



COLUMBIA SHUSWAP REGIONAL DISTRICT

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May 2, 2019

File: 7130 25 34

Via email – Emergency.Management.Deputy.Minister@gov.bc.ca

Lori D. Halls
Deputy Minister, Emergency Management BC
Ministry of Public Safety and Solicitor General
P.O. Box 9850
Stn Prov Gov't
Victoria, BC V8W 9T5

Dear Ms. Halls:

Re: Erosion along Newsome Creek and BC Supreme Court Decision Waterways Houseboats Ltd v. British Columbia 2019 BCSC 581

The Chair of the Columbia Shuswap Regional District (CSRD), Ms. Rhona Martin, has requested that I write to you in response to the Minister's April 24, 2019 response to our earlier correspondence regarding the erosion along Newsome Creek and the matter of responsibility to address the situation.

There is perhaps a need at this stage to try to bring some clarity to the fine legal distinction between rights and obligations, so far as flood mitigation steps are concerned.

To be clear, this is now not a case of an emergency response, but rather ongoing flood hazard management.

While we appreciate that the CSRD could apply for funding that might have financed certain works and while we could, subject to procedural processes, undertake some of this work, I think the Minister has mis-stated the point by saying that "Provincial legislation assigns responsibility for flood hazard management to local authorities; this includes addressing erosion along streams."

As an example of why local governments are reluctant to step into such matters I would refer you to the very recent Supreme Court of BC decision in *Waterway Houseboats Ltd. v British Columbia 2019 BCSC 581*. There, the District of Sicamous was found partially liable for significant damages purely as a result of its good faith attempts to work with the Province and obtaining, albeit reluctantly, *Water Act* approvals to do mitigation works after an earlier flood incident. On our reading of the Court's decision, the local government would have had no liability if it had simply allowed the Province to deal with this situation. Instead, it was found to be strictly liable for the damages that arose out of the restoration works as approved under the *Water Act*.

The Court stated the starting point here quite concisely:

"[306] The *Water Act* is strict. The Province has complete control over the use of water and over any changes to streams, stream beds or bridges spanning streams. That authority is granted to the Province for good reason."

ELECTORAL AREAS

A GOLDEN-COLUMBIA
B REVELSTOKE-COLUMBIA

C SOUTH SHUSWAP
D FALKLAND-SALMON VALLEY

E SICAMOUS-MALAKWA
F NORTH SHUSWAP-SEYMOUR ARM

MUNICIPALITIES

GOLDEN
REVELSTOKE

SALMON ARM
SICAMOUS

Based on the Court's analysis above, we remain confused by the Minster's assertion that "provincial legislation assigns flood hazard management to local authorities". Is there an Act other than the *Water Act* that is applicable here that we are not aware of?

In this sort of situation, I trust that you will appreciate that a local government -- that at the outset has no real liability risk -- will be increasingly reluctant to voluntarily assume the risk transfer from the Province arising out of the necessary approval process.

A second issue is that as a regional district we have no service established to fund these works and so it is not clear to me that we would have the authority to levy a tax in order to be able to act in this situation. If local governments are going to be compelled by the Province to deal with such unfunded mandates, then it would seem that significant changes to the *Local Government Act* may be necessary. Since these amendments would, amongst other things, likely expand significantly the ability to borrow without assent, we would imagine that a broad level of public consultation would be appropriate.

The bottom line here however is that this issue is not restricted to the CSRD or Newsome Creek -- it has Province wide implications for local government.

The Sicamous judicial experience described above is a clear warning to all local governments as to the dangers of stepping into a scenario where it assumes this significant risk exposure. Even at that, it would seem that the policy justification of the entire regional district expending significant public dollars to protect a smaller portion of the area raises other concerns of fairness.

In all of these circumstances I do not see what the policy or legal justification would be for the CSRD to step in when, as the Court noted: "The Province has complete control That authority is granted to the Province for good reason."

We are certainly willing to meet with senior officials to discuss this issue further.

Yours truly,

COLUMBIA SHUSWAP REGIONAL DISTRICT

Per:



Charles A. Hamilton
Chief Administrative Officer

cc: John Allan, Deputy Minister of Forests, Lands & Natural Resource Operations & Rural Dev.

via email only:

Mark Zacharias, Deputy Minister of Environment & Climate Change Strategy

Kaye Krishna, Deputy Minister of Municipal Affairs & Housing

Tom Barnes, CEO and General Counsel, Municipal Insurance Association of BC

Gary MacIsaac, Executive Director, UBCM

Chair & Directors, Columbia Shuswap Regional District