The Future of "Reno-viction" in Prince Edward Island

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IN THIS ISSUE

BUSINESS REGULATION

REGULATING PERSONS AND PROPERTY

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The phenomenon known as "renoviction" has garnered much attention on Prince Edward Island in recent years. On November 17, 2021, the Province of Prince Edward Island passed Bill 122, which implemented a two-year moratorium on the ability of landlords to evict tenants to renovate their occupied units. While the government of PEI is currently in the process of updating the *Rental of Residential Property Act,* SPEI 1988, c. 58 (the "*Act*") to place increased parameters on renovictions, the current *Act* has few requirements on the landlord's ability to renovict. Specifically, according to section 15(1)(c) of the *Act*, if the landlord seeks, in good faith, to renovate the premises and cannot do so while the tenant continues to live there, the landlord can evict the tenant, so long as they have advised the tenant of the nature of the renovations. While this ability has been placed on hold until November 23, 2023 by Bill 122 and will be varied by the proposed amendments to the *Act*, the province has received some criticism from affordable housing advocates regarding the speed at which these amendments are taking place.

In other provinces, where enabling authority exists, municipal governments have taken the matter into their own hands. In British Columbia for example, the City of New Westminster (the "City") recently enacted a bylaw which restricts the ability of landlords to evict tenants in order to accommodate renovation work. If a tenant cannot continue to reside in a unit due to renovation work, the bylaw requires landlords to either (1) enter into a new tenancy agreement with the tenant for a comparable unit in the same building on the same or better terms, or (2) make arrangements for temporary accommodation for the tenant and subsequent return to the renovated unit for the same rent.

Upon the enactment of the bylaw, one landlord in the City, the owner of a four-storey, multi-family residential rental building with 21 suites, challenged the bylaw as *ultra vires,* meaning beyond the legislative jurisdiction of the City.[1] The application was dismissed. According to the court, the City had jurisdiction to enact such a bylaw and as such, it was *intra vires.*

One wonders if the same outcome would result if such a bylaw were enacted and challenged in Prince Edward Island. In the British Columbia case, the court considered the relevant governing legislation which included the *Community Charter*, SBC 2003, c. 26 and the *Residential Tenancy Act*, SBC 2002, c. 78. These statutes are comparable to the *Municipal Government Act*, SPEI 2016, c. 44 and the *Rental of Residential Property Act,* SPEI 1988, c. 58 in Prince Edward Island. A comparison of the required analysis in each jurisdiction is as follows:

How should we interpret the legislation?

PEI's *Municipal Government Act* (the "*MGA*"), like BC's *Community Charter* (the "*CC*"), is to be interpreted liberally and broadly. In each province, both the municipal and provincial governments are to acknowledge and respect each other's jurisdiction, which includes insuring that municipal governments are permitted to govern the people they serve as necessary.

Must give broad and liberal interpretation to statute.	
British Columbia: *Community Charter*, section 4.	**Prince Edward Island:** *Municipal Government Act*, section 10.
Municipalities and the Province acknowledge and respect their respective jurisdictions.	
British Columbia: *Community Charter*, sections 2(1) and 2(2).	**Prince Edward Island:** *Municipal Government Act*, preamble.
Purpose of Act includes flexibility for municipalities to adapt to the needs of the people they serve.	
British Columbia: *Community Charter*, section 3.	**Prince Edward Island:** *Municipal Government Act*, sections 2 and 179.

Business Regulation

Can the municipality regulate in this area?

In the BC case, section 8(6) of the *CC* granted the City the authority to regulate business. According to the court, for the bylaw to be *intra vires*, it needed to "regulate". In PEI, section 180(c) of the *MGA* allows council to pass bylaws respecting business activities. While it includes the ability to regulate, it does not require regulation. As such, although the BC Supreme Court found that the bylaw did in fact regulate, the analysis would be even simpler in PEI.

If the hypothetical petitioner is in the business of renting units in an apartment building, then the municipality's bylaw respecting its business is likely not *ultra vires* for that reason.

Regulating Persons and Property

PEI's *MGA*, like BC's *CC*, also permits the regulation of businesses and protection of persons and property.

Under section 8(3)(g) of the *CC*, a municipality may enact bylaws relating to the health, safety or protection of persons or property in relation to matters referred to in section 63. According to section 63(f), this includes rental units and residential property. While section 180(a) of the *MGA* permits a council to pass bylaws respecting the safety, health and welfare of people and the protection of persons and property, it does not define what specific activities this encompasses as the *CC* does.

Nevertheless, there is nothing to suggest that this doesn't include protecting persons and property in matters of rental units and residential property. In fact, this interpretation may be consistent with sections 2, 10, and 179, which allow for a broad interpretation of the statute (s.10) and allow municipalities to adapt to the needs of the people (ss. 2 and 179).

Ability for municipality to enact certain bylaws.	
British Columbia: *Community Charter*, sections 8(3)(g) – protection of people property; 8(6) – in relation to business; and, 63(f) – rental units/residential property.	**Prince Edward Island:** *Municipal Government Act*, sections 180(a) – protection of people and property; 180(b) – improvement of private land; 180(c) – in relation to business; and, 180(g) – alteration of buildings.

In the BC case, the court held that pursuant to section 10 of the *CC*, a bylaw is inconsistent with a provincial enactment only if it requires contravention of the enactment. Since the Applicant did not demonstrate how the bylaw would result in a contravention of the *Residential Tenancy Act* (the "*RTA*"), the court held that the City exercised municipal power in respect of a subject area also governed by the *RTA*, but in a way that is consistent with the *CC*. Is the bylaw inconsistent with any other statute?

In PEI; however, section 5 of the *MGA* does not contemplate that a bylaw provision must *contravene* a provincial enactment in order to be inconsistent. Section 5 reads as follows:

5. *Effect of inconsistency*

Where there is an inconsistency between a bylaw of a municipality and this Act or another enactment, the bylaw of the municipality is of no force or effect to the extent of the inconsistency.

The question on PEI would be, is the bylaw inconsistent with section 15(1)(c) of the *Rental of Residential Property Act* (the "*RRPA*")? Given that section 15(1)(c) currently allows the landlord to serve the tenant with a notice of termination in advance of renovating, and the hypothetical

bylaw would *not* allow for the termination of the lease, it is likely a court would find that the bylaw is inconsistent with the current *RRPA*. Therefore, in PEI, such a bylaw would be *ultra vires.*

Inconsistency between bylaw and provincial enactment.	
British Columbia: *Community Charter*, section 10	**Prince Edward Island:** *Municipal Government Act*, section 5

[1] *193652 B.C. Ltd. v. New Westminster (City),* 2020 BCSC 163Overall, a similar bylaw in PEI would likely be *ultra vires* given that it would be inconsistent with the *RRPA* as it is currently written. Is this bad news for tenants? Maybe, but perhaps the practical reality of such a bylaw helps a little. It could be anticipated that such a bylaw would result in fewer landlords choosing to upgrade their occupied units, which may result in a municipality with fewer desirable housing options overtime. Then again, that would be a small price to pay to avoid being "renovicted", some might argue. Without another avenue for recourse, tenants say the *RRPA* amendments can't come soon enough!