The BC Supreme Court in Coffey v Fraser Valley (Regional District), 2018 BCSC 959 recently ruled on an alleged breach of the Canadian Charter of Rights and Freedoms arising from the entry onto private property by a local government. The court ruled that the Fraser Valley Regional District's (the "FVRD") inspection of outbuildings on the property did not violate the tenant's right to be free from an unreasonable search. Further, the court ruled that on the facts in this case, the 6-month limitation period for bringing an action against a local government under section 735 of the Local Government Act, applies to claims for remedies under the Charter. Accordingly, the plaintiff's claim was barred, having been filed 10 months after the inspection at issue.

This case discusses the extent and limitations of local governmental authority to enter onto private property, without a warrant, to determine whether bylaws are being complied with. The case also shows that the 6-month limitation period can be an effective tool for defending claims arising from warrantless entries.

Background Facts

The plaintiff, Peter Coffey, sought damages for trespass and a violation of his section 8 Charter rights against the FVRD. The plaintiff held a licence to produce medical marihuana, and grew and processed marihuana on the property. In 2013, the FVRD received notice of an application for a research and development license for the production of marihuana on the property. The FVRD advised the applicant that building and development permits would be required for any new construction.

The FVRD subsequently determined that there was at least one existing outbuilding on the property for which a building permit was not obtained.

In April 2015, the FVRD wrote to the owner and tenants of the property to arrange a mutually convenient time to inspect the property in relation to suspected building bylaw violations. The FVRD received no response. The FVRD's building bylaw authorized inspections of property to determine whether the bylaw was being complied with. Under the bylaw, notice to the owner and tenant was required for inspections of occupied residences, but not for outbuildings.

Subsequently, the FVRD learned of complaints of sewage discharge from the property, and of gunshots having been fired near the property. In December 2015, the RCMP advised the FVRD that it was conducting an investigation of possible criminal offences on the property.

Due to safety concerns the FVRD requested a RCMP escort for an inspection of the property.

In January 2015, the RCMP advised the FVRD that its officers were conducting an investigation on the property, and that the residents were not present. The FVRD seized the opportunity to inspect the outbuildings on the property while the RCMP conducted its investigation. The FVRD identified a number of structures for which building permits had not been obtained, and posted 'stop work' and 'do not occupy' notices on the structures. The FVRD did not inspect the residence on the property.

Within about a week of the inspection, the plaintiff's lawyer advised the FVRD that he considered the FVRD's search to constitute trespass, on the basis that no warrant had been obtained. Approximately 10 ½ months later the plaintiff filed a lawsuit against the FVRD.

Legal Analysis

The plaintiff alleged that the FVRD's inspection of the property breached his right to be free from unreasonable search under section 8 of the Charter. The plaintiff did not challenge the validity of the building bylaw itself.

The FVRD argued that the plaintiff's claim was barred by section 735 of the LGA, having been filed more than 6 months after the inspection. The FVRD also argued that its inspection was authorized by section 419 of the LGA and its own building bylaw, and that it was not unreasonable.

Limitation Period Defence

There is case authority from other provinces which suggest that limitation periods contained in specific legislation should not apply to claims of alleged Charter breaches. However, the Court in this case ruled that section 735 of the LGA applies to claims of an alleged Charter breach in circumstances in which there is no evidence that the limitation period would operate unfairly or deprive the plaintiff of a just remedy. The Court found that the plaintiff was not deprived of a just remedy, because he was aware of a possible claim immediately after the inspection, (in fact his counsel had complained to the FVRD one week after the inspection), and yet the plaintiff waited 10 months to file the claim.

Section 8 of the Charter

An inquiry under section 8 of the Charter involves determining whether the plaintiff had an expectation of privacy with respect to the property being searched, and whether the search was reasonable. In this case, the property was a residential property for which the plaintiff clearly held an expectation of privacy.

To determine whether the search was reasonable (the second part of the inquiry), the court applied the test outlined by the Supreme Court of Canada in R v Collins [1987] 1SCR 265:

1. Was the search authorized by law?
2. Was the law reasonable?
3. Was the manner in which the search was conducted reasonable?

The court found that the search was authorized by section 419 of the LGA and the FVRD's building bylaw. Given that the plaintiff did not challenge the validity of those laws, the court proceeded on the assumption that those laws are reasonable.

Turning to whether the search was conducted in a reasonable manner, the Court remarked that there was no requirement that the owner or tenant be present during the inspection, nor that they receive notice of the inspection. The Court further remarked that the FVRD had notified the owner and tenant of its intention to conduct an inspection (albeit nearly a year prior to the inspection), to which neither the owner nor the tenant responded. The Court noted that the FVRD was not under a duty to arrange a mutually convenient time to inspect the property, and was not required to follow-up with the plaintiff

after receiving no response. As to the allegation that the FVRD was working with the RCMP, there was no evidence to support that characterization, and in any event any complaints of the RCMP's conduct was not a matter to be determined in this proceeding. Finally, the Court remarked that the FVRD limited its inspection to outbuildings.

The Court dismissed the plaintiff's claim under the summary judgment Rule 9-6, which is used where there is no genuine issue requiring a trial.

Lessons for Local Governments

This case confirms the extent of local governmental authority to enter and inspect private property without a warrant. In cases in which only outbuildings will be inspected, no notice is required (assuming the bylaw has the same wording as the FVRD's building bylaw in this case). However, the provision of notice (even where not legally required) can still be of assistance in avoiding costly legal disputes and supporting the argument that any subsequent search was reasonable.

This case also confirms that section 735 of the LGA remains a powerful tool for defending against claims brought more than 6 months after the subject event. It bears noting that section 735 is limited to a certain category of claim against a local government, and not all claims in general.

Please contact us should you wish to discuss the implications of this decision in more detail.

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