



No. S-175088
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CITY OF MAPLE RIDGE

PLAINTIFF

AND:

TRACY SCOTT, JANE DOE,
JOHN DOE AND OTHER UNKNOWN PERSONS

DEFENDANTS

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and THE
BC TRANSPORTATION FINANCING AUTHORITY

THIRD PARTIES

NOTICE OF APPLICATION

Names of applicants: The Plaintiff, City of Maple Ridge

To: The Defendants and Third Parties

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge or master at the courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia, on January 14 – 15, 2019 at 10:00 a.m. for the order(s) set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An Order that the City of Maple Ridge, including its servants, employees or contractor, be permitted to enter upon the premises located at the civic address of 11683 – 223rd Street in the City of Maple Ridge, British Columbia and legally described as:

PID 005-063-787, Lot 8, Block 5, District Lot 398, Group 1, New Westminster District, Plan 155; and

PID 009-546-642, Lot 2 Except: Firstly: Part on Highway Plan 63822 and Secondly: Part Dedicated Road on Plan LMP10261, District Lot 398, Group 1, New Westminster District, Plan 11527;

PID 013-603-515, Lot 6 Except: Part Black on Highway Statutory Right of Way

Plan 63822, Block 5, District Lot 398, Group 1, New Westminster District, Plan 155; and

PID 013-603-523, Lot 7 Except: Part Black on Highway Statutory Right of Way Plan 63822, Block 5, District Lot 398, Group 1, New Westminster District, Plan 155,

and including the unopened road allowances along the northern and southern borders of Lots 6, 7 and 8 (and collectively referred to as the “St. Anne Lands”) and carry out the terms of the October 19, 2018 Order of Ron French, Acting Fire Commissioner made pursuant to the *Fire Services Act*, RSBC 1996, c. 144, and appended hereto as Schedule “A” (the “*Fire Services Act Order*”), and the Fire Safety Regulations incorporated into the November 27, 2017 Consent Order of this Court (the “Fire Safety Regulations”) and, without limiting the generality of the foregoing, may:

- a. enter upon the St. Anne Lands for the purposes of bringing and maintaining the St. Anne Lands into conformance with the *Fire Services Act Order* and Fire Safety Regulations;
 - b. bring and maintain the St. Anne Lands into conformance with the *Fire Services Act Order* and Fire Safety Regulations;
 - c. pursuant to the authority of Section 16 of the *Community Charter*, SBC 2003, c. 26, enter and inspect the interior of any tent, shelter or structure on the St. Anne Lands for compliance with the *Fire Services Act Order* and Fire Safety Regulations following 24 hours after affixing a notice of intention to enter and inspect upon such tent, shelter or structure on the St. Anne Lands;
 - d. remove from the St. Anne Lands any substances or materials prohibited by the *Fire Services Act Order* or Fire Safety Regulations;
 - e. remove from the St. Anne Lands any unoccupied campsites and related materials;
 - f. remove from the St. Anne Lands any building, structure or recreational vehicle/camper which has been located or constructed or upon the St. Anne Lands without the written authorization of a Building Inspector for the City of Maple Ridge; and
 - g. dispose of such items or materials removed from the St. Anne Lands under the authority of this Order without recourse as to any claim for loss of personalty.
2. An injunction enjoining the defendants, and all those who have taken up occupancy of the St. Anne Lands, from hindering, obstructing or preventing the City of Maple Ridge, including its servants, employees or contractor, from entering upon the St. Anne Lands and carrying out the terms of this Order.
 3. An Order prohibiting any person from:
 - a. constructing any building or structure upon the St. Anne Lands contrary to a written Stop Work Order made by a Building Inspector for the City of Maple Ridge;

or

- b. occupying any building or structure upon the St. Anne Lands contrary to a written Do Not Occupy Order made by a Building Inspector for the City of Maple Ridge.
4. An Order that all defendants, and any others claiming to have taken up occupancy of the St. Anne Lands, and who seek transition to housing must, within 48 hours of the order of this Court:
 - a. identify themselves to a representative of the City of Maple Ridge by way of producing Government-issued photo identification, or if Government-issued photo identification is not available, then by agreeing to be photographed and providing their full legal name to a representative of the City, and which information shall be used and retained solely for the purpose of verifying the identity of such individuals; and
 - b. identify to the City of Maple Ridge their specific campsite location upon the St. Anne Lands,

(a "Verified Occupant").
 5. Within 48 hours of the order of this Court, any person who is not a Verified Occupant must vacate the St. Anne Lands and shall be enjoined from occupying any portion of the St. Anne Lands unless authorized to do so in writing by the City of Maple Ridge, and the City and any police officer are authorized to prevent any person who is not a Verified Occupant from occupying the St. Anne Lands.
 6. Any police officer is hereby authorized to arrest and remove any person who the police officer has reasonable and probable grounds to believe is contravening or knowingly has contravened the provisions of the order of this Court. For the sake of clarity, such police officer retains his or her operational discretion as to whether or not to arrest or remove any person pursuant to the order of this Court.
 7. Any police officer who arrests and removes any person pursuant to the order of this Court is hereby authorized to:
 - a. release that person from arrest upon the police officer being satisfied that the person will no longer contravene the provisions of the order of this Court;
 - b. release that person from arrest upon the person agreeing in writing to abide by the order of this Court and to appear before this Court at such a time and place as may be fixed for the purpose of being proceeded against for contempt of court or for fixing a date for such a proceeding;
 - c. where such a person has refused to give a written undertaking pursuant to paragraph 7(b) above, or where in the circumstances the police officer considers it appropriate, to bring forthwith such person before this Court at the Supreme Court Registry in Vancouver, or any such other place, or in any such manner, as the Court may direct for the purpose of being proceeded against for contempt of court, or for fixing a time for such proceedings; or

- d. detain such person until such time until they can be brought before this Court.
8. A police officer and/or the BC Sheriffs Service is entitled to detain and transport any person in order to give effect to paragraph 7(c) above.

Part 2: FACTUAL BASIS

A. The Parties

1. The plaintiff, City of Maple Ridge (the “City”), is a municipality incorporated pursuant to the *Local Government Act*, R.S.B.C. 2015, c. 1 and is the owner in fee simple and lawful occupier of those portions of the St. Anne Lands described below.
2. The defendant, Tracy Scott, is a person whose vocation and place of usual abode is unknown to the City, and, along with other persons whose identities are unknown to the City have since May 2, 2017, taken up continuous occupation upon the St. Anne Lands in an unauthorized temporary encampment established by the defendants (the “Encampment”).

B. The St. Anne Lands

3. The St. Anne Lands are approximately 0.34 hectares in size (0.84 acre) and located in a primarily residential and urban area close to the downtown area of the City. The St. Anne Lands are configured in a triangle-shaped area bounded:
- a. on the north side by three residential parcels and one commercial parcel;
 - b. on the east side by multi-family, commercial, and mixed use along 223rd Street; and
 - c. on the west side by a four-lane road known as the Haney Bypass, with multi-family dwellings located across the road.
4. The St. Anne Lands comprise four parcels of property and portions of unopened road allowances, as follows:
- a. The City is the registered owner in fee simple, of the two eastern-most parcels (the “City Parcels”) legally described as:
 - i. PID 005-063-787, Lot 8, Block 5, District Lot 398, Group 1, New Westminster District, Plan 155; and
 - ii. PID 009-546-642, Lot 2 Except: Firstly: Part on Highway Plan 63822 and Secondly: Part Dedicated Road on Plan LMP10261, District Lot 398, Group 1, New Westminster District, Plan 11527;
 - iii. And is the vested owner in possession of the two unopened road allowances along the northern and southern borders of Lots 6, 7 and 8, pursuant to section 35 of the *Community Charter*, S.B.C. 2003, c. 26; and

- b. The Third Party, British Columbia Transportation and Finance Authority, is the registered owner in fee simple of the two western-most parcels (the “BCTFA Parcels”), legally described as:
 - i. PID 013-603-515, Lot 6 Except: Part Black on Highway Statutory Right of Way Plan 63822, Block 5, District Lot 398, Group 1, New Westminster District, Plan 155; and
 - ii. PID 013-603-523, Lot 7 Except: Part Black on Highway Statutory Right of Way Plan 63822, Block 5, District Lot 398, Group 1, New Westminster District, Plan 155.
5. By a Licence of Occupation agreement in writing made September 22, 2016 between BCTFA and the City (the “Licence of Occupation”), the City is obliged, *inter alia*, as follows, to:
- a. Keep the BCTFA Lands “in a safe, clean and sanitary condition”;
 - b. Not “do anything on the [BCTFA Lands] that may become a nuisance or annoyance to an owner or occupier of land in the vicinity of the [BCTFA Lands]”;
 - c. “[E]nforce municipal by-laws ... to ensure the safety of the general public ...”;
 - d. “[U]se and occupy the [BCTFA Lands] only in accordance with and for the purposes [of green space or park purposes only]”;
 - e. Indemnify and save the BCTFA harmless for claims and losses arising out of or in connection with the BCTFA Lands; and
 - f. “Not permit any person to do anything it is restricted from doing under [the covenants above]”.
6. Immediately prior to the May 2, 2017 occupation, the St. Anne Lands: (a) did not contain any permanent buildings or structures, (b) contained a mix of open and treed areas, (c) were maintained and administered through the City’s Parks, Recreation and Leisure Department, and (d) were surrounded by a security fence in anticipation and preparation for formal parks of the St. Anne Lands.

C. Unlawful Occupation of the St. Anne Lands

- 7. On or about May 2, 2017, the defendants removed the anti-tamper clamps on the security fencing and entered on to the St. Anne Lands and established the Encampment. The initial stage of the Encampment included, *inter alia*: approximately 22 camping tents, the defendants’ personal items, a cook stove and propane tank set up in an open area.
- 8. On or about May 5, 2017, the City gave the defendants written notice that the St. Anne Lands were closed to the public, to vacate the St. Anne Lands and that the entry of the defendants onto the St. Anne Lands was considered an unlawful trespass.
- 9. Contrary to the City’s demands and provisions of the Parks Regulation Bylaw the

defendants have, since on or about May 2, 2017, maintained the Encampment.

10. The size and composition of the Encampment has varied from its inception, and at no time has City obtained an accurate or verifiable count as to the number of individuals who have made the Encampment their place of usual abode.

D. History of Proceedings to the Present Application

11. On May 30, 2017, the City filed the Notice of Civil Claim herein and a Notice of Application, seeking interim injunctive relief to order the property to be vacated. The City did not ultimately proceed with that application.
12. Since its inception, the Encampment has contained fire-safety and other health risks which pose a danger to the occupants of the Encampment, first responders and those who may visit the Encampment.
13. Starting primarily in September, 2017, sharp increases were observed at the Encampment relating to, *inter alia*, serious fire-safety related risks and levels of aggressive behaviour shown by occupants towards Maple Ridge Fire Department (“MRFD”).
14. By a Notice of Application filed November 10, 2017 the City intended to seek interim injunctive relief to order the property to be vacated and, alternatively, an interim injunction requiring compliance upon the St. Anne Lands with certain fire safety regulations which had been developed by the MRFD in consultation with the defendants (the “Fire Safety Regulations”).
15. By a Consent Order approved by Mr. Justice Milman and made November 27, 2017, the parties agreed to the formal imposition of the Fire Safety Regulations and by which, *inter alia*, the parties agreed that fire safety was of critical importance and could be best achieved through cooperation and collaboration between the parties. The Consent Order further provided that the City could enter upon the property to assist the defendants in bringing and keeping the property in compliance with the Fire Safety Regulations.
16. Since that time, however, the defendants have failed or refused to bring or maintain the St. Anne Lands in compliance with the Fire Safety Regulations and have caused new violations of the Fire Safety Regulations to occur on the property.

E. Current Condition of Fire and Life-Safety Hazards in the Encampment

17. In addition to failing or refusing to comply with the Fire Safety Regulations, since November 27, 2017 new types of fire and life safety risks have been created within the Encampment, including:
 - a. The construction of new, improvised wooden structures which have been constructed from salvaged materials;
 - b. An improvised electrical distribution system on the property, the source for which is the electrical system for the on-site washroom and hygiene trailer, which has been repeatedly tampered with; and

- c. The presence of gasoline-powered equipment on the property and associated fuel containers.
18. Life-safety risks relating to fire hazards are at a critical level in the Encampment and the occupants have proven themselves unable or unwilling to maintain basic fire-safety standards on the property, and have placed themselves (individually and collectively), first responders and members of the public at serious risk of injury or death.
19. In the summer and fall of 2018, the City presented itself at the property, ready and willing to assist with bringing the property into compliance with the Fire Safety Regulations, but the defendants failed to accept this cooperation and instead hindered, obstructed and refused to allow the property to be brought to into compliance with the Fire Safety Regulations.
20. On September 24, 2018, Fire Chief Howard Exner of MRFD, acting in his capacity as the local assistant to the Fire Commissioner, issued two Remediation Orders under s. 22 of the *Fire Services Act*, RSBC 1996, c. 144, to the City of Maple Ridge and the Province relating to, respectively, the City-owned and BCTFA-owned lands comprising the St. Anne Lands.
21. Following an appeal of the September 24, 2018 *Fire Services Act* Orders brought on behalf of the occupants of the Encampment, on October 19, 2018, Acting Fire Commissioner Ron French issued an order upon the City of Maple Ridge pursuant to the *Fire Services Act*, RSBC 1996, c. 144, and which is appended hereto as Schedule “A” (the “*Fire Services Act* Order”).
22. Subsequently, the City, primarily through members of its Parks Department, attended at the Encampment for the purposes of carrying out the requirements of the *Fire Services Act* Order. In response, the defendants wilfully resisted efforts by the City to address certain elements of the *Fire Services Act* Order, including the removal of fuel containers from the property.
23. Furthermore, MRFD believes that prohibited materials, such as fuel containers and heating appliances, are kept from sight within zipped-up tents or under tarps. If tents are being used to hide dangerous and prohibited materials and substances, however, inspections of all areas of the St. Anne Lands, including inside zipped-up tents, must occur.
24. Fire is indiscriminate, and the safety risks willingly assumed by one person can manifest themselves in the form of fire-related harm experienced by many. Fire safety upon the St. Anne Lands must take primacy over all other considerations.

F. Identification of Defendants and Occupants

25. The defendants have pleaded, *inter alia*, that their taking shelter and occupying the St. Anne Lands has occurred as a matter of necessity in the absence of “adequate housing alternatives and insufficient shelter that is accessible to them”.

26. The defendants have expressed their wish to be housed so that the Encampment can be closed.
27. During the month of October, 2018, BC Housing opened 53 units of temporary supportive housing on Royal Crescent in Maple Ridge for people experiencing homelessness in Maple Ridge and a number of the defendants transitioned into this new supportive housing.
28. The Province of British Columbia, BC Housing and the City have expressed a commitment to work towards the goal of finding housing for all those in the Encampment who wish to be housed.
29. In order to accomplish this, the City must understand how many people are occupying the St. Anne Lands and who they are.
30. Furthermore, if individuals are occupying the St. Anne Lands who do not wish to be housed, then such individuals should be enjoined from occupying the St. Anne Lands.

Part 3: LEGAL BASIS

1. This application is brought pursuant to Rules 8-1 and 10-4.
2. The City has been and continues to be hindered and obstructed in its statutory obligations to:
 - a. Carry out the requirements of a statutory order issued to it by the Office of the Fire Commissioner under the *Fire Services Act*; and
 - b. Take care that in all the circumstances people will be reasonably safe in using the St. Anne Lands, pursuant to s. 3 of the *Occupiers Liability Act*, RSBC 1996, c. 337.
3. Pursuant to the test articulated in *RJR–MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 31, there is a serious issue to be tried, the City (including the public) has and continues to suffer irreparable harm by virtue of the state of fire hazards on the property, and the balance of convenience favours the granting of an injunction.

Part 4: MATERIAL TO BE RELIED ON:

1. Affidavit #2 of Kelly Swift sworn December 5, 2018;
2. Affidavit #2 of Michael Van Dop sworn December 5, 2018;
3. Affidavit #1 of Howard Exner sworn December 5, 2018;
4. Affidavit #2 of David Boag sworn December 5, 2018;
5. Affidavit #1 of Douglas Armour sworn December 5, 2018;
6. Affidavit #1 of Paul Kelly sworn December 5, 2018;
7. Affidavit #1 of William Ozeroff sworn December 5, 2018;

8. Affidavit #1 of Tony Cotroneo sworn December 5, 2018;
9. Affidavit #2 of Dominic Flanagan sworn December 11, 2018;
10. Affidavit #1 of Dominic Flanagan sworn November 23, 2017;
11. Affidavit #1 of Kathryn Vey sworn December 10, 2018
12. Affidavit #1 of Kelly Swift sworn November 9, 2017;
13. Affidavit #1 of Michael Van Dop sworn November 9, 2017;
14. Affidavit #1 of Paul Hurst sworn November 9, 2017;
15. Affidavit #1 of Peter Kuhr sworn November 10, 2017;
16. Affidavit #1 of David Boag sworn May 29, 2017;
17. Affidavit #1 of Shawn Matthewson sworn November 9, 2017; and
18. The pleadings filed herein.

The applicant(s) estimate(s) that the applicant will take 2 days.

- This matter is within the jurisdiction of a master.
 This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) File an application response in Form 33.
- (b) File the original of every affidavit, and of every other document, that
 - (i) You intend to refer to at the hearing of this application, and
 - (ii) Has not already been filed in the proceeding, and
- (c) Serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) A copy of the filed application response;
 - (ii) A copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person
 - (iii) If this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: December 11, 2018



Signature of Jeffrey W. Locke
Lawyer for the applicant
City of Maple Ridge

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1
of this notice of application

with the following variations and additional terms:

Date: [dd/mmm/yyyy] .

Signature of Judge Master

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts.



October 19, 2018

Dentons Canada LLP
20th Floor, 250 Howe Street,
Vancouver, BC V6C 3R8

Reference: 548306
Your File #: 57427-1

Attention: Rajit Mittal

Re: Appeal of Fire Services Act Order

On September 28, 2018, the Office of the Fire Commissioner received a letter by registered mail appealing the following orders issued by the Local Assistant to the Fire Commissioner ("L AFC") #1525 Howard Exner pursuant to section 27 of the *Fire Service Act*, RSBC 1996, c. 144:

1. Section 22 *Fire Services Act* order issued to the Corporation of the City of Maple Ridge dated September 24, 2018, and
2. Section 22 *Fire Services Act* order issued to Her Majesty the Queen in the Right of the Province of British Columbia represented by the Ministry of Transportation and Infrastructure dated September 24, 2018
(the "Section 22 Orders")

The orders were issued for the premises located at:

1. LOT 8, BLOCK 5, DISTRICT LOT 398, GROUP 1, NEW WESTMINSTER DISTRICT, PLAN NWP155 (Civic address: 11683 233 STREET, MAPLE RIDGE BC),
2. LOT 2, DISTRICT LOT 398, NEW WESTMINSTER DISTRICT, PLAN NWP11527
3. AREA DEDICATED AS ROAD, (ST ANNE AVE WEST OF 223rd), AND SHOWN ON PLAN NWP11527
4. AREA DEDICATED AS LANE, (LANE NORTH OF ST ANNE AVE AND WEST OF 223rd), AND SHOWN ON PLAN 11527

(the "Premises")

Fire Services Act:

The Fire Commissioner has authority to hear the appeal of the Section 22 Orders pursuant to section 27 of the *Fire Services Act* which provides that:

Ministry of Public Safety
and Solicitor General

Office of the Fire Commissioner
Emergency Management BC

Mailing Address:
PO Box 9201 STN PROV GOVT
Victoria BC V8W 9J1

Location:
Block A – Suite 200
2261 Keating X Road
Saanichton BC V8M 2A5
Telephone: 1-888-988-9488
Facsimile: 250 952-4888

Appeal to fire commissioner

27 (1) If a local assistant makes an order under sections 21 to 24 to remove or to keep secure combustible or explosive material or to remedy a flammable condition, the occupier may appeal to the fire commissioner by registered letter mailed within 48 hours after receipt of the order.

(2) If a local assistant makes an order under sections 21 to 24 to repair, remove or destroy premises, or to alter the use or occupancy of premises, or to remove or to take proper precautions against a fire hazard, the owner or occupier may appeal to the fire commissioner by registered letter mailed within 10 days after receipt of the order.

(3) The fire commissioner must promptly investigate each appeal, affirm, modify or revoke the order appealed from, and in writing communicate the decision and the reasons to the owner or occupier and to the maker of the order.

Section 1 of the *Fire Services Act* provides that “occupier” “includes (a) a tenant, lessee, agent and any other person who has the right of access to and control of a building or premises to which this Act applies, and (b) in relation to common property and common facilities in a strata plan, the strata corporation”.

Pursuant to section 24 of the *Fire Services Act*, the LAFC may, in the municipality or part of British Columbia for which he or she is a LAFC, exercise the powers conferred by section 21 and 22 of the *Fire Services Act*. Sections 21 and 22 of the *Fire Services Act* provide that:

Inspection of fire hazards

21 On complaint of a person interested or, if believed advisable, without complaint, the fire commissioner and the commissioner's inspectors may at all reasonable hours enter any premises anywhere in British Columbia to inspect them and ascertain whether or not any of the following conditions exist:

- (a) the premises are in a state of disrepair that a fire starting in them might spread rapidly to endanger life or other property;
- (b) the premises are so used or occupied that fire would endanger life or property;
- (c) combustible or explosive material is kept or other flammable conditions exist on the premises so as to endanger life or property;
- (d) a fire hazard exists on the premises.

Order to remedy conditions

22 (1) After an inspection the fire commissioner, or an inspector with the fire commissioner's authority, may in writing order that within a reasonable time, to be set by the order,

(a) if section 21 (a) applies, the owner remove or destroy the premises, or the owner or occupier repair the premises,

(b) if section 21 (b) applies, the owner or occupier alter the use or occupancy of the premises,

(c) if section 21 (c) applies, the occupier remove or keep securely the combustible or explosive material or remedy the flammable conditions, and

(d) if section 21 (d) applies, the owner or occupier remove or take proper precautions against the fire hazard.

(2) After the receipt of an order, the owner, occupier or person in charge must comply with it.

(3) Subject to an agreement to the contrary,

(a) the cost of complying with an order must be borne by the owner, and

(b) if the occupier pays the cost, the occupier has a right of action or set off against the owner for the cost actually and necessarily paid in complying with the order.

Background:

These are the events as I understand them:

1. The residents of the encampment on the Premises appeal the Section 22 Orders pursuant to section 27 of the *Fire Services Act*.
2. The appeal of the Section 22 Orders was received by the Fire Commissioner on September 28, 2018.
3. The powers and authority of a LAFC are contained within the *Fire Services Act*.
4. The appeal makes reference to Consent Order No. S-175088 from the Vancouver Registry issued by the Supreme Court of British Columbia on November 27, 2017 (the "Consent Order"). Paragraph 3 of the Consent Order, under the heading "THIS COURT ORDERS", states that "[n]o person having notice of this Order shall hinder, delay, interfere or obstruct any person from performing any provision of this Order". Except for paragraph 3, the issues raised with respect to the application of the Consent Order are distinct and not within the scope of appeal under the *Fire Services Act*, which considers the validity of the action ordered in relation to fire safety and endangerment to life and property, and the reasonableness of the time frame stated for compliance.

Summary of Evidence:

In accordance with section 27 of the *Fire Service Act*, I have investigated and considered the following in making my decision:

1. Letter from Rajit Mittal (Legal Counsel for the residents of the encampment on the Premises), “Re Appeal of *Fire Service Act* Orders” dated September 26, 2018.
2. LAFC #1525 Howard Exner’s photographs and notes contained in emails dated October 3, 2018 and October 4, 2018.
3. Letter from Micah Weintraub (Legal Counsel for the Province represented by the Ministry of Transportation and Infrastructure) to Jeffrey Locke (Legal Counsel for the City of Maple Ridge) dated September 26, 2018 regarding the license of occupation.
4. Letter from Jeffrey Locke (Legal Counsel for the City of Maple Ridge) to Ron French (Acting Fire Commissioner) dated October 15, 2018 regarding the Maple Ridge Homeless Camp Appeal.
5. Letter from Rajit Mittal (Legal Counsel for the residents of the encampment on the Premises) to Ron French (Acting Fire Commissioner) dated October 15, 2018 regarding the Maple Ridge Homeless Camp Appeal.

Analysis:

The definition of “occupier” in the *Fire Services Act* is not exhaustive. Paragraphs (a) and (b) of the definition of “occupier” add to the meaning of “occupier”, and do not displace its ordinary meaning. The residents of the encampment have been on the Premises since May 2017 and I find that the residents of the encampment on the Premises are “occupiers” for the purposes of the *Fire Services Act*.

In considering the appeal I have taken into account that the intent of the original orders was to ensure a reasonable level of fire and life safety in an ad hoc encampment by minimizing the sources of ignition and likelihood of the rapid spread of fire. The time limits for compliance need to be based upon a reasonable time to comply taking into consideration the level and severity of the associated risks.

The original orders required compliance with all actions within 24 hours. This is not considered reasonable for those actions that do not represent an urgent threat to fire and life safety. It was also noted that some parts of the order direct actions to be taken that are beyond the scope and intent of *Fire Services Act* and the British Columbia Fire Code and consequently cannot be upheld (for example: “1(c) all personal items tied to or otherwise hanging on the fence shall be removed, 2(e) Tents must be visible and accessible from the main pathways”).

Not all actions set out in the Section 22 Orders are necessary to ensure the Premises do not pose an unacceptable fire safety risk or would endanger life or property and accordingly I have decided to modify the order as set out below. The amount of combustible materials and the manner of storage can present a potential fuel load should a fire occur, however the manner of use and compliance with the requirements stated in my order below can mitigate the potential risk to an acceptable level. This should be monitored and assessed on an ongoing basis. It is recognized that when an encampment situation develops there are some restrictions required to minimize the possible sources of ignition and prevent the rapid spread of fire due to overall numbers and crowding of tents and structures. In such situations the requirement to minimize the life safety risk to the collective group outweighs the consideration of individual impacts, which may be more manageable in situations where it involves only a few singular tents in an organized environment.

Decision:

After consideration of the photographs of the encampment I find that the premises are in a state of disrepair such that a fire starting in the premise is likely to spread rapidly and endanger life or other property due to the proximity of tents, tarpaulins overlapping any gaps between tents/structures and lack

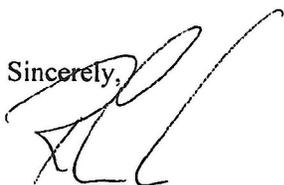
of clear egress from all tents/structures. The Section 22 Orders are hereby modified by rescinding the wording of the actions ordered and replacing it as follows (compliance required within time indicated for each)

YOU ARE HEREBY ORDERED TO:

- 1: Position all tents and structures to maintain a 1 meter clear space on all sides. (7 days)
- 2: Position the entrance of all shelters or tents to face a path of egress. (3 days)
- 3: Ensure all egress routes shall be unimpeded. (24 hours)
- 4: Remove any tarpaulins that extend over more than one shelter or structure. (7 days)
- 5: Restrict the use of open flame; not to be used within 3 meters from combustible materials and do not use under combustible overhangs. (Immediately)
- 6: No storage or use of flammable liquids. (Immediately)
- 7: Restrict the use of propane (and reasonable storage) to a communal cooking area. (3 days)

The work required by this decision shall be completed to the satisfaction of the LAFC having jurisdiction. In the event that you disagree with this decision I refer you to the provisions in section 28 of the *Fire Services Act*.

Sincerely,



Ron French
Acting Fire Commissioner
Ministry of Public Safety and Solicitor General

pc: Howard Exner, LAFC #1525
 Micah Weintraub
 Laura Benson
 Jacqueline McMorran

ORDER

Pursuant to Section 22 Section 33 of the *Fire Services Act*
 British Columbia Fire Code 2012

THIS ORDER IS ISSUED TO:

Her Majesty the Queen in the Right of the Province of British Columbia as represented by the Ministry of Transportation and Infrastructure

Attention: Deputy Attorney General, Minister of Justice, 910 Government Street, Victoria British Columbia V8W 1X3.

FOR THE PREMISES LOCATED AT:

1. LOT 7, BLOCK 5, DISTRICT LOT 398, GROUP 1, NEW WESTMINSTER DISTRICT, PLAN NWP155, EXCEPT PLAN 63822.
22277 ST. ANNE AVE. MAPLE RIDGE BC,
2. LOT 5, BLOCK 5, DISTRICT LOT 398, GROUP 1, PLAN PL 63822, NEW WESTMINSTER DISTRICT, NWP155, EXCEPT BLACK ON HWY SRW, GROUP 1, NEW WESTMINSTER LAND DISTRICT, EXCEPT BLACK ON HWY SRW PL
NO CIVIC ADDRESS, MAPLE RIDGE BC.
3. LOT 6; BLOCK 5; DISTRICT LOT 398; NEW WESTMINSTER LAND DISTRICT; PLAN NWP155
NO CIVIC ADDRESS, MAPLE RIDGE BC.

WHERE THE PREMISES IS USED AS: Open Space Encampment in a Proposed Park

Having inspected the premises of the above address on the 12th day of September, 2018, and or further observed on 14th day of September, 2018, I find that observations made in accordance to Section 21 of the *Fire Services Act*:

(a) the premises are in a state of disrepair that a fire starting in them might spread rapidly to endanger life or other property;

- 1) to wit; that the positioning and proximity of tents, metal fencing and shanty type wooden structures are such that they would impede the egress of occupants during a fire.
- 2) to wit; that the shanty type wooden constructed building are not constructed according to any building code and would present an egress hazard during a fire.

(b) the premises are so used or occupied that fire would endanger life or property;

- 1) to wit; that the positioning and proximity of tents and shanty type wooden structures of tents and shanty type constructed structures are such that they would allow for the rapid spread of fire.

(c) combustible or explosive material is kept or other flammable conditions exist on the premises so as to endanger life or property;

- 1) to wit; that propane cylinders are stored improperly and inadequately secured
- 2) to wit; that open flame heating, cooking and lighting devices were used too close to combustible structures.
- 3) to wit; that stuffed furniture, (sofas, chairs and loveseats), are being used and stored in such a manner that creates an excessive fire load and will cause rapid fire growth.
- 4) to wit; that pallets, lumber and other combustible materials are stored in such a manner as to cause a large fire load with excessive fire growth.

(d) a fire hazard exists on the premises.

- 1) to wit; that the positioning and proximity of tents and shanty type wooden structures of tents and shanty type constructed structures are such that they would allow for the rapid spread of fire.

THEREFORE, pursuant to the authority vested in me and under:

- Section 22 of the *Fire Services Act*
 Section 33 of the *Fire Services Act*
 Division C – Sentence 2.2.1.3.(2) of the British Columbia Fire Code 2012


YOU ARE HEREBY ORDERED TO:

1. With regards to the perimeter fence areas; the 1 meter emergency access space must be maintained as follows;
 - a. all tents and belongings must be moved a minimum of 1 meter away from the fence.
 - b. all ropes and or other like items holding tarps or anything else over tents must be removed from the fence.
 - c. all personal items tied to or otherwise hanging on the fence shall be removed.
2. With regards to the tents:
 - a. Spatial separation remains an issue throughout the entire camp; and must be addressed to assist in preventing fire spread. Move all individual tents and associated belongings a minimum one meter from each other and maintain this space at all times.
 - b. Tarps used to cover multiple tents must be suspended overhead with a minimum 1 meter clearance; raise and/or remove tarps as necessary to achieve this requirement.
 - c. Tarps must be in good condition. Torn, frayed or damaged tarps will aid in fire spread and must be removed. Tarps to be of approved polypropylene variety and therefore remove all:
 - building wrap,
 - lumber wrap,
 - poly plastic coverings.
 - d. All tents main entrances must be accessible to pathways.
 - e. Tents must be visible and accessible from the main pathways.
3. Remove all upholstered furniture within the camp; e.g. all stuffed chairs, sofas and the like. This includes all items inside tents and under tarped areas.
4. Remove any and all shanty type constructed structures, (i.e. wooden walls, shelters, wooden doors etc.) within the camp. Do not construct structures within the camp.
5. Remove all wooden pallets, debris and wood and any excessive combustible storage from the camp.
6. Remove all propane cylinders within the camp with the exception of two 20lbs cylinders for use in the communal kitchen area.
7. Remove all propane/white gas appliances, (i.e. bbqs, heaters and lanterns), from temporary shelters and camp except for the ULC approved appliances for use in the communal kitchen.
8. Remove liquid fuel containers, (e.g. gasoline jerry cans), located throughout camp. Remove all gasoline power equipment such as generators, lawnmowers and the like.
9. Remove all electrical extension cords/connections/appliances. Cease and desist the practice of tying into the electrical service to the washroom trailer.
10. Ensure that all electrical junction boxes in and associated to the washroom facility are properly secured, covered and not tampered with.
11. Access and Egress:
 - a. Continue regular removal of discarded items, garbage and broken objects throughout the camp.
 - b. Maintain established pathways clear of storage/debris/garbage at all times.

The work involved in this Order must be completed within twenty-four, (24), hours after receipt of this order.

This order is written on the 24th day of September, 2018.



Emergency Management BC

Ministry of Public Safety and Solicitor General

Local Assistant to the Fire Commissioner

[Handwritten Signature]

SIGNATURE OF RECIPIENT **DEAN LANGE**
MANAGER, PROPERTY SERVICES

NAME & TELEPHONE NO. OF RECIPIENT

DATE RECEIVED *Sept. 24 / 18*

[Handwritten Signature]

LOCAL ASSISTANT TO THE FIRE COMMISSIONER(SIGNATURE) BADGE NO 1525

NAME OF LOCAL ASSISTANT Howard R Exner TELEPHONE NO. 604 463-5880

NAME OF LOCAL ASSISTANT

ADDRESS OF LOCAL ASSISTANT 22708 Brown Ave, Maple Ridge BC

ADDRESS OF LOCAL ASSISTANT

CONFIRMATION OF DELIVERY:

ON THE _____ DAY OF _____ 20__ I, _____
(month) (Name)

served a copy of the Order hereof to _____
(Print Name of Recipient)

AT _____, BRITISH COLUMBIA
(Location)

(signature)

- Recipient acknowledges the order as owner occupier person in charge representative of corporation
- Recipient refuses to acknowledge the order
- Recipient was given information regarding the appeal process