

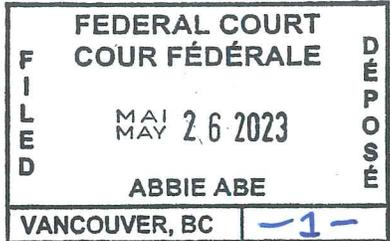
(Court File No.)
T-1107-23

FEDERAL COURT

BETWEEN:

JULIAN CLARK

Applicant,



-and-

THE MINISTER OF INNOVATION, SCIENCE AND INDUSTRY, or INNOVATION, SCIENCE AND ECONOMIC DEVELOPMENT, ISLANDS TRUST SALT SPRING ISLAND LOCAL TRUST COMMITTEE, ROGERS COMMUNICATIONS INC, CAPITAL REGION EMERGENCY SERVICE TELECOMMUNICATIONS, and CYPRESS LAND SERVICES

Respondents.

NOTICE OF APPLICATION

Form 301

TO THE RESPONDENTS:

THE MINISTER OF INNOVATION, SCIENCE AND INDUSTRY, or INNOVATION SCIENCE AND ECONOMIC DEVELOPMENT, ISLANDS TRUST SALT SPRING ISLAND LOCAL TRUST COMMITTEE, ROGERS COMMUNICATIONS INC, CAPITAL REGION EMERGENCY SERVICE TELECOMMUNICATIONS, and CYPRESS LAND SERVICES

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Vancouver, British Columbia.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613--992--4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

DATED at the City of Vancouver, and Province of British Columbia, this 26th day of May, 2023.

Issued by:  _____
ABBIE ABE
REGISTRY OFFICER
AGENT DU GREFFE

Address of local office:

Pacific Centre
P.O. Box 10065
701 West Georgia Street
Vancouver, British Columbia
V7Y 1B6

TO:

THE MINISTER OF INNOVATION, SCIENCE AND INDUSTRY, or
INNOVATION SCIENCE AND ECONOMIC DEVELOPMENT,
Coastal British Columbia District
Lower Mainland Office
Spectrum Management Operations
1700 – 13401 108th Ave.
Surrey, BC V3T 5V6

ISLANDS TRUST, SALT SPRING ISLAND LOCAL TRUST COMMITTEE,
1-500 Lower Ganges Road
Salt Spring Island, BC V8K 2N8

ROGERS COMMUNICATIONS INC,
333 Bloor Street East
Toronto, ON M4W 1G9

CAPITAL REGION EMERGENCY SERVICE TELECOMMUNICATIONS,
Unit 110, 2944 West Shore Parkway
Victoria, BC V9B 0B2

and CYPRESS LAND SERVICES
Suite 1051, 409 Granville Street
Vancouver, BC V6C 1T2

APPLICATION

This is an application for judicial review in respect of the decision of the MINISTER OF INNOVATION, SCIENCE AND INDUSTRY, or INNOVATION, SCIENCE AND ECONOMIC DEVELOPMENT CANADA, herein after referred to as ISED, COASTAL BRITISH COLUMBIA DISTRICT, STS-Western Region, by date of April 27, 2023 (communicated April 28, 2023) (Document 1) wherein, *inter alia*, it is stated that:

“After reviewing your request, ISED has determined that a dispute resolution process is not warranted for the proposed tower. In making this decision, ISED relied on information provided by both the proponent and LUA to address the concerns identified in your recent letter:

- In May 2020, the LUA confirmed that it had not adopted a relevant telecommunications tower public consultation process and that the default public consultation process in the CPC should be used.
- In early 2021, at the request of the LUA, Rogers agreed to go beyond the minimum requirements of the CPC by increasing the notification area and including additional stakeholders.

In May 2021, after the consultation, Rogers sent a request for concurrence to the LUA which the LUA provided via a written letter dated August 19, 2021. In light of the above, ISED has determined that Rogers successfully completed the consultation process for this site proposal, by satisfying ISED’s Default Public Consultation Process pursuant to Section 4 of the CPC.

The Dispute Resolution Process under Section 5 of CPC-2-0-03 is only applicable when Land-Use Authorities and tower proponents have reached an impasse regarding an ongoing public consultation. Since the relevant consultation process was successfully completed in the summer of 2021, ISED will not take steps to commence a Dispute Resolution Process in accordance with your request.”

The Applicant makes application that:

(a) The subject decision of April 27, 2023 be declared invalid, or unlawful, or quashed, set aside or referred back for determination in accordance with such directions as this Honourable Court considers to be appropriate; or to otherwise prohibit or to restrain, the said decision of the Respondent, ISED, by date of April 27, 2023, whereby the following wrongfully occurred and/or were allowed to transpire:

(i) The required protocols of consultation component of CPC 2-0-03 were unfairly and improperly or incorrectly determined, and/or were unfairly and materially ignored, disregarded, or otherwise not followed, or were unfairly and insufficiently considered by the Respondent, ISED, as well as by any of the Respondents;

(ii) The prescribed protocols of dispute resolution component of CPC 2-0-03 were unfairly ignored, disregarded, misinterpreted, not applied, or otherwise not followed, or were unfairly and insufficiently considered by the Respondent, ISED, having regard to:

- the Respondents', Rogers Communications Inc., herein after referred to as Rogers, Capital Region Emergency Service Telecommunications herein after referred to as CREST, and Cypress Land Services, herein after referred to as Cypress, materially incorrect and incomplete application for approval of locating a telecommunications tower on Channel Ridge of Salt Spring Island;

- the Respondent, the Islands Trust Salt Spring Island Local Trust Committee, herein after referred to as the LTC, being unaware of the materially incorrect and incomplete nature of said application until after it had initially concurred with said application on July 27, 2021;

- the Respondent, LTC, on inquiring of the possibility of rescinding its initial concurrence with said application on October 8, 2021, being thus advised by the Respondent, ISED, on October 13, 2021 that "If you believe that the LTC based its decision on inaccurate or incomplete information then you may be able to consider this action.";

- the Respondent, LTC, consequently considering and then rescinding its' initial concurrence on March 22, 2022 with said application, and duly so informing the Respondent, ISED, on April 6, 2022 and April 5, 2023;

- and the Respondent, ISED, refusing to accept either the rescission of the Respondent, LTC or its consequent request for engaging the dispute resolution process of CPC 2-0-03.

- (b) The Respondent, LTC's, rescission on March 22, 2022 of its earlier concurrence with the Respondents', Rogers, CREST and Cypress, application for approval of locating a telecommunications tower on Channel Ridge of Salt Spring Island be held to be fair and lawful and that the Respondent, ISED's, refusal to accept said rescission communicated to the LTC on May 17, 2022, be held to be unfair and unlawful in view of the failure of the Respondents, Rogers, CREST and Cypress, to comply with CPC 2-0-03;
- (c) The Respondent, ISED, be held to have failed to practice procedural fairness and/or natural justice when it failed to address or respond to substantive matters of public record that were raised by the Applicant and others related to decisions rendered by the Respondent, ISED, including without limitation the subject decision of ISED of April 27, 2023;
- (d) The Respondent, ISED, be held to have failed to have adhered to required standards of procedural fairness and/or natural justice in failing to address or respond to allegations of the appearance of a conflict of interest reported to both the Minister of Innovation, Science, and Industry and a senior officer of ISED in September, 2022.
- (e) An immediate *interim* and ultimately a permanent injunction be issued preventing the Respondents, Rogers, Cypress, CREST, or any of them, from undertaking any further work, cutting of trees, preparation of land and/or erection of any and all facilities in any way related to the proposed telecommunications tower on Channel Ridge of Salt Spring Island until such time as the within proceedings are adjudicated upon or until such other Order of this Honourable Court;
- (f) An order that the Respondents, Rogers, CREST and Cypress, or any of them, restore the site of work to erect the proposed telecommunications tower on Channel Ridge of Salt Spring Island to its original natural state, having regard, *inter alia*, to said work having been commenced subsequent to the Respondent, LTC, rescinding its earlier concurrence with the application for approval of the proposed location for the telecommunications tower on Channel Ridge of Salt Spring Island.
- (g) The issuance of the writ of mandamus.

The grounds of the application are:

- 1) This matter involves the application for approval to locate a telecommunications tower by Rogers and CREST, jointly referred to as the Proponents, at Channel Ridge, Salt Spring Island, BC PID 000-638-391.

- 2) Julian Clark, the Applicant, resides on a property adjacent to the proposed tower site and is the designated spokesperson for a group of concerned residents residing either adjacent to or close by the subject site. The concerned residents group, herein after referred to as the Concerned Residents of Canvasback or CROC, consist of over 20 property owners whose properties are as close as 18-metres from the proposed 40-metre tower placement. By virtue of the applicant's proximity to the proposed site, the applicant is an affected party to decisions made around the siting of a tower at this specific location.
- 3) The siting of telecommunication towers in Canada is governed by ISED through protocol set out in Client Procedures Circular CPC-2-0-03, Radiocommunication and Broadcasting Antenna Systems (Document 2).
- 4) Section 4 of the CPC-2-0-03 defines the role and responsibilities of the Land-use authority and the requirements the antenna siting Proponent must meet with regards to Public Consultation.
- 5) Section 4.1 of CPC-2-0-03 Land-use Authority Consultation states "ISED believes that any concerns or suggestions expressed by land-use authorities are important elements to be considered by proponents regarding proposals to install, or make changes to, antenna systems. As part of their community planning processes, land-use authorities should facilitate the implementation of local radiocommunication services by establishing consultation processes for the siting of antenna systems."
- 6) Furthermore, Section 4.1 states "proponents must consult with the local land-use authority(ies) on any proposed antenna system prior to any construction. The aim of this consultation is to:
 - discuss site options
 - ensure the local processes related to antenna systems are respected
 - address reasonable and relevant concerns from both the land-use authority and the community they represent
 - obtain land-use authority in writing"
- 7) Section 4.3 of CPC-2-0-03 Concluding Consultation states "The proponent may only commence installation/modification of an antenna system after the consultation process has been completed by the land-use authority, or ISED confirms concurrence with the consultation portion of this process, and after all other requirements under this process have been met. Consultation responsibilities will normally be considered complete when the proponent has:
 - 1) concluded consultation requirements with the land-use authority

- 2) carried out public consultation either through the processes established by the land-use authority or ISED's default public consultation process where required
- 3) addressed all reasonable and relevant concerns"

8) Section 5 of CPC-2-0-03 Dispute Resolution Process states:

"The dispute resolution process is a formal process intended to bring about the timely resolution where the parties have reached an impasse.

Upon receipt of a written request from a stakeholder other than the general public asking for ISED intervention concerning a reasonable and relevant concern, ISED may request that all involved parties provide and share all relevant information. ISED may also gather or obtain other relevant information and request that parties provide any further submissions if applicable. ISED will, based on the information provided, either:

- make a final decision on the issue(s) in question, and advise the parties of its decision or
- suggest the parties enter into an alternate dispute resolution process in order to come to a final decision; should the parties be unable to reach a mutually agreeable solution, either party may request that ISED make a final decision

Upon resolution of the issue under dispute, the proponent is to continue with the process contained within this document as required."

- 9) ISED, in their April 27, 2023 decision to deny the LTC from activating a dispute resolution process stated "Since the relevant consultation process was successfully completed in the summer of 2021, ISED will not take steps to commence a Dispute Resolution Process in accordance with your request." However, such statement is improper as there is no support to be found for such statement in Section 5 of CPC-2-0-03.
- 10) The Islands Trust was established by the Government of British Columbia in 1974 to preserve and protect the trust area and its unique amenities and environment for the benefit of the residents of the trust area and of British Columbians generally. Islands Trust is organized into 13 different trust areas, each of which is the defined land-use authority, referred to as LUA by ISED, for their respective area. The LTC is the LUA for the site of the proposed Rogers tower.
- 11) Pursuant to a request by the LTC to study the issue, on January 23, 2001, the Salt Spring Advisory Planning Commission issued recommendations for Cellular Phone Transmission Antennae Locations (Document 3) including a recommendation that "to the maximum extent possible, the antennae should be sited as far away from facilities concerned with continuous human activity as is practically feasible".
- 12) On April 26, 2001, the LTC adopted by resolution the Cellular Antenna Procedural Guideline (Document 4) and the Cellular Antennae Proposal Form (Document 5) for the

siting of telecommunications towers on Salt Spring Island. This protocol remained in effect until November 9, 2021 when it was replaced by the Islands Trust Model Public Consultation Protocol.

- 13) On July 16, 2018, Planetworks, a subcontractor to the Respondent, CREST, issued an RF Power Density Prediction report (Document 6) in support of an earlier application by CREST to site an antenna, wherein they state:

“It is a policy guideline of the Salt Spring Island Local Trust Committee that no telecommunication antenna or facility emitting Electromagnetic Radiation (EMR) should be installed within 500 metres of any use, building or structure where there is continuous human activity (dwellings, schools, hospitals, workplaces, parks, etc.). Proponents wishing to install or modify an antenna or facility closer than this distance should demonstrate, using an independent consultant acceptable to the Islands Trust, that the measured and/or predicted EMR power density levels of the antenna, or cumulative levels emitted from the facility, are less than 2 microwatts per square centimetre at the use, building or structure.”

- 14) Rogers developed engineering site plans for the Channel Ridge location in October 2019 (Document 7) and based on the Title (Document 8) obtained a Statutory Right of Way (Document 9) from the landowner of the proposed site on April 24, 2020. These steps were taken prior to any consultation with the LTC.
- 15) Per Archaeology News (Document 10), in June 2004, these same lands were the subject of “an RCMP investigation against Channel Ridge Properties Ltd. for non-permitted impacts to the DfRv-110 site and two other unrecorded sites in contravention of the Heritage Conservation Act (1996).” As a result of this investigation, Channel Ridge Properties Ltd. “discovered a complex of archaeological sites atop of Channel Ridge, including several inland shell middens, lithic scatters, a hearth feature, and previously unknown petroglyph rock art boulders.” This matter was not identified by the Proponents to the LTC in their tower siting application process.
- 16) The proposed site of the tower, included with other lands owned by Channel Ridge Properties Ltd. (and their successors), is subject to Covenant # FB102667 September, 2007 (Document 11), which places restrictions on development, preventing the erection of a tower. This matter was not identified by the Proponents to the LTC in their tower siting application process.
- 17) On November 19, 2020, Cypress, as agent for Respondent, Rogers, “submitted an information package to initiate the consultation process” (Document 12) related to the proposed Rogers Tower at Channel Ridge. With respect to the Consultation Process, this info package stated “The Islands Trust does not have an adopted telecommunications policy applicable to privately owned land, though they do have a draft Model Public Consultation

Protocol of Local Trust Areas and have recommended that the draft protocol and additional consultation be followed.”

- 18) On March 5, 2021, the Proponent’s agent Cypress mailed a notification package to 76 property owners and advertised the tower proposal in the local newspaper’s two subsequent editions. Over 400 pieces of individual correspondence were received including correspondence from Oona McOuat (Document 13) who stated after multiple requests for answers to her questions “Thank you for your well-written form letter response to my letter. There are a few inconsistencies in your reply, however, that raise alarm bells.” Relevant questions by Oona McOuat were not answered by Cypress.
- 19) On May 31, 2021, the Proponent’s agent Cypress submitted a document to the LTC titled “Summary of Consultation and Request for Concurrence for a ROGERS Wireless Communications Facility” (Document 14). This 102-page document stated in the first sentence “Please be advised that ROGERS and CREST have completed the public consultation process, following Islands Trust draft Model Public Consultation Protocol for Local Trust Areas, as it relates [sic] the proposed wireless antenna installations in the above noted subject line.”
- 20) On July 27, 2021, the LTC held a regular meeting which included consideration of providing concurrence for the Rogers proposed tower application request. The meeting agenda (Document 15) indicated there were 378 pages of information for the meeting, and identified the Rogers concurrence request as Agenda # 16.1 with a Staff Report 161 pages in length (Document 16). That Staff Report consisted of the Staff Report and 5 appendices including the Official Community Plan Policies, Site Context and Photographs, Cypress’ initial information package and application request for concurrence, the Islands Trust draft Model Public Consultation Protocol and the 2001 Advisory Planning Commission recommendations/2001 Procedural Guidelines.
- 21) At that July 27, 2021 meeting, the LTC Trustees voted 2 for and 1 opposed to providing concurrence to the proposed tower application. As documented in the minutes of the meeting (Document 17), the motion included 4 reasons for supporting concurrence, including the 4th reason being “the proponent has undertaken the necessary community consultation”. The concurrence decision was communicated to the proponents and ISED on August 19, 2021.
- 22) At a November 9, 2021 LTC regular meeting, LTC staff presented a Memorandum to “provide comments from Innovation, Science and Economic Development (ISED) regarding options post-issuance of the statement of concurrence.” (Document 18). Staff reported “On October 8, 2021, staff reached out to ISED Spectrum Management & Telecommunications branch to seek guidance on options available to SS LTC post-issuance of the statement of concurrence. Their response on October 13, 2021 was as follows:

“Good day Kristine. Rescinding a letter of concurrence is not typical in situations such as this. If you believe that the LTC based its decision on inaccurate or incomplete information then you may be able to consider this action.”

- 23) On November 29, 2021, the LTC Chair wrote a letter to Cypress, with copy to ISED (Document 19), stating “A number of parties have brought to our attention concerns regarding the public consultation process for your application including that a number of elements of the consultation were not fulfilled to the satisfaction of the neighbourhood. Although the SS LTC issued a statement of concurrence for your application, we are concerned about the points raised by the residents in and around Channel Ridge.”
- 24) At the March 22, 2022 LTC Regular Meeting, the LTC Trustees voted unanimously to rescind concurrence of the Rogers tower siting application. That decision was communicated to the proponents, with a copy to ISED, on April 6, 2022. (Document 20)
- 25) On May 17, 2022, ISED sent a letter to the LTC (Document 21) stating that “our office does not support your decision to rescind the concurrence.” Furthermore, the letter stated “Our review of the conduct of the consultation process also found that Rogers was in compliance with Innovation Science and Economic Development’s default process.” This is the first time any Respondent made reference in any public document to the “default process” being the sole public consultation protocol required to be fulfilled to obtain concurrence from the LTC.
- 26) On June 7, 2022, Rogers wrote to the LTC (Document 22) revoking their earlier request to present as delegates at the June 14, 2022 regular LTC meeting. In that letter Rogers further stated “we have sought clarification from ISED Canada, the federal regulator for wireless telecommunication and it has confirmed we have met requirements of Land Use Authority and Public Consultation processes detailed in CPC 2-0-03. As a result, we are commencing construction of the proposed site later this month.”
- 27) On July 7, 2022, Rogers held an on-line, zoom call with concerned residents. As per a letter from Clark to the LTC on June 30, 2022 (Document 23), the invitation for this meeting was sent out on June 30, 2022 at 6:40pm, after business hours and on the eve of the Canada Day long weekend, providing recipients of that invitation with only 3 business days’ notice.
- 28) A CROC member did video a 25-minute segment of the zoom call when Clark questioned the representatives from Cypress and Rogers. A small excerpt from that call has been transcribed (Document 24) where Rogers stated “Well, we acknowledge we didn’t follow the, you know, draft model protocol.”
- 29) On July 8, 2022, Clark wrote to Cypress to request a copy of the recording from the July 7, 2022 zoom call. On July 12, 2023, Cypress responded with a message from Rogers denying the request and advising that the recording would not be made public. (Document 25)

- 30) On July 20, 2022, the LTC wrote to Rogers (Document 26) indicating that the LTC would “request staff to retain legal counsel to prepare a letter of response to the May 17, 2022 ISED letter in consideration of relevant materials received to date.” and requesting that “any development activities associated with the construction of the wireless telecommunications site at Channel Ridge be suspended pending the outcome of Islands Trust legal counsel review of materials associated with the application.”
- 31) On July 25, 2022, Rogers had subcontractors deliver an excavator to the proposed tower site and begin development. (Document 27). Over the ensuing weeks, concerned residents peacefully protested by picketing at the access road to the proposed site. Sub-contractors did not cross that picket line and by mid-August, the excavator was removed.
- 32) During August and September 2022, McOuat and Clark (two Concerned Residents), corresponded with ISED several times highlighting instances where ISED conclusions appeared inconsistent with documentation in the public records. (Document 28) Neither McOuat nor Clark ever received an explanation from ISED regarding these inconsistencies.
- 33) Furthermore, included in Document 28 is an email from Clark to Susan Hart, Executive Director General sent on September 26, 2022 where he states:
- “Without a clear reason under the regulations for ISED to be involved in this matter, the appearance of a conflict of interest continues to not only be present, but grows. Neither the proponent nor the land use authority in this matter have filed a complaint or requested the dispute resolution process be triggered. The Proponent is represented by a former ISED employee. ISED appears to be supporting the Proponent without a formal review being conducted, and ISED’s senior personnel could not explain why ISED is even involved in this matter, at this stage. Whether or not it is true, there is most certainly an appearance of a conflict of interest...”
- 34) On September 20, 2022, the LTC published an open letter (Document 29) informing the public as to the outcome of their legal review. They stated “In consultation with legal counsel, the LTC has determined that it has exhausted its viable options with respect to communication with ISED.” Furthermore, the letter concludes by stating “By rescinding concurrence, and providing Rogers and ISED with, in the view of the LTC, valid rationales for the decision to rescind, the LTC has played its part in the approval process.”
- 35) On November 8, 2022, the LTC wrote to Rogers (Document 30) stating “please be advised that the LTC stands by its decision to rescind concurrence, and that any development activities associated with the construction of the wireless telecommunications site at Channel Ridge should be suspended.”
- 36) On February 14, 2023, newly elected LTC Chair Timothy Peterson wrote a letter to Rogers (Document 31) stating “I am writing to advise you that the newly-elected LTC are in full

agreement with the decision to rescind concurrence and advise Rogers to indefinitely suspend any development at the proposed site.”

37) Additionally, the February 14, 2023 letter provided an Appendix detailing the reasons for the LTC rescission. The concluding paragraph stated:

“CPC 2-0-03 enables the Land Use Authority to define the protocol that must be completed by a Proponent to obtain a concurrence decision. By statements made in their application, the Proponents clearly knew that completion of the draft Model Protocol was required for concurrence. The Proponents falsely asserted they had fulfilled the protocol, provided inaccurate information, and omitted material information in their application, which are valid reasons for rescindment of the concurrence decision.”

38) On February 27, 2023, Rogers acknowledged receipt of the February 14, 2023 LTC letter. (Document 32) stating “This will acknowledge receipt of your February 14, 2023 letter concerning Rogers telecommunication site at Channel Ridge on North Salt Spring Island. Please contact Michael Krenz at 672-515-9534 or Michael.Krenz@rci.rogers.ca for further information.” No additional correspondence on this matter between the LTC and Rogers appears in the public record.

39) On March 7, 2023, Clark wrote to the LTC informing them that Rogers blocked access to a public trailhead with No Trespassing signs and were active in developing the proposed site. (Document 33)

40) On March 23, 2023, the LTC sent a letter to ISED (Document 34) regarding the rescission and stated “We are aware that the previous LTC action in March 2022 to rescind the original July 2021 concurrence decision was appropriate, well within the jurisdiction granted to the land use authority within CPC 2-0-03, and consistent with direction provided to the LTC by the federal regulator (ISED) in October 2021.”

41) On March 24, 2023, Rogers’ sub-contractor delivered heavy excavation equipment to the proposed tower site (Document 35). Rogers began excavation and drilling on March 25, 2023 and have continued to construct the proposed tower at the site since then.

42) On April 5, 2023, ISED responded to the LTC letter of March 23, 2023 (Document 36) stating that “In your letter, you outlined points supporting the SSLTC’s rationale for rescindment. I would like to draw your attention to the publicly available “Staff Report” (Document 16) that was submitted to the SSLTC by Kristine Mayes, Planner 1, Salt Spring Island Team on July 27, 2021 prior to the granting of concurrence by the SSLTC. Within this report it stated the ISED default process is to be followed as the Model Public Consultation Protocol had not yet been adopted.”

43) On April 8, 2023, Clark responded to ISED's April 5, 2023 letter (Document 37) stating "Mr. Pungente's letter (attached) dated April 5, 2023 to Chair Peterson regarding the Rogers tower at Channel Ridge is misleading, and misrepresents the facts as they have been recorded in the public documentation."

44) Furthermore, the April 8, 2023 letter concludes with the following request of ISED:

"Section 5 of CPC 2-0-03, the Dispute Resolution Process, does not provide a detailed roadmap of how the process should be undertaken, however, it does state:

Based on the information provided, ISED may:

- *suggest to the parties that they use another dispute resolution process in order to reach a final agreement;*

If there were ever a situation where ISED should apply this provision in the regulations, it is here and now. Rogers and the SS LTC should appoint a mutually agreed upon arbitrator. It is in everyone's best interest that an independent review of the facts be pursued in this case! It is also in everyone's best interest that ISED demand Rogers stop all development activity at the site until such time as an independent arbitrator reviews the case and provides a ruling."

45) In addition to the correspondence mention in 42) above, on April 5, 2023, the LTC sent a letter to ISED (Document 38) requesting that the dispute resolution mechanism, also known as an Impasse, be triggered as outlined in Section 5 of CPC-20-03.

46) As previously indicated in this application, On April 28, 2023, ISED sent the LTC a letter dated April 27, 2023 (Document 1) indicating that the request to trigger the dispute resolution process was denied.

47) Furthermore, on May 15, 2023, Susan Hart, the Executive Director General, Spectrum Management Operations Branch of Innovation, Science & Economic Development communicated with the Applicant (Document 39) stating "ISED has determined that Rogers has successfully completed the consultation process for this site proposal by satisfying the requirements of the CPC. Therefore, ISED did not find grounds for the LUA to rescind its concurrence. As such, the Department considers this matter closed and the project can proceed as planned."

48) The Applicant thereby states that the Respondent, ISED, failed to exercise its' jurisdiction or duty, and/or otherwise entirely shirked, delegated, and or relegated away their decision make power and authority to the Respondents, Rogers and CREST.

49) The Respondents, ISED, Cypress, Rogers, and CREST, owed a duty and responsibility to the neighbouring public located within the vicinity of the proposed telecommunications

tower, but failed to, or otherwise refused to consider the neighbours complaints, comments, and/or concerns and for all intents and purposes largely ignored and/or disregarded their voices.

- 50) The Respondents, ISED, Cypress, Rogers, and CREST, failed to render due process to the Applicant and/or in relation to the public consultation process, which resulted in such intended framework as being manifestly unfair and without safeguards in relation to the said public, including the owners of the neighboring properties to the site proposed by the Respondents, Rogers and CREST.
- 51) If the erection of the tower be allowed to proceed, it will cause irreparable harm to the Applicant, and thus ought to be halted pending the determination of the merits of the subject proceeds or other Order of this Honourable Court.
- 52) The erection of the proposed tower will forever change the residential nature and character of the lands and premises in relation to which it is proposed to be placed to the severe and permanent detriment of the neighbouring public and their respective properties.
- 53) The Applicant submits the within application for judicial review of the Minister's decision, and/or that of its duly authorized agent or representative, under the Federal Courts Act, R.S.C. 1985, c F-7, inter alia, Sections 18.1(1), (3), and (4) thereof.

This application will be supported by the following material:

Affidavits:

1. Julian Clark
2. Oona McOuat
3. William Steiner
4. Garth Hendren
5. Diana Pattison
6. Mary Maclean
7. Scott Maclean
8. Elaine Senkpiel
9. Various other neighbouring property owners
10. Real Estate agent for subject area
11. Peter Grove

Documents:

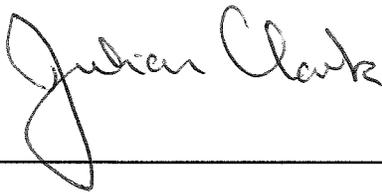
1. Response for Impasse Request – April 28th, 2023
2. CPC-2-0-03, Radiocommunication and Broadcasting Antenna Systems
3. Salt Spring Advisory Planning Commission Siting Recommendations – January 2001

4. SSI Cellular Antenna Procedural Guideline – April 26, 2001
5. SSI Cellular Antennae Proposal Form – April 26, 2001
6. CREST RF Power Density Prediction – July 16, 2018
7. Initial Engineering Site Plan – October 2019
8. Title on Proposed Tower Site – Statutory Right of Way – April 24, 2020
9. Statutory Right of Way Agreement – April 24, 2020
10. Archaeology News Article on First Nations at Channel Ridge – June, 2004
11. Channel Ridge Covenant on Land Proposed as Tower Site – September, 2007
12. Info Package Initiating Consultation Process – November 19, 2020
13. Correspondence between McOuat and Cypress – March to May 2021
14. Application Requesting Concurrence on Antenna Siting – May 31, 2021
15. Agenda for LTC Regular Meeting - July 27, 2021
16. LTC Staff Report & Appendices Regarding Concurrence Request – July 27, 2021
17. LTC Minutes – July 27, 2021 Meeting
18. Memorandum by LTC Staff Regarding Post Concurrence Options – November 9, 2021
19. LTC Chair Letter to Cypress Regarding Concerns with Consultation – November 29, 2021
20. LTC Rescission Letter – April 6, 2022
21. ISED Letter Regarding Rescission – May 17, 2022
22. Rogers Letter to LTC Commencing Construction – June 7, 2022
23. Letter to LTC Regarding Rogers Townhall Meeting Invitation – June 30, 2022
24. Partial Transcript July 7, 2022 Zoom Call
25. Request for Call Recording and Transcription - July 12, 2022
26. LTC Letter to Rogers Requesting Development Be Suspended – July 20, 2022
27. Email to LTC reporting construction work beginning – July 25, 2022
28. McOuat/Clark Correspondence with ISED – August/September 2022
29. LTC Public Letter Exhausted Viable Options – September 20, 2022
30. LTC Letter to Rogers Stands By Rescission – November 8, 2022
31. LTC Letter to Rogers Documenting Reasons for Rescindment – February 14, 2023
32. Rogers Response to LTC Letter – February 27, 2023
33. Letter to LTC Regarding Rogers Activity at Site – March 7, 2023
34. LTC Letter to ISED Regarding Rescission – March 23, 2023
35. Letter to LTC Regarding Rogers Commencing Excavation Work – March 24, 2023
36. ISED Denial of Rescission – April 5, 2023
37. Letter from Clark Responding to ISED Letter Regarding Rescission – April 8, 2023
38. LTC Request for Impasse – April 5, 2023
39. Director General Letter Denying Rescission – May 15, 2023
40. Canadian Cellular Towers Map
41. CRD Interactive Regional Maps - <https://maps.crd.bc.ca/Html5Viewer/?viewer=public&>
42. Rogers Contact Information in Rogers 2022 Annual Report

The applicant requests THE MINISTER OF INNOVATION, SCIENCE AND INDUSTRY, or INNOVATION SCIENCE AND ECONOMIC DEVELOPMENT to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the tribunal to the applicant and to the Registry:

1. All correspondence or documentation regarding communications between Rogers and ISED from the date of Rescindment (April 6, 2022) to the date of the ISED decision to deny the LTC Impasse request (April 28, 2023)
2. The date Michael Krenz left the employ of ISED in the position as Director, Coastal BC District.
3. Whether Michael Krenz was considered a “designated public office holder” as defined in Section 2.1 of the Lobbying Act of 1985 when he vacated his employment with ISED.
4. The ISED Organization Chart for British Columbia on the day prior to Michael Krenz’s departure from ISED.
5. The date of the first communication after Michael Krenz was employed by Rogers Communications Inc. and/or their affiliates, between Michael Krenz and ISED.
6. The date Rogers applied to the Salt Spring Island LTC to site an 18-Metre Tower on Mt. Tuam (Document 40) and the public consultation protocol that was followed to obtain concurrence.

Date: May 26, 2023



(Signature of applicant)

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No Fax Available