



Walled In: Court Shows Deference to the Decision of a Building Official

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The British Columbia Supreme Court, in its recent decision in *Lawrie (Guardien ad litem of) v. District of North Saanich*, 2010 BCSC 53, accorded considerable deference to the decision of the District's building inspector by dismissing the petitioner's application for judicial review.

The facts in this case are uncomplicated. The District's building inspector issued a stop work order to prohibit construction from being carried out on the petitioner's property until the petitioner obtained a building permit. The construction work involved the replacement of some interior walls, which had been panelled with drywall. The petitioner argued that the work consisted of "non-structural repairs" and was therefore exempt from the building permit requirement under the District's Building and Plumbing Bylaw WO 1150. At trial, the petitioner's architect supplied affidavit evidence that only the load bearing parts of a building could be characterized as "structural". However, it was the building inspector's position that the drywall being replaced was part of the structure of the house because it provided lateral support against wind load.

Although the building inspector's opinion was contradicted by that of a professional architect, the Court found in favour of the District. The Court's dismissal of the petitioner's application shows that the courts will be deferential to local government decisions that are found to be both reasonable and *intra vires*. In other words, the courts will be slow to impose their views of what is fair and appropriate in place of those of the local government decision maker, provided that the decision maker is acting within the scope of his or her statutory authority.

It is important to note, however, that this concept of deference does not preclude a court from considering the propriety of local government decisions. Such decisions will be subject to judicial review where they are unreasonable or made in bad faith or where irrelevant considerations are applied or there is evidence of discrimination.

Accordingly, local government decision makers, when exercising their statutory authority, should:

- turn their attention to those matters which they are bound to consider;
- exclude from consideration matters which are irrelevant to the issue;
- ensure that their decisions are transparent and intelligible; and
- ensure that there is evidence on the record which supports the reasonableness or rationality of the decision made.