord an extension of a temporary development permit to maintain a presentation centre on an area of land known as sub-area 9.

[5] The petitioners, F.C.R.A., consent to the application only in so far as the applicant be granted intervenor status in this application for judicial review, but disagree that the applicant should be made a party to the proceedings.

Factual Background

[6] In the course of their submissions, counsel referred to the factual background to these proceedings as set out in the applicant's notice of application such that they are common knowledge and accurate. I can do no better than reproduce them here as they will assist the reader in knowing and understanding the historical framework which precedes the petition and this application to be made a party to the petition:

> In order to permit Expo 86 to take place close to the heart of the City, the Province of British Columbia (the "Province") assembled a parcel of land on the North side of False Creek. Following Expo 86, the Province sold most of the site to Concord for redevelopment (the "Concord Pacific Place Lands").

Many of the parcels making up the Concord Pacific Place Lands were previously used for industrial purposes and had become contaminated. It was a term of the agreement between Concord and the Province that the Province assume full responsibility for the costs of any soil remediation.

Once development of the Concord Pacific Place Lands commenced, it became evident that the costs to the Province of removing all contaminated soil and treating that material off-site would be enormous. The Province then proposed that contaminated soils on development sites be buried on park sites which would become long term storage facilities. The soils would be covered by a protective membrane and the parks built on top of that membrane. The Province would become the owner of the park sites - hence continue to be responsible for the contaminated soils contained in them - and would lease the sites to the City on very long term leases calling for nominal rents.

This is the process that has been followed ever since: as development sites have been rezoned, the Province has identified contaminated soils on them and has removed that soil to the next park site to be developed, by agreement with Concord and the City. Andy Livingstone, Coopers and George Wainborn Parks were all developed in this fashion.

Concord has developed most of the Concord Pacific Place Lands. The only areas that are currently undeveloped are sub-areas 6C and 9.

The Statutory Regime

On May 17, 1956, the Council of the City of Vancouver passed By-law No. 3575, being the Zoning and Development By-law. The Zoning and Development By-law allows the Director of Planning to relax the provisions of a by-law where literal enforcement would result in unnecessary hardship. Section 3.2.4 provides:

> The Development Permit Board, in the exercise of its jurisdiction, may relax the provision of this By-law in any case where literal enforcement would result in unnecessary hardship. In granting any relaxation, the Board shall have regard to the intent of this By-law, the regulations and policies of any Official Development Plan, and other applicable policies and guidelines adopted by Council
>
> (the "Hardship Provision").

On February 21, 1984, the Council of the City of Vancouver enacted By-law No. 5744, a by-law to amend the Zoning and Development By-law. By-law No. 5744 created a new Comprehensive Development District known as the BC Place/Expo District (the "BCPED"). All of the Concord Pacific Place Lands fell within the BCPED.

> On August 30,1988, the Council of the City of Vancouver approved the False Creek Policy Broadsheets. The policies are intended to be used by the City and developers to guide future development in the False Creek Area. Section 11 of the False Creek Policy Broadsheets anticipates owners using their property for interim uses to generate some income. Section 11 states:
>
> > Interim uses should be facilitated provided they are compatible with anticipated permanent uses, the shorelines and water experience, and views across the water. Interim uses should be moveable, low intensity, or low in capital investment. Time limits on interim uses should be secured through a legal arrangement satisfactory to the Director of Legal Services.
>
> On April 20, 1990, the Council of the City of Vancouver enacted By-law No. 6650, which adopted the False Creek North Official Development Plan (the "Development Plan"). The Development Plan established the framework for development of properties, including sub-area 9, stretching from the Granville Bridge in Vancouver east to Quebec Street, nearly all of which were owned by Concord.
>
> Section 5 of the Development Plan provides:
>
> > The development of False Creek North is expected to occur over many years. Interim uses are appropriate, having regard to the policies set out in the False Creek Policy Broadsheets.
>
> The vision under the Development Plan is to extend Creekside Park into sub-area 9. Currently, Creekside Park runs from Science World, north towards the boundary of sub-area 9. See Figures 6, 11 and 12a of the Development Plan, which is exhibit "E" to the affidavit #1 of Matthew Meehan,
>
> In October 2000, By-law No. 5744 was amended, *inter alia,* to include a provision limiting the use of sub-area 9 to park and recreational uses and customarily ancillary uses. Section 2,2 of By-law No. 5744 provides:
>
> > Despite Section 2.1, uses will be further limited in several of the sub-areas known in Figure 1, as follows:
> >
> > > (c) sub-area 9 will be limited to park and recreational uses and customarily ancillary uses.

[7] Concord submits that under the current legal agreements between the City, Concord and the Province, Concord has no obligation, or authorization, to commence construction of the Creekside Park Extension. This obligation, says Concord, will not arise until sub-area 6C is rezoned and excavated.

[8] Concord says the Province has reserved the right, consistent with previous practice, to relocate the contaminated soils from sub-area 6C onto sub-area 9.

[9] In 2004 Concord applied to the City to rezone and develop sub-area 6C. That application was refused in 2005.

[10] Events since then have further complicated the picture. In 2013, the City resolved to consider demolishing the Georgia and Dunsmuir viaducts and replacing them with an at-grade road network. The City commissioned a two-year study of that proposal.

[11] If the City decides, based on the results of the study, to demolish the viaducts and replace them with an at-grade road network, then Concorde submits the City will likely need to seek alterations of the boundaries of sub-areas 6C and 9. Concorde maintains that land swaps of this type are typically worked out in the context of an application to rezone, when the developer's interest in obtaining rezoning may be of assistance to the City in obtaining the desired land swaps.

[12] As a result, the City has advised Concord that it has no interest in considering the rezoning of sub-area 6C until the future of the Georgia and Dunsmuir viaducts have been determined.

[13] As a result of all of the foregoing, Concord suggests the key steps that must be taken before construction of the Creekside Park Extension are as follows:

(a) Completion of the study of removal of the viaducts;

(b) A decision by the City as to whether to remove the viaducts;

(c) Designing the at-grade road network to a degree sufficient to determine the City's land needs;

(d) Concord applying for rezoning of sub-areas 6C and 9 and agreeing with the City on the shapes of sub-areas 6C and 9;

(e) The City granting the new zoning for sub-area 6C; and

(f) Concord excavating sub-area 6C to allow the contaminated soil to be relocated to sub-area 9,

[14] To help expedite the process, Concord has committed to contributing $250,000 towards the first step: completing the study of removing the viaducts.

The Application for a Development Permit

[15] In 2005, Concord brought an application for the construction of two temporary presentation centre buildings, with 62 associated surface parking spaces and one loading zone, on sub-area 9.

[16] A presentation centre is a place where a potential buyer can go to obtain information on new and existing developments. The presentation centre, staffed with marketing and sales personnel, typically contains vignettes or full suite models for proposed developments as well as other marketing tools to assist a buyer with getting orientated with the local neighbourhood and City.

[17] Concord maintains that the presentation centres have played an integral role in its ability to sell and market developments on Concord Pacific Place Lands.

[18] Prior to applying for a development permit for sub-area 9, Concord had three presentation centre buildings on Homer Mews in Vancouver. As development of the Homer Mews site was expected to commence in the fall of 2005, Concord needed to move the presentation centre buildings to a new location.

[19] This would be the third move of the Vancouver presentation centre in 15 years.

[20] Concord says that because there is limited vacant space in Vancouver to accommodate presentation centre buildings, relocating to sub-area 9 was ideal because of its proximity to the proposed developments in the area.

[21] Additionally, in accordance with the agreements between the City, Concord and the Province, sub-area 9 is the last area to be developed in the Concord Pacific Place Lands. This meant the presentation centre could remain in sub-area 9 for a number of years.

[22] On June 22, 2005, the Development Permit Staff Committee recommended (the "Committee Report") that the Development Permit Board (the "Board") approve the application as submitted with a number of conditions, including:

> (a) producing a Site Management Plan to the satisfaction of the Director of Planning;
>
> (b) designing a development to provide temporary pedestrian lighting, signage and appropriate markings along the seawall wall/bike route;
>
> (c) designing and constructing access to Carrall Street;
>
> (d) widening the seawall by approximately *5'* along the site and removal of the fence north of the seawall; and
>
> (e) initiating a design process for the future Creekside Park extension, in consultation with neighbours
>
> (the "First Conditions")

[23] The Committee Report stated that it was appropriate for the Board to consider approving the application under the Hardship Provision.

[24] The Committee Report concluded that Concord would face unnecessary hardship if the application was denied. The Committee Report stated:

> Staff believe it would be an unnecessary hardship to the applicant to deny the use of this site, given that there are few other vacant sites in the vicinity, and each would likely trigger a requirement for multiple relocations.

[25] On July 19, 2005, the Board granted Concord a development permit numbered DE409317, permitting the construction of two temporary presentation centres, parking and one loading space, for a period of three years from the date of occupancy.

[26] In 2006, the Director of Planning approved amendments to DE409317, which allowed for the addition of a third presentation building on the site.

[27] Concord maintains it spent approximately one half million dollars in satisfying the First Conditions and approximately three and one half million dollars in relocating and constructing the presentation centre buildings. The date of occupancy was determined to be March 2008, leading the development permit to expire in 2011.

[28] In 2011, Concord brought an application to renew DE409317 for an additional three years. On April 26, 2011, the Development Permit Staff Committee recommended that the Board approve the application as submitted, subject to conditions, including:

> (a) enhancing the public water edge and seaside greenway to the satisfaction of the Director of Planning, the General Manager of Engineering Services and the General Manager or Parks and Recreation;
>
> (b) providing a separated bicycle path for northbound cyclists;
>
> (c) enhancing the property edge of Pacific Boulevard, Carrall Street Greenway south of Pacific and the southeast comer of sub-area 9; and
>
> (d) providing a Site Management Plan
>
> (the "Second Conditions").

[29] Concord says it spent approximately one hundred thousand dollars in satisfying the Second Conditions.

[30] On May 16, 2011, the Board approved an extension to DE409317 for an additional three years, expiring on May 16, 2014.

[31] On May 21, 2014, the F.C.R.A. filed a petition against the City pursuant to the *Judicial Review Procedure Act,* R.S.B.C. 1998, c. 241 (the "Petition"), which was amended on August 25, 2014, to seek:

> 1. An order in the nature of certiorari to quash the decision of the City of Vancouver made on or about July 24, 2014 and August 8, 2014 to grant the extension of the temporary development permit dated May 30, 2006 until July 31, 2017 to allow the continuation of a “Presentation Centre” and associated surface parking on the sub-area 9 of the BC Place/Expo District in contravention of Bylaw 5744 and the Official Development Plan, and
>
> 2. A declaration that any use of sub-area 9 must be in conformity with the zoning of sub-area 9, specifically as “park and recreational uses and customarily ancillary uses”

[32] Concord says the relief sought by the F.C.R.A. would have little effect on the respondent City, however its principal effect would be to stop Concord's commercial

activities on sub-area 9, including the operation of its presentation centre. Concord submits losing the ability to operate a presentation centre on sub-area 9 would negatively impact its ability to sell and market developments in the Concord Pacific Place Lands. This is because sub-area 9 offers advantages that no other space in Vancouver has. The primary advantage with sub-area 9 is its location. The presentation centre is located just off the seawall, overlooking False Creek. This, says Concord, helps to provide potential purchasers with a premium sales experience.

[33] In addition, Concord maintains it is able to market the developments in conjunction with the local community since the presentation centre is walking distance to the current and proposed developments in the Concord Pacific Place Lands and prospective purchasers are encouraged to go outside and walk to the development sites. Being able to walk along the seawall, and experience the community, says Concord, is an important marketing tool.

Discussion and Analysis

[34] The petitioner, who is the respondent in this application, acknowledges that Concord has an interest in the proceedings, but maintains that the petitioner seeks no relief from or against the applicant. Rather, says the petitioner, the issue to be decided at the hearing of the petition is whether the City of Vancouver has the statutory authority to “relax” the zoning of parkland to permit a commercial condominium sales center to continue to occupy the site zoned for parkland.

[35] The petitioner expresses the concern that if Concord is permitted party status to the proceedings that that will permit Concord to “highjack” the proceedings, as Concord has already expressed an interest in cross-examining Ms. Fern Jeffries on her affidavit sworn in support of the petition.

[36] The petitioner respondent maintains that the interests of Concord can be addressed at the hearing of the petition by intervenor status granted to Concord rather than party status, and rely on *Friedmann v. MacGarvie,* 2012 BCCA 109, and

Carter v. Canada (Attorney General), 2012 BCCA 502, as authority for that proposition.

[37] The petitioner further submits that the British Columbia Court of Appeal in *British Columbia (Attorney General) v. Davies,* 2009 BCCA 337 [*Davies*], has held that a person should only be a respondent in a judicial review where relief is claimed against that person or if that person is a party to an adversarial proceeding which gives rise to judicial review.

[38] In support of its application for party status, Concord relies heavily on *Kitimat (District) v. Alcan Inc.,* 2006 BCCA 562, where Alcan sought full party status in Kitimat's petition for various orders that instruments regulating Alcan and its hydroelectric generation at Kemano, British Columbia were *ultra vires*.

[39] The current application is brought pursuant to Rule 6-2(7) of the *Supreme Court Civil Rules.* The relevant portions of the Rule read as follows:

> (7) At any stage of a proceeding, the court, on application by any person, may, subject to subrules (9) and (10),
>
> …
>
> (b) order that a person be added or substituted as a party if
>
> (i) that person ought to have been joined as a party, or
>
> (ii) that person's participation in the proceeding is necessary to ensure that all matters in the proceeding may be effectually adjudicated on, and
>
> (c) order that a person be added as a party if there may exist, between the person and any party to the proceeding, a question or issue relating to or connected with
>
> (i) any relief claimed in the proceeding, or
>
> (ii) the subject matter of the proceeding
>
> that, in the opinion of the court, it would be just and convenient to determine as between the person and that party.

[40] Concord submits it is entitled to be added as a party to the petition under Rule 6-2(7)(b) or Rule 6-2(7)(c) because:

> (a) Concord was a party to the application for an extension of the temporary development permit;
>
> (b) Concord has a direct interest in the outcome of the petition; and
>
> (c) it is just and convenient to determine the issues between Concord and the FCRA.

[41] The petitioner respondent says that paragraphs 27 and 28 in *Davies* is the important part of that case that should assist the court here when it says:

> [27] Some comment might also be made with respect to the status of the various parties other than the Commissioner who purport to be respondents in this matter. No objection was taken to them appearing and presenting argument. We have some doubt that they are properly characterized as respondents. Ordinarily, a person will be a respondent to a judicial review petition only if relief is being claimed against that person or if that person is a party to an adversarial proceeding that gives rise to the judicial review. In the case at bar, the only relief claimed is against the Commissioner, and the proceedings before the Commission are not adversarial.
>
> [28] Our tentative view is that persons in positions like those of the purported respondents should, if they wish to present argument, apply for intervenor status. On this appeal, it was clear that the various purported respondents should be given the opportunity to present argument. In the absence of any objection to their doing so, the Court did not raise any issue as to their standing. This case should not be seen, however, as a precedent for the proposition that all persons having party status in a non-adversarial administrative proceeding will automatically have party status on judicial review proceedings or appeals.

[42] In a more recent case, the Court of Appeal said in *Friedmann* at paras. 12-19:

> [12] In *Gehring v. Chevron Canada Limited.*, 2007 BCCA 557 (Chambers), Rowles J.A. outlined this Court's general approach to intervenor applications:
>
> > [6] In *EGALE Canada Inc. v. Canada (Attorney General)*, 2002 BCCA 396, 170 B.C.A.C. 2004, I gave a brief summary of the principles that are generally considered on an application for leave to intervene:
> >
> > > [6] …
> > >
> > > [7] Generally speaking, before an applicant will be allowed to intervene, the court should consider whether the applicant has a direct interest in the litigation or whether the applicant can make a valuable contribution or bring a different perspective to a

> consideration of the issues that differs from those of the parties. When an application for intervention is made on a public law issue, the application may be allowed even though the applicant does not have a direct interest in the appeal.

[13] In *Bazley v. Children's Foundation et al.* (1996), 75 B.C.A.C. 177 (Chambers) at 180, Goldie J.A. enumerated the relevant criteria as follows:

> [15] …
>
> 1. the nature of the group seeking the intervener status;
> 2. the directness of the group's interest in the matter;
> 3. the suitability of the issue of the case at bar.

A. Nature of the applicant

[14] Although an applicant for intervenor status need not have a formal structure or form, it must have a broad representative base: *Guadagni v. British Columbia (Workers' Compensation Board)* (1988), 30 B.C.L.R. (2d) 259 (C.A. Chambers) at 262.

B. Directness of the applicant's interest in the matter

[15] An intervenor applicant's interest will be direct when "legal rights of the proposed intervenor will be affected or when any additional legal obligations would be imposed on the proposed intervenor resulting in a direct prejudicial effect": *R. v. N.T.C. Smokehouse*, [1991] B.C.J. No. 2082 (C.A. Chambers); *Faculty Association of the University of British Columbia v. University of British Columbia*, 2008 BCCA 376 (Chambers) at para. 7. A direct interest does not materialize from a mere precedential concern: *North Pender Island Local Trust Committee v. Conconi*, 2010 BCCA 405 (Chambers) at paras. 6-7.

[16] An intervenor application will not necessarily be defeated because the applicant has no direct interest in the outcome. In *R. v. Watson*, 2006 BCCA 234 (Chambers), Newbury J.A. stated at para. 3 (applied in *Gehring* at para. 7 and *Kwicksutaineuk/Ah-Kwa-Mish First Nation v. British Columbia (Agriculture and Lands)*, 2011 BCCA 294 (Chambers) at para. 19):

> [3] … where the applicant does not have a "direct" interest in the litigation, the court must consider the nature of the issue before the court (particularly whether it is a 'public' law issue); whether the case has a dimension that legitimately engages the interests of the would-be intervenor; the representativeness of the applicant of a particular point of view or "perspective" that may be of assistance to the court; and whether that viewpoint will assist the court in the resolution of the issues or whether… the proposed intervenor is likely to "take the litigation away from those directly affected by it". …

> C. Suitability of the issue in the case at bar
>
> [17] This criterion involves consideration of whether the applicant will bring something new to the issues on appeal. In *U.T.U., Locals 1778 & 1923 v. B.C. Rail Ltd*. (1990), 45 C.P.C. (2d) 33 (B.C.C.A. Chambers), Proudfoot J.A. stated at para. 6:
>
> > [6] Intervener status may also be granted if there is no direct interest in the issues between the parties but the applicant has an interest in the "public law issues". The Court will then consider the issues in that particular case and will consider whether the intervener will bring a new or different perspective to the consideration of the issues, or will make a useful contribution towards resolving the issues, always bearing in mind that the intervention will not be permitted if it would result in injustice to the parties.
>
> [18] Other justices of this Court have echoed this proposition in *R. v. Kapp*, 2005 BCCA 247 (Chambers) at para. 11, *Gateway Casinos LP v. BCGEU,* 2007 BCCA 48 (Chambers) at para. 8, and *PHS Community Services Society v. Canada (Attorney General)*, 2008 BCCA 441 (Chambers) at para. 13.
>
> [19] The potential concern at this stage is whether the proposed intervenor would change the issues or expand the scope of the litigation, thereby commandeering the proceedings and placing an undue burden on the parties to respond to arguments and issues immaterial to their private action: *Ward v. Clark*, 2001 BCCA 264 at paras. 6-11; applied in *FortisBC Inc. v. Shaw Cablesystems Limited*, 2010 BCCA 606 (Chambers) at para. 17. In *Canadian Broadcasting Corporation v. Luo*, 2008 BCCA 335 (Chambers) at para. 18, for example, Rowles J.A. noted in dismissing the application for intervenor status that the applicant wished to present arguments on the constitutional division of powers, whereas the appeal likely came down to an issue of statutory interpretation.

[43] Lastly, the petitioner relies on the most recent decision of the Court of Appeal in *Carter* at paras. 11-15:

> [11] An order granting leave to intervene in an appeal is discretionary, and may be made on any terms and conditions the judge considers appropriate. The jurisprudence governing such applications was recently summarized and affirmed by Madam Justice Bennett in *Friedmann v. MacGarvie*, 2012 BCCA 109, 318 B.C.A.C. 119 (Chambers), as follows.
>
> [12] Generally, intervention will be permitted in two situations. The first is the case in which the applicant has a direct interest in the litigation, in the sense that the result of the appeal will directly affect its legal rights or impose on it some additional legal obligation with a direct prejudicial effect. The fact that the outcome might ultimately adversely impact individual members of a proposed intervenor is not, however, sufficient to constitute the necessary direct interest, since the Court would not, on the appeal, be directly considering their rights or liabilities: *Ahousaht Indian Band v. Canada (Attorney General)*, 2012 BCCA 330 at paras. 4-8, 325 B.C.A.C. 312 (Groberman J.A. in Chambers), aff'd on review, 2012 BCCA 404.

> [13] Where an applicant does not have a direct interest, the Court may nevertheless grant intervenor status if the appeal raises public law issues that legitimately engage the applicant's interests, and the applicant brings a different and useful perspective to those issues that will be of assistance in resolving them. The appropriate considerations were summarized by Madam Justice Newbury in *R. v. Watson and Spratt*, 2006 BCCA 234 at para. 3, 70 W.C.B. (2d) 995 (Chambers):
>
> > ... where the applicant does not have a "direct" interest in the litigation, the court must consider the nature of the issue before the court (particularly whether it is a 'public' law issue); whether the case has a dimension that legitimately engages the interests of the would-be intervenor; the representativeness of the applicant of a particular point of view or "perspective" that may be of assistance to the court; and whether that viewpoint will assist the court in the resolution of the issues or whether, as noted in *Ward v. Clark*, the proposed intervenor is likely to "take the litigation away from those directly affected by it". (Para. 6.)
> > …
>
> [14] Factors weighing against granting intervenor status include the possibility that an intervenor will expand the scope of the proceeding by raising new or immaterial issues, or create an undue burden or injustice for the parties to the appeal by, for example, forcing them to respond to repetitive arguments: *Friedmann* at para. 19; *Faculty Association of the University of British Columbia v. University of British Columbia*, 2008 BCCA 376 at para. 15, 263 B.C.A.C. 3 (Chambers). Rule 36(5)(b) affirms this as it provides an intervenor may only make submissions that pertain to the facts and issues set out in the factums of the parties unless a court orders otherwise.
>
> [15] Finally, an intervenor is to make principled submissions on points pertinent to the appeal. It is not to argue for a particular result or support the position of one party or the other: *Friedmann* at para. 28.

[44] In *Kitimat,* the Court quoted extensively from the learned author, Joseph Story, from his *Commentaries on Equity Pleadings,* 8th ed., Boston; Little, Brown and Company, 1870, regarding whether or not an applicant ought to be made a party to proceedings, and concluded by saying at para. 25:

> Story's proposition, that the prime consideration in determining whether a person should be a party to the litigation is the interests of justice, is consistent with the overarching consideration on the application of any rule, the primary value being the interests of justice.

[45] The Court in *Kitimat* then went on to say at para. 26:

> It is my view that Alcan was entitled to be joined under both Rule 15(5)(a)(ii) and Rule 15(5)(a)(iii). The question is illuminated by considering Alcan's position in the event that it is not a full party to the litigation, that an order adverse to the respondent is made in the proceeding, that the present

> respondent declines to appeal the matter and that Alcan wishes to do so. Under the *Court of Appeal Act*, Alcan, if anything less than a party, would not have the right of appeal even though a court order may be made detracting from an order of the Minister of Energy and Mines, or an order-in-council, or an agreement between itself and the Province, or certain water licences it holds. In that circumstance Alcan's only opportunity to remedy the court order would be to commence a legal proceeding in which it is a party, seeking a contrary order concerning the instrument in question and risking embarrassment of the court. Such a result, in my view, is contrary to the interests of justice.

[46] Thus, in my view, one of the propositions that clearly emerges from the reading of the *Kitimat* case is whether or not the granting of the application sought in the case at bar is in the interests of justice, quite apart from the Rule itself.

[47] Rule 6-2(7)(b) applies in two circumstances, where a person “ought to have been joined as a party”, or where a person’s “participation in the proceeding is necessary to ensure that all matters in the proceedings may be effectually adjudicated upon”. In the event either of these tests is met, the applicant should to be joined.

[48] As regards the latter portion of the Rule, 6-2(7)(c) [formerly Rule 15(5)(a)(iii)] the Court of Appeal in *Kitimat* said this portion of the Rule:

> …applies where there may be between the party seeking to be added and any party to the litigation, a question or issue related to "relief claimed in the proceeding" or "the subject matter of the proceeding". That is, Rule 15(5)(a)(iii) encompasses both tests referred to by Calvert, an interest in the object and an interest in the subject of the litigation, such that either is sufficient to require joinder, provided it is just and convenient to determine the question or issue between that party and one already joined in the proceeding.

[49] The Court went on to find that because the District of Kitimat and its mayor sought remedies that would render invalid provincial instruments in Alcan’s favour and that that invalidity might restrict the range of uses by Alcan of the power generated by Alcan, that it created both a relief claimed in the proceeding as well as to the subject matter of the proceeding.

[50] The cases relied upon by the applicants as set out above have to be distinguished from cases related to applications for party status as opposed to applications for intervenor status, as the applicant seeks party status, not intervenor status.

[51] In *Davies* the Attorney General was appealing a decision dismissing its application for judicial review of a proposed inquiry into the death of a homeless aboriginal man who died after police left him in an alleyway in a severely intoxicated state. A commission was established to determine why no charges had been laid in connection with the man's death.

[52] The Attorney General argued the commission of inquiry violated the principle of prosecutorial discretion. The Court of Appeal held otherwise. In my view, the portions of the Court of Appeal decision upon which the petitioner relies in its opposition to the application is *obiter* only and, accordingly, is of no assistance to whether the applicant in this case should be made a party to the proceedings.

[53] *Carter* was an appeal of a finding that the provisions of the *Criminal Code* that prohibit physician-assisted suicide unjustifiably infringe sections of the *Canadian Charter of Rights and Freedoms* and so are of no force and effect. The cited passages from the judgment of Neilson J.A. concern the applications of at least 10 entities seeking intervenor status.

[54] The relied-upon portions of that judgment, in my view, apply directly to the application by an individual or entity for intervenor status and not where an individual seeks party status.

[55] The *Friedmann* case dealt with an application for intervenor status by West Coast Women's Legal Education and Action Fund, especially where the applicant does not have a direct interest in the outcome of an appeal of a judge's ruling regarding the decision of the British Columbia Human Rights Tribunal where a complaint had been made to it in the context of sexual harassment of a tenant by a landlord.

[56] In the case at bar, quoting some of counsel's hyperbole, the applicant stands the chance of having its property "expropriated" by the petitioner should it be successful in quashing the decision of the City of Vancouver to extend the temporary development permit which was recently extended to 2017. It seems to me that that creates a direct interest in the subject and the object of the petition, such that the applicant ought to have been joined as a party to the proceeding. I also take the view that it is in the interest of justice to do so.

[57] Accordingly, in the circumstances, the application by Concord is allowed.

[58] Costs will be in the cause.

"Master Taylor"