COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *McNeil v. Elizabeth Fry Society of Greater Vancouver,* 2024 BCCA 2

Date: 20240105
Docket: CA48800

Between:

Nicole McNeil

Appellant
(Petitioner)

And

Elizabeth Fry Society of Greater Vancouver

Respondent
(Respondent)

And

British Columbia Civil Liberties Association, Pivot Legal Society and Our Homes Can't Wait

Interveners

Before: The Honourable Madam Justice Fenlon
The Honourable Mr. Justice Voith
The Honourable Madam Justice Horsman

On appeal from: An order of the Supreme Court of British Columbia, dated December 13, 2022 (*McNeil v. Elizabeth Fry Society of Greater Vancouver*, 2022 BCSC 2174, Vancouver S223355).

Counsel for the Appellant:	D. Sabelli S. Khazei
Counsel for the Respondent:	A.S. Boucher C.L. Formosa
Counsel for the Intervener British Columbia Civil Liberties Association:	J. Riddle
Counsel for the Interveners Pivot Legal Society and Our Homes Can't Wait:	L.D. Watson S.A. Akyianu

2024 BCCA 2 (CanLII)

Place and Date of Hearing:	Vancouver, British Columbia October 16, 2023
Place and Date of Judgment:	Vancouver, British Columbia January 5, 2024

Written Reasons by:
The Honourable Madam Justice Fenlon

Concurred in by:
The Honourable Mr. Justice Voith
The Honourable Madam Justice Horsman

2024 BCCA 2 (CanLII)

Summary:

The appellant was a resident of a social housing facility operated by the respondent. She objected to a rule restricting guests and sought relief from the Residential Tenancy Branch ("RTB"). The arbitrator found the RTB did not have jurisdiction over the dispute because the Lodge provides transitional housing, which is exempted from the Residential Tenancy Act. The reviewing judge upheld the RTB decision. The appellant appealed. Held: Appeal dismissed. It was not patently unreasonable for the arbitrator to hold that the Lodge met the statutory definition of transitional housing which requires the accommodation to be temporary and funded by the government. Her conclusions that the accommodation was temporary even though the appellant was not given a fixed departure date, and that it was not necessary for the funding agreement to explicitly state that it was for transitional housing, were not patently unreasonable ones. However, there is lack of clarity in RTB decisions as to the indicia of temporariness which it would be helpful for the RTB to address in future cases. Finally, the respondent's participation in earlier RTB proceedings with other Lodge residents without raising the jurisdictional issue it now relied on did not amount to an abuse of process.

Reasons for Judgment of the Honourable Madam Justice Fenlon:

Introduction

[1] The appellant, Nicole McNeil, is a resident of Mazarine Lodge (the "Lodge"), a social housing facility operated by the respondent, Elizabeth Fry Society of Greater Vancouver (the "Society"). The Lodge is intended to provide stable housing for women who are homeless or at risk of being homeless.

[2] Ms. McNeil objected to a rule restricting her ability to have guests at the Lodge. She sought relief from the Residential Tenancy Branch ("RTB"), contending that the restriction on guests violated the rights of tenants under the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [*RTA*]. A delegate of the Director of the RTB (the "Arbitrator") concluded that the RTB did not have jurisdiction over the dispute because the Lodge provided transitional housing, which, along with emergency shelters, is expressly exempted from the operation of the *RTA*, pursuant to s. 4(f).

[3] Ms. McNeil sought judicial review of the RTB decision in the British Columbia Supreme Court, contending the Lodge provided longer-term supportive housing, not transitional housing, and was therefore subject to the *RTA*. The reviewing judge

2024 BCCA 2 (CanLII)

upheld the RTB decision. Ms. McNeil appeals from that order, seeking a declaration that the Lodge does not provide transitional housing and is therefore subject to the *RTA.* In the alternative, she seeks an order remitting the matter to the RTB for reconsideration.

[4] For the reasons that follow, I would dismiss the appeal.

Standard of review

[5] On an appeal from judicial review, this Court puts itself in the shoes of the reviewing judge and addresses the tribunal's decision according to the appropriate standard of review. In the present case, the reviewing judge correctly identified the standard of review of patent unreasonableness: section 5.1 of the *RTA* provides that RTB decisions are subject to s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 25, which provides that a finding of fact or law or an exercise of discretion by a tribunal must not be interfered with unless it is patently unreasonable. That standard is a highly deferential one—the decision in issue can be interfered with only if it "'almost borders on the absurd'": *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 at para. 28.

Analysis

[6] The central question on this appeal is whether the Arbitrator made a patently unreasonable decision when she found that the Lodge provided the appellant with transitional housing that was not subject to the *RTA.*

[7] The appellant and the interveners submit that the protections provided by the *RTA* to tenants are particularly important to residents of social housing who are vulnerable and face systemic barriers to accessing and maintaining housing. They point to earlier decisions of the RTB and the courts emphasizing that tenants who reside in social housing ought to be entitled to the same rights, protections and standards as other tenants. The appellant and interveners say such residents will be disproportionately impacted by the broad interpretation of transitional housing adopted by the Arbitrator, because it will result in more facilities being found to be

2024 BCCA 2 (CanLII)

exempt from the *RTA*. Indeed, the appellant describes the definition of transitional housing contained in s. 1 of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003 (the "Regulation") as a "shield against the misidentification of transitional housing and misuse of the exemption."

2024 BCCA 2 (CanLII)

[8] The Regulation sets out three criteria for determining whether accommodation meets the definition of "transitional housing":

> 1 (2) For the purposes of section 4 (f) [*what the Act does not apply to*] of the Act, **"transitional housing"** means living accommodation that is provided
>
> (a) on a temporary basis,
>
> (b) by a person or organization that receives funding from a local government or the government of British Columbia or of Canada for the purpose of providing that accommodation, and
>
> (c) together with programs intended to assist tenants to become better able to live independently.

[9] The Arbitrator found that the accommodation provided to the appellant by the Society satisfied all three elements of this definition. The appellant raises three grounds of appeal, contending that the Arbitrator erred in her analysis of the first two criteria, and in rejecting the appellant's argument that it was an abuse of process to allow the Society to take the position that the *RTA* did not apply to it when the Society had earlier used RTB procedures in resolving disputes with other residents of the Lodge.

[10] I turn now to the first ground of appeal.

1. Accommodation that is provided on a temporary basis

[11] The appellant contends the Arbitrator was wrong to find that the Lodge provided temporary accommodation as required by the first criterion under the Regulation. She identifies three errors in that assessment.

(a) No fixed end date

[12] First, the appellant submits that the accommodation provided to her at the Lodge cannot be characterized as temporary because it has no fixed end date. To

the contrary, it is common ground that she was told she could stay for two years or more—proof, she says, that the accommodation had the potential to be long term. The appellant argues that the open-ended term and potential for accommodation of up to or beyond two years is antithetical to temporary housing and instead constitutes supportive housing, which is not exempt from the *RTA*.

[13] In support of this argument, the appellant relies on Residential Policy Guideline 46, applicable to "Emergency Shelters, Transitional and Supportive Housing" which describes the differences between transitional and supportive housing:

> **D. TRANSITIONAL HOUSING**
>
> Transitional housing is often a next step toward independent living. An individual in transitional housing may be moving from homelessness, an emergency shelter, a health or correctional facility, or an unsafe housing situation. Transitional housing is intended to include at least a general plan as to how the person residing in this type of housing will transition to more permanent accommodation in the future. Individuals in transitional housing may transition to independent living or, if they have a more moderate need for ongoing support services, they may transition to supportive housing.
>
> Living accommodation must meet all of the criteria in the definition of "transitional housing" under section 1 of the Regulation in order to be excluded from the RTA. Requiring residents to sign a "transitional housing agreement" does not determine whether housing is exempt from the RTA.
>
> …
>
> **G. SUPPORTIVE HOUSING AND INDEPENDENT LIVING**
>
> …
>
> Supportive housing is long-term or permanent living accommodation for individuals who need some support services to live independently. In the context of seniors' housing, supportive housing is often referred to as "independent living." Supports offered on-site by supportive housing providers are non-clinical, and residents are not required to receive supports to maintain their housing. These supports include meal services, life skills training, and access to health supports. The RTA applies to supportive housing.
>
> Under section 5 of the RTA, landlords and tenants cannot avoid or contract out of the RTA or regulations, so any policies put in place by supportive housing providers must be consistent with the RTA and regulations.
>
> [Emphasis added.]

2024 BCCA 2 (CanLII)

[14] The Arbitrator did not accept the appellant's argument that only accommodation with a fixed end date can be "temporary". She reasoned that the absence of a fixed departure date for residents did not mean that the housing was being provided indefinitely or on a permanent basis. In coming to that conclusion she considered the following circumstances.

[15] In September 2020, the appellant was temporarily living at someone else's home. She obtained her room at the Lodge with the assistance of a housing outreach worker. Before she moved in, she signed the Mazarine Lodge Program Agreement (the "Program Agreement") which contemplates the establishment of program goals and the provision of program services. The Program Agreement states that the purpose of Ms. McNeil's participation in the program was "to provide [her] with supportive housing and services, so that [she was] able to move onto independent living as soon as possible": RFJ at para. 3.

[16] In addressing whether the accommodation provided at the Lodge was "temporary", the Arbitrator made the following findings:

(a) The length of a resident's stay at the Lodge is determined on a case-by-case basis;

(b) The average stay of most residents is 10.5 months;

(c) Ms. McNeil was not intending to stay at the Lodge indefinitely, but rather to move out and obtain independent accommodation;

(d) Ms. McNeil signed the Program Agreement;

(e) Under the Program Agreement, Ms. McNeil agreed to pay a "monthly contribution" and a "monthly program fee", rather than "rent";

(f) The Program Agreement expressly states that the accommodation was not covered by the *RTA*; and

2024 BCCA 2 (CanLII)

(h) The Society's own tenure under its agreement for the use of the space was limited: a five-year term with the option to renew for another five.

[17] The appellant contends that a finding that a stay of up to two years or more constitutes temporary housing is inconsistent with RTB Policy Guideline 27, which addresses RTB jurisdiction over other transitory and temporary housing such as travel trailers and recreational vehicles. That policy suggests that "the *RTA* would likely apply" to a rental agreement of six months for these types of transitory housing. The appellant argues that six months is therefore a benchmark beyond which housing should no longer be considered temporary.

[18] I cannot accede to this submission. First, RTB policies do not have the force of statute or regulation; they are guidelines and interpretive aids. Second, and more importantly, Policy 27 applies to an entirely different form of accommodation. Transitional housing is specifically addressed in Policy 46, which makes no suggestion of a six-month limit.

[19] In my view, the appellant's argument that temporary housing must have a fixed cut-off date would be inconsistent with the object of transitional housing: to prepare and assist residents to move into permanent housing. To send someone "out the door" after a fixed period, "ready or not", would create a revolving door of homelessness.

[20] In conclusion on this issue, I agree with the following observations of the reviewing judge:

> [41] … As a matter of semantics, the core meaning of the word "temporary" is not "for a fixed or definite period of time". "Temporary" is the opposite of "permanent". Something that is permanent is expected not to end. Conversely, it is expected that something that is temporary will end, although it may not be known precisely when it will end. In this case, it was not irrational or absurd for the [Arbitrator] to conclude that accommodation provided to Ms. McNeil until she can move on to independent living, which was intended to take place as soon as possible, is provided on a temporary basis. This is not a permanent or unending arrangement for accommodation.

2024 BCCA 2 (CanLII)

(b) Reliance on the Program Agreement

[21] The second error identified by the appellant in the assessment of the "temporary" criterion is the Arbitrator's consideration of the Program Agreement the appellant signed before she moved into the Lodge. The Program Agreement is six pages long and written in plain language. It begins by describing the nature of the accommodation provided at the Lodge:

> Mazarine Lodge offers single occupancy housing units for women who are homeless or at risk of homelessness who require a supportive living environment. The cost of the program is covered through a program fee based on your independent income, Ministry of Social Development and Poverty Reduction and BC Housing.

The relevant portions of the Program Agreement are set out below:

> I, Nicole McNeil, agree to participate in the Mazarine Lodge Program located at 838 Ewen Avenue, New Westminster, BC, V3M 5C8. I will be assigned Unit 209 to reside in and agree to pay $375.00 monthly contribution towards the cost of the program.
>
> …
>
> I agree that the purpose of my participation in the program is to provide me with supportive housing and services, so that I am able to move onto independent living as soon as possible. To support my movement toward independence, I agree to meet with program staff at least monthly, to discuss my residency at Mazarine Lodge, to identify goals and develop plans to remedy any concerns.
>
> …
>
> I understand and agree, that my program participation and progress will be reviewed in order to set out my personal development and housing goals which will be assessed at least every three months. To be eligible for continued residency, I must continue [to] actively participate in progress towards my goals. Lack of engagement in development plan may result in a "discharge plan" being developed for my departure from the program prior to my achievement of housing independence.
>
> **My participation in the program is voluntary and is expressly NOT governed by the B.C. Residential [T]enancy Act.**
>
> …
>
> Residents must be willing and able to participate in case planning, monthly meetings and programming and to work toward their short and long term goals toward independence.
>
> …
>
> [Emphasis in original.]

2024 BCCA 2 (CanLII)

[22] The appellant says that the Arbitrator should not have relied on the terms of the Program Agreement because s. 5 of the *RTA* provides that landlords and tenants may not avoid or contract out of the *RTA*. In other words, the appellant says the Program Agreement cannot, by describing the housing as temporary and transitional and not governed by the *RTA*, "make it so" if the housing is in reality supportive housing subject to the *RTA*. The appellant contends the Arbitrator failed to recognize that restriction when she considered the Program Agreement in assessing the type of housing being provided to Ms. McNeil at the Lodge.

[23] I would not accede to this submission. Although I agree that the statement in the Program Agreement that the Lodge is not governed by the *RTA* is not determinative of that question, the Arbitrator did not find that term or any other in the Program Agreement to be conclusive of the transitional versus supportive housing character of the Lodge. Rather, she considered the stated intentions of the parties about the living arrangements as one factor among many in her assessment. I agree with the reviewing judge that it would have been "wholly artificial" for the Arbitrator to have assessed the nature of the accommodation provided to Ms. McNeil at the Lodge without regard to the parties' mutual intentions as expressed in the Program Agreement: RFJ at para. 39.

(c) No transition plan

[24] Third, the appellant says the Arbitrator erred in her assessment of whether the Lodge provided temporary housing because she failed to consider the absence of a transition plan. She points to Policy Guideline 46 which states that "[t]ransitional housing is intended to include at least a general plan as to how the person residing in this type of housing will transition to more permanent accommodation in the future".

[25] The appellant testified at the RTB hearing that she was not provided with a transition plan. However, the Arbitrator was not persuaded that this proved that the housing was not temporary. She observed that a transition plan is described by Policy Guideline 46 as "intended," rather than "required." The Arbitrator concluded

2024 BCCA 2 (CanLII)

that only the three criteria in the Regulation are mandatory for housing to fall within the transitional housing exemption in the *RTA*.

[26] I see nothing in the Arbitrator's analysis that is patently unreasonable. Although I agree with the appellant that the existence or absence of such a plan is a relevant factor, neither is conclusive of transitional housing status. In this regard I would also note that the appellant was required initially to meet regularly with a case worker but, after some months at the Lodge, she opted to withdraw from involvement in the program—a state of affairs the Society allowed to continue pending the outcome of these proceedings.

[27] In summary on this ground of appeal, I do not find the Arbitrator's conclusion that the Lodge meets the first criterion of temporary accommodation to be patently unreasonable.

[28] It is convenient to address here the intervener British Columbia Civil Liberties Association's ("BCCLA") submission that those using and providing social housing would benefit from greater clarity as to what circumstances satisfy the "temporary accommodation" criterion. The BCCLA recognizes that the Legislature's use of the word "temporary" is not prescriptive, leaving room and flexibility for the RTB to delineate the applicable parameters. However, the BCCLA points to a lack of consensus and even contradictory decisions by RTB adjudicators regarding the indicia of "temporary" which include:

(a) Whether the housing provider is actively assisting the resident with moving elsewhere—i.e., if they are creating a transition plan.

(b) The existence of an end date: Some arbitrators have found that an indefinite occupancy cannot be "temporary" since it does not require the renter to "transition" anywhere: RTB Decision 6241 (2018), RTB Decision 6303 (2022), RTB Decision 6010 (2021). Other arbitrators have concluded that transitional housing should be indefinite, as it would be contrary to the purpose of providing transitional housing to have participants leave before

2024 BCCA 2 (CanLII)

they were capable of living independently: RTB Decision 6014 (2019), RTB Decision 11040 (2022), RTB Decision 6284 (2020).

(c) Some arbitrators have focused on the actual length of occupancy, concluding that tenancies lasting as long as four years cannot be "temporary": RTB Decision 6076 (2019), RTB Decision 6010 (2021). However, in other cases, arbitrators have decided long-term rentals—such as a five-year occupancy—can be considered temporary: RTB Decision 6156 (2019).

(d) An expectation that the living accommodation will end at an undefined point.

(e) Indications in the written agreement that the rental is a "program" that the tenant must leave at some point.

[29] Although a number of indicia may be considered in assessing temporariness, it is evident that some of the decisions cannot stand together. When there is evidence of "persistently discordant or contradictory legal interpretations within an administrative body's decisions", a reviewing court may "encourage the use of internal administrative structures to resolve the disagreement": *Canada (Minister of Citizenship and Immigration v. Vavilov,* 2019 SCC 65 at para. 132. In my view, that course is appropriate here. I would respectfully invite the RTB to address these inconsistencies and provide clearer guidance on the factors to be considered in determining whether accommodation is temporary.

[30] I turn now to the second ground of appeal.

2. Accommodation funded by the government for the purpose of providing transitional housing

[31] The second criterion in s.1(2) of the Regulation defining "transitional accommodation" requires the provider of the accommodation to receive funding from the government "for the purpose of providing transitional housing". The appellant does not dispute that the Society receives funding from the provincial government for the operation of the Lodge. However, she submits that the Arbitrator adopted a

2024 BCCA 2 (CanLII)

patently unreasonable interpretation because the funding agreement (the "Operator Agreement") between the Society and the British Columbia Housing Management Commission ("BC Housing") does not explicitly state that the funding is provided for transitional or temporary housing. She submits that the Operator Agreement is thus equally consistent with the provision of funding for supportive housing that would be governed by the *RTA*. In short, the appellant maintains that the Regulation, properly construed, requires that the specific purpose be made clear in the Operator Agreement.

[32] The reviewing judge rejected this argument, saying:

> [54] Ms. McNeil's argument is untenable. Elizabeth Fry received government funding for the purpose of providing living accommodation at Mazarine Lodge. That accommodation is, in fact, transitional housing. That is all that is required. It matters not whether the Operating Agreement explicitly describes the accommodation at Mazarine Lodge as transitional housing.

I agree with this analysis. What matters is whether an operator receives funds from the government that are used to provide transitional housing—it is not necessary for the funding agreement to explicitly refer to transitional housing.

[33] The appellant's second argument regarding the government funding criterion is that the Arbitrator failed to construe the Operator Agreement as a whole, and in particular failed to take into account ar. 3 which provides:

> **3. STANDARDS AND OUTCOMES.**
>
> a. The Provider will meet its obligations under this Agreement throughout the Term and will provide written reports and other matters in an acceptable form as outlined in *Schedules B and C*.
>
> b. The following will be used to measure outcomes at the Development:

2024 BCCA 2 (CanLII)

Outcome	Indicator	Measure
Residents who are Housed remain Housed at twenty-four (24) months	Number and percentage of Residents who are verified remain Housed at twenty-four (24) months; Reasons for Resident Leaving the Development (e.g. found alternate Housing)	80% of Residents are Housed after twenty-four (24) months

c. The Provider will strive to achieve this measure, however, where Residents do not remain Housed (i.e. if the Housing no longer meets the needs of the Resident), the Provider will notify BC Housing and will work with the Resident to find alternative appropriate Housing.

d. The Provider will work collaboratively with other community partners to achieve the standards and outcomes established in this Agreement.

[Italics in original, underlining added.]

[34] The appellant interprets ar. 3.b as requiring the Society to strive to achieve an outcome at the Lodge, such that 80% of residents are to be housed at the Lodge after 24 months. She contends this is the only rational interpretation because ar. 3.c requires the Society to notify BC Housing and to work with a resident to find alternative appropriate accommodations when the housing no longer meets the needs of the resident. She says that if “Housed or Housing” were meant to apply to accommodation other than the Lodge, the Society would be burdened with the impossible task of monitoring all tenants who vacate the Lodge, and of providing continued and ongoing assistance to them.

[35] There is merit to this interpretation, particularly because “Resident” means a person “entitled to reside in a Residential Unit pursuant to a Residency Agreement”, “Residential Unit” means “a residential dwelling within the Development” i.e., the Lodge, and ar. 3 addresses measurable outcomes “at the Development”. However, when the Operator Agreement is read as a whole, it is evident that the appellant’s proposed interpretation is but one possible interpretation. The question before us is

2024 BCCA 2 (CanLII)

not whether there are other interpretations available, but whether the interpretation chosen by the Arbitrator is patently unreasonable. In my view, it is not.

[36] In this regard, I note that the measurable outcomes at ar. 3.b consistently refer to Residents who are "Housed." That is a defined term:

> "Housed or Housing" is defined as accommodation allowing for tenancy of more than thirty (30) days, under conditions in which the individual/family has adequate personal space. This range includes supportive, transitional housing to independent social or private market housing. This definition does not include emergency shelters or transition houses.
>
> [Emphasis added.]

The goal is therefore to have 80% of residents housed in supportive, transitional, independent social or private market housing after 24 months. The goal is not limited to accommodation at the Lodge.

[37] Part 1, ar. 5 also supports a reading of ar. 3 that goes beyond the goal of keeping residents housed at the Lodge. It reads:

> Through RRH, BC Housing and the Provider are working together to help Residents acquire and maintain housing, and to accomplish this goal, each party recognizes that it is essential to connect Residents with supports that meet their immediate need.
>
> [Emphasis added.]

This clause suggests that the goal is to help residents acquire housing, and then to maintain it. If the Operator Agreement only concerned maintaining residence at the Lodge, this language would not be necessary. Further, if the object is to have residents remain at the Lodge, it would have been a simple matter to refer in ar. 3.b to residents remaining housed at the Development. The "Indicator" column instead refers to residents who are Housed (i.e., in some form of Housing) at 24 months. That column refers to "the Development" only in relation to the reason residents have left the Lodge, which could include being housed elsewhere, returning to homelessness or to a shelter.

[38] Although ar. 3.c requires the Society to "track" the residents who have received the benefit of transitional housing at the Lodge—which would mean

2024 BCCA 2 (CanLII)

following their progress in the community—ar. 3.d expressly provides that the Society is to "work collaboratively with other community partners to achieve the standards and outcomes established in this Agreement". Thus, this is not an "impossible task" as the appellant argues, since the Society works with other community partners to monitor these former Lodge residents.

2024 BCCA 2 (CanLII)

[39] In short, I do not regard the Arbitrator's interpretation of the Operator Agreement as one that is patently unreasonable.

3. The Society's denial of RTB jurisdiction over the Lodge amounted to an abuse of process

[40] Before this dispute arose, the Society invoked RTB procedures in two earlier disputes with residents of the Lodge. The appellant says the Society used the *RTA* to its advantage, settling matters by using RTB proceedings to reach a compromise resolution. The appellant submits that in doing so, the Society effectively conceded that the RTB had jurisdiction over it.

[41] Both the Arbitrator and the reviewing judge accepted that the Society invoked the *RTA* and RTB procedures in order to achieve a compromise resolution to avoid further conflict with residents involved in an advocacy initiative. However, the appellant points out that the compromise resolution was a settlement of a disputed issue between the Society and its residents under the *RTA*. She says that the Society's participation in that process was an acknowledgment that the Lodge was not excluded from the *RTA* and was therefore not transitional housing. She contends that the question of jurisdiction "was fully and finally disposed of" in the earlier proceedings.

[42] Alternatively, the appellant argues that if the disputed issue of jurisdiction was not fully and finally disposed of by the prior RTB proceedings, the Society should have raised the issue at the time. It was not permitted to withhold its position until a more convenient or favourable case arose: *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 at para. 18.

[43] Even accepting, without deciding it to be so, that the Society withheld its jurisdictional position rather than merely overlooking the question, the outcome in this case must be the same. A tribunal either has jurisdiction or it does not. There is no middle ground, and parties have no capacity to confer jurisdiction on a tribunal either by consent or through inattention to the jurisdictional question. If the Society provides transitional housing at the Lodge, it is exempt from the *RTA* and the RTB has no jurisdiction over it. Even if the Society was wilfully blind to the jurisdictional question in earlier proceedings, it is not an abuse of process for the Society in this proceeding to recognize and accept the jurisdictional limits of the RTB.

2024 BCCA 2 (CanLII)

Disposition

[44] With thanks to all counsel for their assistance, I would dismiss the appeal.

"The Honourable Madam Justice Fenlon"

I AGREE:

"The Honourable Mr. Justice Voith"

I AGREE:

"The Honourable Madam Justice Horsman"