IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Madaninejad v. North Vancouver (District),* 2015 BCSC 895

Date: 20150529
Docket: S144880
Registry: Vancouver

Between:

Mostafa Madaninejad and Fatemeh Khosravi-Amiri

Petitioners

And

District of North Vancouver

Respondent

- and-

Docket: S147882
Registry: Vancouver

Between:

The District of North Vancouver

Petitioner

And

Mostafa Madaninejad and Fatemeh Khosravi Amiri

Respondents

Before: The Honourable Madam Justice E.A. Arnold-Bailey

Reasons for Judgment

Counsel for Madaninejad and Amiri (in both petitions):	James L. Straith
Counsel for the District of North Vancouver (in both petitions):	Francesca Marzari and Michael Moll

Place and Date of Hearing:	Vancouver, B.C. January 26, 2015
Place and Date of Judgment:	Vancouver, B.C. May 29, 2015

Introduction

[1] Mostafa Madaninejad and Fatemeh Khosravi Amiri (the “Owners”) own a residential property in the District of North Vancouver, BC (the “District”) at 1576 Merlynn Crescent. By resolution of the Council of the District (the “Council”), the District issued a municipal order that requires the Owners to remedy an unsafe condition due to slope stability (the “Remedial Action Resolution”). The Owners resist compliance with the Remedial Action Resolution on a number of grounds and seek judicial review. The District seeks an order of the court enforcing the Remedial Action Resolution.

[2] The District is a local government that derives its authority from the *Community Charter*, S.B.C. 2003, c. 26 [*Community Charter*], and the *Local Government Act*, R.S.B.C. 1996, c. 323.

[3] The Owners are the registered owners of the property at 1576 Merlynn Crescent in the District, bearing the legal description of PID: D-9772, Lot 20, Block D Westlynn Plan 9772 (the “Property”). The Property is located in the Westlynn Terrace of the West Hastings Escarpment area of the District.

[4] Each party commenced a petition to which the other has responded. The two petitions were heard together, as they relate to the same subject matter. The first petition (S 14480, Vancouver Registry) brought on behalf of the Owners seeks a number of forms of relief related to having the Court quash the Council’s resolutions that impose the Remedial Action Resolution upon them. The second petition (S 147882, Vancouver Registry), brought on behalf of the District, seeks a court order enforcing the Remedial Action Resolution.

[5] The Owners seek judicial review. They allege certain deficiencies in the resolution-making process and errors with regards to the Remedial Action Resolution. In particular, they submit that: the District failed to properly consider alternatives, namely the construction of a debris fence, leading to an erroneous finding of fact; the term “unsafe” as contained in s. 73(2)(a) of the *Community Charter* does not apply to the Property; and the District made an error of law by expanding the definition of “is in or creates an unsafe condition” as applied to the Property by incorporating geotechnical risks into the term “unsafe condition”, such that the District acted *ultra vires* its powers under the *Community Charter*.

[6] Accordingly, the Owners seek an order in the nature of *certiorari* quashing the Remedial Action Resolution, and declaratory orders relating to the legal basis upon which the Remedial Action Resolution was made, which include how the provisions of the *Community Charter* ought to be interpreted in relation to geotechnical risks, and interim and final injunctive relief to prevent the District from taking action under the Remedial Action Resolution.

[7] In the alternative, the Owners seek that the Remedial Resolution be stayed pending a full hearing of the matter in order for the complete factual matrix and record to be placed before the

Court. On that basis, the Owners seek an order that the petition brought by the District should be adjourned to the trial list with directions.

[8] The District's position is that the Council acted reasonably and within its powers when it imposed the Remedial Action Resolution to prevent a landslide risk affecting the Owners' Property, and that the Court should uphold its validity and compel the Owners to comply.

The Facts

[9] The material facts are not in dispute and are drawn from the affidavit material provided by the parties.

[10] In January 2005, a landslide occurred after heavy rains in the Berkley Escarpment area of the District, as a result of which a woman was killed and several homes were destroyed. Following the landslide, the District set about to identify and manage landslide risks and retained engineering firms to perform landslide hazard and quantitative risk assessments for priority areas of the District. Between 2008 and 2013, the District obtained a number of reports that identified a risk of a landslide originating from fill materials and a retaining wall on the Property at the rear of the residence.

[11] In particular, BGC Engineering Inc. ("BGC") prepared a report for the District, dated November 27, 2008 (the "2008 BGC Report"), which set out its process for identifying risks. This process groups the risks associated with properties into three categories: Broadly Acceptable, Tolerable and Unacceptable. The risk level specifically relates to a risk of fatality of a house occupant, and not to injury or property damage. Properties within the Tolerable category were described as those possessing identified hazards that should be reduced whenever reasonably practicable, to which the "As Low As Reasonably Practicable" ("ALARP") principle applied.

[12] Of note are several portions of the 2008 BGC Report at p. 23:

> 10.0 TARGET RISK LEVELS AND RISK EVALUATION
>
> 10.01 Tolerable Risk Levels
>
> Tolerable risk levels are risks within a range that society can live with so as to secure certain net benefits. It is a range of risk regarded as non-negligible and needing to be kept under review and reduced further if practicable (Leroi et al. 2005). Where houses are built on or near slopes, such as along the Westlynn and Pemberton Heights Escarpments, the residual risks from landslides cannot be eliminated. Instead, they can be compared with criteria that have been established with the purpose of evaluating if the risks are tolerable. Where they are not, risk control measures can be designed and implemented to reduce risk to tolerable levels.
>
> At the time of the 2006 Berkley Escarpment study quantitative tolerable risk or risk acceptance criteria for landslides had not been defined for DNV [District of North Vancouver] or British Columbia. In the absence of tolerable risk or risk acceptance criteria for the Berkley Escarpment DNV adopted, for an interim period, similar risk levels to those used in Hong Kong, Australia and the United Kingdom [Reference omitted]. DNV Council recognized the need to establish local risk acceptance criteria for landslides and other natural hazards and,

> consequently, created a Natural Hazard Task Force charged with the task of guiding the development of risk acceptance criteria for the District. Therefore, tolerable risk levels adopted for the Berkley Escarpment were also employed in this study. Some background on how the risk acceptance criteria were defined is provided in the sections that follow.

[13] The 2008 BGC Report also sets out the following general principles for risk evaluation at p. 23:

> The evaluation criteria for individual and societal risk are different, but some common general principles can be applied (Leroi et al. 2005):
>
> - the incremental risk from a hazard to an individual should not be significant compared to other risks to which a person is exposed in everyday life;
> - the incremental risk from a hazard should be reduced wherever reasonably practicable, i.e. the As Low As Reasonably Practicable (ALARP) principle should apply;
> - if the possible number of lives lost from a landslide incident is high, the likelihood that the incident might actually occur should be low. This accounts for society's particular intolerance to many simultaneous casualties, and is embodied in societal tolerable risk criteria;
> - higher risks are likely to be tolerated for existing slopes than for planned projects;
> - tolerable risks may vary from country to country, and within countries, depending on historic exposure to landslide hazard, and the system of ownership and control of slopes and natural landslide hazards.

[14] With regards to individual risk, the 2008 BGC Report referred, at p. 29, to a strategy to reduce individual risk in several areas, one of which related to the Property (the Westlynn Escarpment):

> 12.0 STRATEGY TO REDUCE INDIVIDUAL RISK TO $<10^{-4}$ PER YEAR
>
> A risk of 10^{-4} per year is roughly equivalent to the average Canadian's annual risk of fatality in a motor vehicle accident (Statistics Canada 2005). Based on DNV's interim risk tolerance criteria it is also the maximum tolerable risk recommended for existing developments exposed to landslide hazards.
>
> Storm water connections and surface water management improvements along the Berkley Escarpment proved to be the most cost-effective means of reducing landslide risk.
>
> Risk control measures required to remove the public from unacceptable risk exposures from landslide source areas along the Westlynn and Pemberton Heights Escarpments are less extensive than the Berkley Escarpment. In fact, hypothetical landslides originating from only one property investigated as part of this study, [Not the Property], posed unacceptable landslide risk levels to individuals at the base of the escarpment. [Description of remediation steps taken that reduced the risk to a tolerable level within the ALARP zone follow.]

[15] The 2008 BGC Report, at p. 30, considered homes above and at the base of the escarpment. It recognized that "[i]n line with current best practices, one means of reducing risk further is to ensure that all homes along the crests of the escarpments are connected to the storm system".

[16] The 2008 BGC Report then stated, "[L]andslide source areas posing risk levels greater than 10^{-5} per year are identified for further risk reduction, and listed in Table 6." In Table 6, entitled "Source Areas Posing >10^{-5} Risk to Individuals", the report identifies the Property as one of six "potential candidates" for further risk reduction under the heading "Source Areas Above Homes Located < 25° from Crest of Escarpment". The Property is one of six in a list highlighted as showing:

> [E]vidence of slope deformation below the escarpment crest (including slides, leaning trees, or bulging retaining walls) or [having] thick fills below the crest of the escarpment. If mitigation efforts are to be further prioritized these areas should be addressed first.

[17] Two properties denoted by an asterisk, of which the Property is one, are stated to pose "unmitigated individual risks >10^{-5} to occupants of houses at the crest of the slope" (p. 30).

[18] The Property is also identified in Table 7, at p. 31, titled "Source Areas Posing >10^{-5} Risk following Surface Water Improvements", as one of three properties located <25° from the crest of the escarpment that:

> [S]how[s] evidence of slope deformation below the escarpment crest (including slides, leaning trees, or bulging retaining walls) or [has] thick fills below the crest of the escarpment. If mitigation efforts are to be further prioritized these areas should be addressed first.

[19] At p. 31 of the 2008 BGC Report, the following opinion is offered:

> The simplest way to further reduce the risks from potential landslide source areas is to remove retaining walls (where present) and loose soils at the crest of the escarpment. Source areas with homes that are at an angle >25° [not the Property] from the escarpment crest and show evidence of land instability or contain thick fills should be addressed first (Table 7).
>
> In some cases removing retaining walls and loose soils at the escarpment crest will not reduce landslide risk posed to individuals at the base of the crest to <10^{-5} unless ongoing visual inspection of the remediated slopes shows that slope deformation has abated.

[20] In the 2008 BGC Report's summary, at p. 32, the following is stated:

> We suggest DNV ensure properties along the crest of the Westlynn and Pemberton Heights Escarpments have access to the storm water system and encourage property owners to connect their drainage downpipes to it.
>
> Also, at several locations along the escarpment lawn cuttings and garden debris were observed. We suggest DNV encourage property owners to remove this material currently located along the escarpment crest and discourage further placement of garden waste along the escarpment.
>
> Prior to the removal of any retaining walls or fills, the final remediation designs should be reviewed by an independent qualified professional to ensure the design will achieve the desired level of risk reduction…
>
> Ongoing visual monitoring of the slopes should be provided…

[21] The 2008 BGC Report concluded that the Property was one of 12 sites along the Westlynn and Pemberton Heights Escarpments that was identified and prioritized for mitigation due to posing

a greater than 10^{-5} risk as a result of their quantitative landslide risk assessment. The Property's site observations, photographs and the fill analysis that formed part of the 2008 BGC Report provided specific information about the state of the Property at that time. Among other observations noted, the Property is described as having a stepped, timber crib retaining wall that has settled and is bulging, and "Overall … appears in good condition." A copy of this report was provided to the Owners at the time.

[22] In 2010, BGC prepared a Landslide Risk Summary for the District that collated previous reports and investigations into one document. The District provided the property owners in the area, including the Owners, with a copy of this report, and advised of an incentive program to encourage them to improve storm water management with the District. The program provided lateral storm connections at no cost to the residents and waived the associated permit fees. To date, the Owners have declined to improve the storm water drainage on the Property.

[23] In May 2012, the District received a report from Horizon Engineering Inc. ("Horizon") in relation to the Property and two adjacent properties. This report (the "2012 Horizon Report") noted the following conclusions at p. 5:

> Based on the available information in conjunction with the site observations, the following conclusions are provided with respect to the properties included in this slope stability reconnaissance.
>
> - No indicator signs of any imminent slope stability problems were noted on the aforementioned subject properties.
> - […]
> - The stability of the retaining walls at 1576 Merlynn Crescent [the Property] appear [sic] to be deteriorating as a result of ground settlement and/or wall construction/performance related issues. The condition of these walls and the adjacent slope crest area should be monitored for signs of slope movement or further wall displacement. This monitoring work should include removal of vegetation cover from the toe of the retaining wall to allow for visual observations of ground conditions.
> - The disconnected drainage pipe at 1576 Merlynn Crescent should be reconnected to reduce the potential for misdirected water that could adversely impact the local slope stability.
> - […]
>
> At 1576 Merlynn Crescent, it should be emphasized that although this retaining wall and the retained material is currently not an imminent slope hazard to the subject house or downslope areas, maintenance and/or repair of the wall and ground conditions will be required in an effort to reduce potential landslide related hazards. Should monitoring data for the slope and wall conditions indicate there is ongoing or accelerated displacement or settlement, a detailed site investigation and slope stability analysis should be carried out to develop recommendations for stabilizing the wall and/or slope.
>
> [Emphasis added.]

[24] The 2012 Horizon Report recommended that the wooden retaining wall at the Property be monitored annually and that ground and slope monitoring be carried out, both at the Property and

at an adjacent property, by professional surveyors at specified times in a 12 month period. This monitoring would be done by way of permanent survey markers referenced to a benchmark, with the results being reported to the District.

[25] In June 2012, the District provided a copy of the 2012 Horizon Report to the Owners and again offered financial assistance to hook the Property up to the District's storm drainage system.

[26] In April 2013, the District received a further report from Horizon (the "2013 Horizon Report") with respect to the Westlynn Terrace area of the District that included the Property. The report identified the likelihood of landslide from the Property to the property below as "High" and the qualitative risk to the property below as "Very High."

[27] In May 2013, the District also received a further report from BGC (the "2013 BGC Report) that identified the Property and an adjacent property as having a greater than average likelihood of a landslide occurring.

[28] Specifically with regards to the Property, the 2013 BGC Report noted the following at pp. 10-11:

> 6.2. 1576 Merlynn Crescent [the Property]
>
> The single family home of 1576 Merlynn Crescent is situated approximately 4 m upslope from the escarpment crest. A terraced, timber crib retaining wall that has an overall height of approximately 2.5 m is located along the slope crest. Slope angles downward of the retaining wall are approximately 41° In 2008, 0.5 m of silty sand fill was encountered in the shallow subsurface hand auger holes along the slope crest and upslope of the retaining wall. Additional subsurface investigations completed by Horizon in 2013 indicated that the depth of loose material along the slope crest is approximately 3 m (Horizon 2013).
>
> In the 2008 and 2013 field inspections it was observed that the upper terrace retaining wall was bulging and settlement was observed behind the retaining wall. Several sections of the timber cribs appear to be rotten. According to the DNV Geoweb, the perimeter drains for the residence are not connected to the storm outfall network. The perimeter drains may be connected to a 10 cm PVC pipe that discharges mid-slope. In 2008, the likelihood of a landslide originating from 1576 Merlynn Crescent was considered high.
>
> In this updated QRA [Quantitative Risk Assessment], the likelihood of a landslide originating from the backyard of 1576 Merlynn Crescent remains greater than average. Despite this, the consequence of a landslide impacting downslope residences along Camaria Court causing loss of life is considered to be very low. Consequently, the risk to loss of life as a result of the potential landslide hazard from 1576 Merlynn Crescent is considered 'tolerable'. However, there remains an elevated likelihood of a landslide that could cause damage to the public and private property down slope.
>
> [Emphasis added.]

[29] The 2013 BGC Report also recommended (at p. 12):

> ...As a result, remedial work to reduce the likelihood of landslide occurrence from these properties is recommended. Removal of fill and/or reconstruction of retaining walls are likely the most practical options to reduce landslide hazard at 1582 and 1576 Merlynn Crescent.

[30] In May 2013, District staff held a meeting with the Owners of the Property and the owners of the adjacent property at 1582 Merlynn Crescent and provided them with copies of the 2013 Horizon Report and the 2013 BGC Report. The District requested the Owners and the owners of the adjacent property to voluntarily submit a plan prepared by a qualified professional to address and remediate the unsafe condition by August 1, 2013 and complete the works by October 15, 2013.

[31] The District followed up by letter in June 2013 asking the Owners to address the slope stability issues identified on the Property and advising that the District was considering the imposition of a remedial action requirement in relation to the Property, but would postpone that action to give the Owners an opportunity to submit a plan to remediate the slope and to perform the recommended work by October 15, 2013.

[32] The Owners did not comply with those timelines, but in mid-November 2013 they provided the District with a further report from Horizon (the November 2013 Horizon Report") that identified three remediation options for the Property: Option A: to reslope by removing the retaining wall and fill from the rear of the Property; Option B: to reslope and construct a new deck; or Option C: to remove the existing retaining wall and fill and replace with engineer-approved fill and a new engineered retaining wall.

[33] After discussions with the Owners and their engineers, District staff indicated that any of the stated options would be satisfactory. According to the District, although there was some indication that the Owners preferred Option B, they ultimately declined to proceed with any of the identified and approved options to remediate the Property.

[34] Horizon also orally recommended to the Owners, their neighbours on the adjacent property and District staff that tarps be installed at the rear of both properties as an interim measure pending the completion of the recommended remediation measures. This was to prevent soil at the rear of the Property and the adjacent one from becoming saturated with rain water during the rainy season from October to April, as saturated soil is heavier and more likely to cause a landslide. The District agreed to pay for the installation of the tarps if the Owners provided written permission to allow entry to the properties for installation.

Proceedings before the District's Council

[35] At its meeting on December 9, 2013, the District's Council considered a report regarding the Property prepared by the District's Public Safety Section Manager (dated December 5, 2013). It recommended that remedial action be required for the Property and attached copies of the both 2013 Horizon reports. The report included the following:

> REASON FOR REPORT:
>
> To address an unsafe condition related to slope stability on the property of 1576 Merlynn Crescent [the Property] by ordering remedial action requirements to restore the slope to a safe condition to mitigate landslide risk.

> BACKGROUND:
>
> The District's adopted landslide risk tolerance for existing development is 1:10,000 for Tolerable properties and 1:100,000 for Broadly Acceptable properties. The District has approximately 110 properties where landslide risks meet existing development but exceed the criteria for new development.
>
> 1576 Merlynn Crescent was rated as Tolerable during the 2008 Landslide Risk Assessment. The District retained Horizon Engineering to evaluate the slope condition of the property in 2013 and other adjacent properties of the crest of the escarpment. Horizon Engineering rated the Landslide Hazard Likelihood rating as High and Qualitative Risk Rating as Very High for 1576 Merlynn Crescent (Attachment A). The Property was reevaluated in a Quantitative Risk Assessment by BGC Engineering in 2013. According to District risk criteria, the property still falls within the Tolerable range as the landslide runout path is predicted to impact Carmaria Court Road and Utilities infrastructure and not a home. The landslide risk potential for loss of life is limited to the potential for the landslide to impact one of the Carmaria Court residents driving a car on the road. Nine homes are accessed from Carmaria Court and would be inaccessible if a landslide blocks the road. The District staff have requested the Owners to mitigate the risk of landslide based on the potential of the landslide impacting the road and causing potential injury to drivers on the road. Engineering staff and BGC Engineering met with Carmaria Court homeowners on May 23, 2013 to discuss and disclose the landslide risk.
>
> This property is not connected to the storm network…
>
> Quantiative [sic] Risk Assessment BGC 2013
>
> Both geotechnical consultants retained by the District provided the same recommendation of removing the fill load and the removal/replacement of the retaining walls on the property for landslide mitigation.
>
> The Owners were provided copies of geotechnical reports relating to slope stability of the property on May 23, 2013 and met with BGC Engineering and District Staff to interpret reports. At that time the property owners were requested to voluntarily [submit a plan]…
>
> The Owners complied with this request and retained Horizon Engineering to develop remediation plan…
>
> ANALYSIS:
>
> The landslide risk to residents using Ca[r]maria Court road creates an unsafe condition. The remediation order is needed to insure that the risk of landslide impacting the road is mitigated.
>
> The Owners are currently obtaining price estimates from contractors on the scope of work for each remediation plan option. The cost of the remediation to each property is estimated to start at $75,000-$100,000 based on the amount of fill needed to be removed from the slope and the difficulty of access to the rear yards. The Owners have indicated limited financial ability to be able to fund the remediation need on the Property.
>
> An alternative of a debris fence being constructed at the base of the slope was explored. Preliminary cost estimates to design and install the fence start at $150,000. Installation of a fence would not stop the impending landslide from occurring and clean-up costs would be additional once the landscape occurred.
>
> […]
>
> [Emphasis added.]

[36] The report continues to outline how the District may undertake remedial action at the expense of the Owners and recover the costs as a debt under s. 17 of the *Community Charter*. If the debt remains unpaid, the cost could be added to the property taxes for the Property (s. 258 of

the *Community Charter*). The report also noted:

> The homeowners, as seniors have indicated a limited financial ability to carry out the remediation. In recognition of the financial limitations of the homeowners, the District has provided $2,000 in geotechnical assistance towards the development of the remediation plan, has waived permit fees and is providing a location to dump fill for the remediation…

[37] At the December 9, 2013 meeting of Council, Mr. Edward Bickford spoke on behalf of the Owners.

[38] After hearing from Mr. Bickford, Council passed the following resolutions, constituting the Remedial Action Resolution, which were incorporated into the letter sent to the Owners, dated December 10, 2013:

> 1. Council declares, pursuant to s. 73 of the *Community Charter*, 2003 c. 26, that the property, legally described as: 1576 Merlynn Crescent, PID: D-9772-20, Lot 20, Block D Westlynn Plan 9772 (the "Property") is in and creates an unsafe condition due to slope stability.
> 2. Council hereby imposes the following remedial action requirements (the "Remedial Action Requirements") on Mr. Mostafa Madaninejad and Ms. Fatemeh Khosravi-Amiri the registered owners of the Property (the "Owners") to address and remediate the following unsafe condition:
>
> 1. Select a remediation plan option and indicate to the District in writing the selected option by January 15, 2014 and submit all necessary permit applications to the District by February 15, 2014.
>
> 2. Complete the work in accordance with the selected remediation plan and issued permits by April 30, 2014.
>
> 3. The Owner's Qualified Professional must provide a report to the District within three weeks following completion of the work, certifying the safe condition of the slope.
>
> 4. Council hereby directs that in the case of failure of the Owner to comply with the Remedial Action Requirements, then:
>
> a. The District, its contractors or agents may enter the Property and may carry out the following remedial actions:
>
> i. Generally restore the Property to a safe condition (Option A: 1582 Remediation Plan and Option A: 1576 Remediation Plan) to the satisfaction of the Chief Building Official; and,
>
> ii. For the foregoing purposes may retain the services of a professional engineer to provide advice and certifications;
>
> [Terms follow about how the District would recover the costs of remediation.]

[39] The letter advised that the Owners could request reconsideration by Council in accordance with s. 78 of the *Community Charter*, which was to be requested in writing within 14 days of December 13, 2013. On December 24, 2013, counsel for the Owners requested a reconsideration of the Remedial Action Resolution. A date for reconsideration of the matter was set for February 3, 2014.

[40] On February 3, 2014, counsel for the Owners advised the District's solicitor that his clients would sign an agreement to permit the District to enter the Property to install tarps at the rear to reduce soil saturations by rain water.

[41] After hearing counsel for the Owners at the February 3, 2014 meeting, Council passed a further resolution that: extended the deadline for reconsideration to May 1, 2014; extended the time for the Owners to submit permit applications from February 15, 2014 to May 15, 2014; and extended the time for completion of the work to July 31, 2014.

[42] Counsel for the Owners requested a further reconsideration of the Remedial Action Resolution in April 2014, which was heard by the Council during its regular meeting on May 5, 2014. After hearing from counsel for the Owners, Council tabled the resolution to their next regular meeting.

[43] On May 16, 2014, Council confirmed the Remedial Action Resolution, but amended it to extend the date to submit all necessary permit applications to the District to June 6, 2014. According to the Dercole affidavit, sworn October 10, 2014, none of the work ordered in the Remedial Action Resolution has been completed.

[44] After the District filed its petition, the Owners executed an agreement to allow the District to place tarps at the rear of the Property as an interim measure, which the Court was advised has been completed.

The Owners' evidence

[45] Mostafa Madaninejad, one of the Owners, deposed the following in his affidavit made September 15, 2014:

- he and his wife have resided at the Property for many years and there have not been any problems with the Property;
- he did not attend or have submissions made on his behalf at the District's Council meeting on December 9, 2013, when the Remedial Action Resolution was made. He understood that the Council considered a report from the Public Safety Manager regarding the Property dated December 5, 2013, in rendering its decision regarding the Remedial Action Resolution;
- the December 5, 2013 Report, which was carried out in response to concerns regarding the slope stability of several properties in the District in the immediate vicinity of the Property, set out the various alternatives that were looked at with respect to a debris fence at the base of the underlying property development at the base of the slope, immediately below the Property;

- the December 5, 2013 Report provided to Council contained the following:

  > To address an unsafe condition related to slope stability on the property of 1576 Merlynn Crescent by ordering remedial action requirements to restore the slope to a safe condition to mitigate landslide risk.
  >
  > The report held that 1576 Merlynn Crescent was rated as tolerable during the 2008 landslide risk assessment.

- the Remedial Action Resolution passed by Council on December 9, 2013 did not take into account the geotechnical survey by Horizon that listed the Property at a "tolerable risk" in 2013, but imposed additional terms sought by the District staff;

- the underlying basis of the Remedial Action Resolution (at p. 2 of the December 5, 2013 Report by District staff) states, "The District staff have requested the owners to mitigate the risk of landslide based on the potential of the landslide impacting the road and causing potential injury to drivers on the road", which does not include reference to the Property being in an unsafe condition, or make reference to the statutory condition contained in s. 73 of the *Community Charter*, so as to trigger a s. 72 order;

- he sought legal advice and reconsideration by the District of the Remedial Action Resolution and his counsel appeared and made oral and written submissions before the Council at the time the matter was reconsidered;

- when he attended the Council's May 26, 2014 meeting, to which reconsideration of the matter had been deferred, no further oral submissions were made on his behalf and Council made their oral decision;

- the letter he and his wife received from the District, informing them of Council's decision after the reconsideration, made no mention of the Horizon survey or why the original resolution was confirmed, and failed to address their counsel's submissions as to how the Property was not in an unsafe condition as the term is defined in s. 73 of the *Community Charter*;

- in his opinion, based on his experience of living on the Property, there are no existing geotechnical risks, and the Property is not in "an unsafe condition";

- the District has improperly sought to incorporate geotechnical risk assessment and other concerns into the definition of "unsafe" contained in s. 73 of the *Community Charter*; and

- the District's engineering director, Gavin Joyce, stated at the Council's meeting on May 5, 2014, in response to a question from one of the counsellors, that there was no additional documentation in the District's possession regarding the area immediately below the Property and the construction of a debris fence.

Analysis

[46] The Owners challenge the District's Remedial Action Resolution based on it declaring, pursuant to s. 73 of the *Community Charter*, that the Property "is in and creates an unsafe condition due to slope stability". They submit that to order remediation based on geotechnical risk is beyond the jurisdiction of the District. It is their position that there is no "unsafe" condition with regards to the Property, and that the District's Council failed to properly consider the alternative of a debris fence at the bottom of the slope adjacent to the Property.

[47] Their position upon judicial review encompasses questions of law, to be reviewed on a standard of correctness, and also challenges the reasonableness of the District's Remedial Action Resolution.

[48] The District submits that Council acted reasonably and within its authority when it adopted the Remedial Action Resolution.

The Standards of Judicial Review

[49] Since the decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9 [*Dunsmuir*], the dichotomy between a standard of review of reasonableness *simpliciter* and patent unreasonableness has been eliminated, resulting in a legal test that is conceptually less-complicated when conducting a judicial review. Bastarache and Lebel JJ. outline the test as follows at para. 45:

> [45] We therefore conclude that the two variants of reasonableness review should be collapsed into a single form of "reasonableness" review. The result is a system of judicial review comprising two standards - correctness and reasonableness. But the revised system cannot be expected to be simpler and more workable unless the concepts it employs are clearly defined.

[50] The standard of review with regards to questions of law is correctness, as explained in *Dunsmuir* at para. 50:

> [50] As important as it is that courts have a proper understanding of reasonableness review as a deferential standard, it is also without question that the standard of correctness must be maintained in respect of jurisdictional and some other questions of law. This promotes just decisions and avoids inconsistent and unauthorized application of law. When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

Is the District's Remedial Action Resolution based on valid legal authority?

[51] A remedial action requirement is a municipal order imposed by resolution of council. A municipal council has the authority to impose remedial action requirements under Division 12 of Part 3 of the *Community Charter*. There is no issue that the District may act by resolution in this type of case, as opposed to bylaw.

[52] Section 72 is the enabling provision of the *Community Charter* that grounds the District's resolution and it reads as follows:

> 72 (1) A council may impose remedial action requirements in relation to
>
> (a) matters or things referred to in section 73 [*hazardous conditions*],
>
> (b) matters or things referred to in section 74 [*declared nuisances*], or
>
> (c) circumstances referred to in section 75 [*harm to drainage or dike*].
>
> (2) In the case of matters or things referred to in section 73 or 74, a remedial action requirement
>
> (a) may be imposed on one or more of
>
> (i) the owner or lessee of the matter or thing, and
>
> (ii) the owner or occupier of the land on which it is located, and
>
> (b) may require the person to
>
> (i) remove or demolish the matter or thing,
>
> (ii) fill it in, cover it over or alter it,
>
> (iii) bring it up to a standard specified by bylaw, or
>
> (iv) otherwise deal with it in accordance with the directions of council or a person authorized by council.
>
> […]
>
> [Emphasis added.]

[53] The District's Council is permitted, by virtue of s. 73 of the *Community Charter*, to impose a remedial action requirement in relation to unsafe conditions:

> 73 (1) Subject to subsection (2), a council may impose a remedial action requirement in relation to any of the following:
>
> (a) a building or other structure, an erection of any kind, or a similar matter or thing;
>
> (b) a natural or artificial opening in the ground, or a similar matter or thing;
>
> (c) a tree;
>
> (d) wires, cables, or similar matters or things, that are on, in, over, under or along a highway;
>
> (e) matters or things that are attached to a structure, erection or other matter or thing referred to in paragraph (a) that is on, in, over, under or along a highway.
>
> (2) A council may only impose the remedial action requirement if
>
> (a) the council considers that the matter or thing is in or creates an unsafe condition, or
>
> (b) the matter or thing contravenes the Provincial building regulations or a bylaw under section 8 (3) (l) *[spheres of authority — buildings and other structures]* or Division 8 *[Building Regulation]* of this Part.
>
> [Emphasis added.]

[54] Therefore, if I find that the District is legally correct with regards to what constitutes "a matter

or thing [that] is in or creates an unsafe condition", the standard of correctness upon judicial review will be met.

[55] In the present case, the Owners submit that for something to be unsafe, it must create an immediate and imminent danger. They submit that the plain and ordinary meaning of "unsafe" does not include complex geotechnical guidelines that are not set out in any legislation, regulation or municipal bylaw. Essentially, their position is that property at a low risk of a landslide is not in an unsafe condition.

[56] The Owners further submit that for the District to interpret the term "unsafe condition" in s. 73 of the *Community Charter* in a manner that expands its meaning to include geotechnical risk is contrary to basic rules of statutory interpretation. They submit that this is particularly so when interpreting a term with plain meaning in a manner so as to impose remedial action that causes financial hardship.

[57] I find that I am unable to accept the Owner's submissions. Many conditions associated with property may result in property being in an unsafe condition. It is not necessary for the legislature to enumerate specific conditions or risks that serve to render a property unsafe.

[58] In fact, while s. 73(1) of the *Community Charter* sets out certain specific items or categories of items against which remedial action may be directed, s. 73(2) permits a remedial action requirement to be imposed in very broad and general terms, namely when "the matter or thing is in or creates an unsafe condition…"

[59] In my view, the District is not precluded from determining what is "unsafe" as and when it receives new information relating to a potential hazard. Sophisticated geotechnical information that quantifies the risk of harm to persons and property associated with landslide or other instabilities falls into this category. Risk of harm to persons or property, although clearly a matter of degree, may result in property being in an unsafe condition. While the legislature could amend the *Community Charter* or enact other legislation to specifically address the geotechnical risks, including those associated with landslides, the fact that this topic is not specifically mentioned in the *Community Charter* as a potential source of danger for residents and members of the public within a municipal district does not exclude it from consideration by district councils. Rather, the real question is a factual one of whether a matter or thing creates an unsafe condition, for whatever reason, so as to bring it within s. 73 of the *Community Charter*.

[60] The Owners also argue that basic principles of statutory interpretation prevent an interpretation of "unsafe" that includes geotechnical risk so as to place a financial burden upon them. Again, I disagree.

[61] The *Concise Oxford Dictionary* (11th Ed.) defines "Safe" and "Unsafe" as:

> safe adj. 1 protected from or not exposed to danger or risk; not likely to be harmed or lost. -

> not causing or leading to harm or injury. (of a place) affording security or protection. […] PHRASES to be on the safe side in order to have a margin of security against risks.
>
> unsafe adj. 1 not safe; dangerous. […]

[62] From the above definitions, determinations as to what may be "safe" or "unsafe" involve an assessment of danger or risk. While the Owners in the present case may disagree with how the District Council has assessed the risk of a landslide emanating from the Property based on geotechnical studies that have assessed the Property's features, I conclude that it is not illogical or contrary to basic principles of statutory interpretation for the District to incorporate geotechnical information into their decisions. It follows that it is not *ultra vires* their powers to order remedial action requirements on this basis within s. 72 and s. 73 of the *Community Charter.*

[63] Therefore, in my view, it is clearly within the District's jurisdiction to consider geotechnical information, including risk analyses with regards to properties within the District, including the Property in the present case, when considering matters of safety or potential hazard. Accordingly, the standard of correctness has been met.

[64] To the extent that the Owners dispute where the District "has drawn the line" regarding the Property and the risks associated with a possible landslide in the context of ordering remediation, the proper inquiry is as to the reasonableness of its decision. I will proceed with this analysis below.

The standard of review of "reasonableness"

[65] In *Dunsmuir,* the Supreme Court of Canada explains how reviewing courts are to identify an unreasonable decision in the context of the judicial review of an administrative decision:

> [47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[66] It is clearly established that the standard of review for the District Council's decision to pass and confirm the Remedial Action Resolution is reasonableness: *McLaren v. Castlegar (City)*, 2011 BCCA 134 at para. 23 [*McLaren*]; *Vernon (City) v. Sengotta*, 2009 BCSC 70 at paras. 47-50; and *Sahota v. Vancouver (City)*, 2010 BCSC 387 at para. 51.

[67] *Dunsmuir* also makes it clear that a standard of judicial review of administrative decisions based on reasonableness does not represent an invitation for a more intrusive review by the courts. Deference for the decision of the administrative board or tribunal is a critical component of the

analysis. Bastarache and Lebel JJ. describe this deference as follows:

> [48] […] Deference is both an attitude of the court and a requirement of the law of judicial review. It does not mean that courts are subservient to the determinations of decision makers, or that courts must show blind reverence to their interpretations, or that they may be content to pay lip service to the concept of reasonableness review while in fact imposing their own view. Rather, deference imports respect for the decision-making process of adjudicative bodies with regard to both the facts and the law. The notion of deference "is rooted in part in a respect for governmental decisions to create administrative bodies with delegated powers" (*Canada (Attorney General) v. Mossop*, [1993] 1 S.C.R. 554, at p. 596, *per* L'Heureux-Dubé J., dissenting). […]
>
> [49] Deference in the context of the reasonableness standard therefore implies that courts will give due consideration to the determinations of decision makers. As Mullan explains, a policy of deference "recognizes the reality that, in many instances, those working day to day in the implementation of frequently complex administrative schemes have or will develop a considerable degree of expertise or field sensitivity to the imperatives and nuances of the legislative regime": D. J. Mullan, "Establishing the Standard of Review: The Struggle for Complexity?" [Citation omitted], at p. 93. In short, deference requires respect for the legislative choices to leave some matters in the hands of administrative decision makers, for the processes and determinations that draw on particular expertise and experiences, and for the different roles of the courts and administrative bodies within the Canadian constitutional system.

[68] In *Nanaimo (City) v. Rascal Trucking Ltd.*, 2000 SCC 13 [*Nanaimo*] (a pre-*Dunsmuir* decision), Nanaimo City Council passed resolutions declaring that a pile of soil on Rascal's property was a nuisance pursuant to the *Municipal Act*, R.S.B.C. 1979, c. 290, and ordered the company to remove it. When Rascal failed to comply, the city brought a petition for a declaration that it was entitled to access to the property to remove the soil, which was granted. Rascal then brought a petition seeking to quash the city's resolution. Major J. dismissed Rascal's petition, reversing the Court of Appeal, and concluded that Nanaimo's resolution was not patently unreasonable by applying the test prior to *Dunsmuir*.

[69] The comments of Major J. for the Court regarding the deference to be shown to elected municipal bodies are apt here:

> 35 In light of the conclusion that Nanaimo acted within its jurisdiction in passing the resolutions at issue, it is necessary to consider the standard upon which the courts may review those *intra vires* municipal decisions. Municipal councillors are elected by the constituents they represent and as such are more conversant with the exigencies of their community than are the courts. The fact that municipal councils are elected representatives of their community, and accountable to their constituents, is relevant in scrutinizing *intra vires* decisions. The reality that municipalities often balance complex and divergent interests in arriving at decisions in the public interest is of similar importance. In short, these considerations warrant that the *intra vires* decision of municipalities be reviewed upon a deferential standard.
>
> 36 *Kruse v. Johnson*, [1898] 2 Q.B. 91 (Div. Ct.), has long been an authority in Canadian courts for scrutinizing the reasonableness of municipal by-laws. There, Lord Russell of Killowen offered the courts some cautionary language on findings of unreasonableness (at p. 100):
>
> > A by-law is not unreasonable merely because particular judges may think that it goes

> further than is prudent or necessary or convenient, or because it is not accompanied by a qualification or an exception which some judges may think ought to be there. Surely it is not too much to say that in matters which directly and mainly concern the people of the county, who have the right to choose those whom they think best fitted to represent them in their local government bodies, such representatives may be trusted to understand their own requirements better than judges. […]
>
> [Emphasis added.]

[70] Accordingly, in the present case the Remedial Action Resolution made by the District's Council attracts a high degree of deference given that the legislature has specifically delegated to the District the powers to address issues on privately-owned property pertaining to safety and compliance with building regulations.

Is the District's Remedial Action Resolution reasonable?

[71] In assessing the reasonableness of the District's Remedial Action Resolution, the Court is to focus on whether the District's decision is justified, transparent, intelligible, and within the range of possible, acceptable outcomes that are defensible on the facts and in law, to use the language of *Dunsmuir* as quoted above. The key issue is whether there was evidence before Council "capable of justifying its decision": *McLaren* at para. 23.

[72] It falls to the Court to review what information that the District gathered, shared with the Owners and presented to Council, upon which Council then passed the Remedial Action Resolution in question. In particular, I note the following:

- The 2008 BGC Report concluded that the Property was one of 12 sites identified and prioritized for mitigation due to posing a greater than 10^{-5} risk as a result of their quantitative landslide risk assessment for selected properties along the Westlynn and Pemberton Heights Escarpments;

- In 2010, BGC prepared a Landslide Risk Summary that included recommendations about storm water management that the District distributed to the owners of affected properties, including the Property, offering incentives to improve storm water management, which the Owners did not participate in;

- The 2012 Horizon Report noted that conditions on the Property were deteriorating in terms of ground settlement and/or wall construction performance issues and recommended that the District monitor the base of the wall and that the storm sewers should be connected. Although there were no indications of any "imminent slope stability problems", the Property's retaining wall and retained material would require maintenance and/or repair to reduce potential landslide hazards. It recommended that conditions on the Property be monitored for accelerated displacement or settlement, and that a detailed site investigation be done with a slope stability analysis;

- The 2013 Horizon Report recommended mitigation of the landslide risk from the Property through removal of fill materials at the crest of the slope on the Property, re-contouring of the slope, and a further comprehensive assessment of the Property. The retaining wall at the Property was specifically “observed to be bulging.” Three properties in the 1500 block of Merlynn Crescent adjacent to one another, one of which is the Property, posed a potential landslide hazard to the property below rated as “Very High”;

- The 2013 BGC Report noted that in the 2008 and 2013 field inspections it was observed that the upper terrace retaining wall on the Property was bulging, settlement was observed behind the retaining wall, several sections of the timber cribs appeared to be rotten and the perimeter drains for the residence were not connected to the storm outfall network. In 2008, the likelihood of a landslide originating from the Property was considered high. Its updated quantitative risk assessment found that the likelihood of a landslide originating from the backyard of the Property remained greater than average. However, because the consequence of a landslide impacting downslope residences along Carmaria Court causing loss of life was considered to be very low due to the fact that its run out area would impact the road, as opposed to the residences themselves, the risk to loss of life as a result of the potential landslide hazard from the Property was still considered ‘tolerable’. However, there remained an elevated likelihood of a landslide emanating from the Property that could cause damage to the public and private property down slope. This report recommended remedial work be done on the Property to reduce the likelihood of landslide occurrence emanating from it and concluded that the removal of fill and the reconstruction of retaining walls was the most practical solution;

- The November 2013 Horizon Report prepared for the Owners proposed three options for remediation, as opposed to suggesting that the Property could be left as is, or that a debris fence be built;

- The December 5, 2013 Report to the District’s Council set out that while the landslide risk posed by the Property was still classified as “tolerable” due to the landslide run out area impacting Carmaria Court Road and the utilities alongside it, a landslide would likely cause damage to property and block the sole access road to the nine residences at Carmaria Court, with the potential loss of life limited to someone driving a car on the road; and

- Despite a more than reasonable opportunity to remediate the risk via three options, the Owners have declined to do so.

[73] I find that there was an abundance of information collected by the District from skilled,

independent professionals that quantified the risks of landslides based on developing geotechnical standards which, when combined with the physical observations of the bulging retaining wall and the nature of the fill at the back of the Property's residence, constituted an ample justifiable and intelligible basis for the Council to pass the Remedial Action Resolution at issue. The process has been transparent.

[74] Landslide risk assessment and amelioration of risk is clearly an area of decision-making for which elected municipal councils such as the District are particularly well suited. In matters such as this, municipal councils are required to "balance complex and divergent interests in arriving at decisions in the public interest": *Nanaimo* at para. 35. Given that the decision in the present case is clearly *intra vires* the District, it is entitled to considerable deference upon judicial review.

[75] In the circumstances of the present case, it is not necessary for Council to conclude that a landslide originating from the Property, with its failing retaining wall and potentially unstable fill at the crest of a slope, would cause a fatality in order to declare the Property to be in an unsafe condition within the meaning of s. 73 of the *Community Charter*. It is for the District to determine what level of risk is generally appropriate and then to assess individual properties of concern. The risk of damage to property, the blockage of a public road to a housing development and a very low risk of a fatality with regards to someone on the road if the slide occurred provide a reasonable basis for the Council's decision. An appreciable risk of fatality was also identified to the occupants of the residence on the Property in the 2008 BGC Report as quoted above. I find that it was reasonable for the District's Council to decline to run the risk of damage to property and the lesser risk of harm to persons presented by the unsafe condition of the Property, as clearly documented. Hence, I conclude the Council's decision to pass the Remedial Action Resolution is a reasonable one. I further note that the November 2013 Horizon Report obtained by the Owners set out three options to remediate the problem, as opposed to finding that the problem did not warrant remediation. None of the geotechnical experts have recommended the *status quo* with regards to the Property.

[76] However, not all such decisions are to be assumed to be reasonable. Each case must be carefully considered on its unique facts. If municipal districts were to insist on costly remediation at the expense of property owners based solely on extremely conservative standards with regards to management of geotechnical risk, such decisions might well be considered unreasonable.

[77] In the present case, I find it is the combination of the landslide risks identified in relation to the Property and the physical signs of deterioration that support the reasonableness of the Remedial Action Resolution.

[78] With regards to the Owners' claim that the District ought to have done more to obtain quotes and explore the placement of a debris fence at the bottom of the slope, presumably at the District's cost, I do not find that the District acted unfairly or unreasonably in this regard. To the extent the

District's Council determined that a debris fence was not a viable option, that determination cannot be said to be unreasonable. For the District to decline to pursue the possibility of constructing a debris fence with detailed cost estimates or studies also cannot be considered unreasonable, as the purpose of such a fence was to contain debris after a slide, as opposed to ameliorating the risk of a slide occurring in the first place. I note that none of the geotechnical experts recommended a debris fence as a way of reducing the risk of harm to life or property from a landslide.

Procedural fairness

[79] The history of this matter in terms of the information sought by the District and shared with the Owners, and then its consideration and re-consideration by Council, accompanied by an extension of deadlines and an offer to waive certain fees associated with remediation of the Property, does not support any claim by the Owners that they were treated unfairly by the District or the District's Counsel when it passed the Remedial Action Resolution.

[80] The Council considered a number of engineering reports from independent and different engineering firms before seeking to have the Owners remediate the condition of the Property. In these reports, a number of skilled geotechnical experts found the Property to be of significant concern. In fact, the Property was one of a number of properties of concern to the District, and ultimately remediation was required of an adjacent property as well.

[81] When the initial Remedial Action Resolution was passed by Council on December 9, 2013, the Owners were represented by a spokesperson, Mr. Bickford. They were then represented by legal counsel on February 3, May 6 and May 26, 2014. The Owners had ample opportunity to convince Council that the Property was not in an unsafe condition or to present alternative reports or remediation recommendations. The Owners had an opportunity to provide their own report and did so in the form of the November 2013 Horizon Report, which the District then used when it imposed one of the three recommended options for remediation contained in that report.

[82] The District shared with the Owners the limited information it had regarding a debris fence, which included that a debris fence had been considered and a rough cost estimate to construct it, noting that clean up would still be required at an additional cost in the event a slide occurred. There was no information in its possession that it withheld. No procedural unfairness to the Owners arose in this regard.

[83] I note that while there is no requirement for the District to provide written reasons for its resolution pursuant to s. 73 of the *Community Charter*, the Owners were provided with the engineers' geotechnical reports, the District's staff report that went before Council and the Remedial Action Resolution. The Owners obtained the November 2013 Horizon Report containing options for remediation they ultimately declined to implement, which was also considered by Council. Based on all the information that has been provided to the Owners, and indeed the affidavit filed by Mr. Madaninejad, I find that the Owners have a clear understanding of the reasons

for the Remedial Action Resolution, although they disagree with certain conclusions.

[84] In short, the Court finds that the process associated with the Remedial Action Resolution has been procedurally fair.

Conclusion

[85] Having considered the submissions and the affidavits provided on behalf of the Owners, this Court has concluded in the circumstances of these petitions pertaining to the Property and the District's Remedial Resolution that the District's resolution to issue the Remedial Action Resolution is a correct and reasonable one. It was also made in a manner that afforded the Owners a full opportunity to be heard and to make their position known to the Council. There was no unfairness with regards to the initial Remedial Action Resolution or its reconsideration. It was open to Council to decide the matter as they did without quotes or supporting information with regards to the cost of constructing a debris fence at the bottom of the slope. There was no erroneous finding of fact in this regard.

[86] While the Court appreciates that there may be a need for further judicial scrutiny of resolutions by municipal bodies when landslide or other risks are associated with privately owned property such that remedial actions are ordered, the obviously unsafe nature of the bulging retaining wall on the Property in the context of the risk of landslide onto the road below brings it within the definition of when "the matter or thing is in or creates an unsafe condition" pursuant to s. 73(2) of the *Community Charter*.

[87] The Court declares that the Owners have contravened the Remedial Action Resolution as amended, specifically by failing to remove the retaining wall and fill at the rear of the Property in accordance with any of the options set out in the November 2013 Horizon Report.

[88] The Court finds that the District is entitled, pursuant to s. 274 of the *Community Charter*, to enforce the Remedial Action Requirement in relation to the Property by way of an injunction (*Langley (Township) v. Wood*, 1999 BCCA 260 at para. 17; *North Pender Island Local Trust Committee v. Conconi*, 2010 BCCA 494 at paras. 37-38), there being no appreciable difference between the enforcement of bylaws and the enforcement of resolutions imposing remedial action requirements. It is in the public interest that lawfully made decisions by municipal authorities are complied with: *Immeubles Jacques Robitaille inc. v. Québec (City)*, 2014 SCC 34 at para. 23.

[89] Therefore, the Owners are required to remove the retaining wall and fill at the rear of the Property in accordance with one of the options set out in the November 2013 Horizon Report on or before October 1, 2015 with all necessary permits, and to provide a report to the District on or before October 15, 2015, certifying that the retaining wall and fill have been removed in accordance with one of the options identified in the November 2013 Horizon Report. These dates have been set as reasonable dates by the Court in view of the time taken to decide this matter, which rendered

the prior deadlines sought by the District impracticable given that they were March 15, 2015 and March 30, 2015 respectively.

[90] Accordingly, the Owners' claims for relief are denied.

[91] The Court also orders that the Owners pay the District's costs for both petitions at Scale B.

"The Honourable Madam Justice Arnold-Bailey"