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June 11, 2015

Honourable Christy Clark
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Honourable Norm Letnik
Minister of Agriculture
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Re: Legality of Termination of Richard Bullock, ALC Chair

Dear Sir and Madam:

We write in regard to Order in Council (OIC) No. 241/2015 approved May 14, 2015 (the Termination Order) that authorized the termination of Agricultural Land Commission (ALC) Chair Richard Bullock prior to the end of his term.

It is our understanding that Mr. Bullock's appointment as Chair was terminated without cause. If that is the case, then we respectfully submit that the government did not have the legal authority to pass the Termination Order and ask that he be reinstated for the duration of his term. Alternatively, if you believe us to be wrong in our facts or analysis, we respectfully ask that you clarify the basis of your authority to terminate Mr. Bullock's appointment.

Background

Mr. Bullock was appointed as Chair of the ALC by Order in Council No. 323/2010 for a term ending November 30, 2013. He was reappointed as Chief Executive Officer of the ALC by Order in Council 224/2011, and then reappointed as Chair by Order in Council No. 406/2012 (the Reappointment Order) for a term ending November 30, 2015.

The Termination Order was approved May 14, 2015. Neither the Termination Order, nor any public statements of which we are aware, suggest that Mr. Bullock had in any way acted

inappropriately or that there was any other cause leading to his termination. Rather, statements in the media suggest that a change in policy direction resulted in the termination.¹

Legal discussion

The Termination Order gives as its authorities sections 5, 5.1 and 8 of the *Agricultural Land Commission Act* (the ALC Act), OIC 406/2012 and OIC 224/2011. Section 5(2)(a) of the ALC Act requires Your Honour to appoint a Chair of the ALC “after a merit based process.” Section 8(1) permits Your Honour to “appoint, during pleasure, a chief executive officer of the commission.” Section 5.1 states that certain sections of the *Administrative Tribunals Act* (the ATA) apply to the ALC. Among those is section 8 of the ATA, which states:

The appointing authority may terminate the appointment of the chair, a vice chair or a member *for cause* [emphasis added].

Two things are noteworthy about the relevant provisions. First, section 8 of the ALC Act specifies that Your Honour may appoint a CEO during pleasure (i.e., may be removed at the government’s pleasure), whereas section 5 does not specify the Chair’s appointment is “during pleasure,” and in fact contemplates a merit-based process for appointment.

Second, the ATA only grants Your Honour power to terminate the appointment of the Chair for cause. It does not explicitly authorize terminations of Chairs without cause.

According to the principle *expressio unius est exclusio alterius*, if legislation says one thing and doesn’t include another that would logically go with it, the other thing can be assumed to be excluded. In this case, in light of the explicit mention of “during pleasure” in section 8 of the *ALC Act*, it can be assumed that the legislature intended for the Chair’s appointment to not be “during pleasure.” This interpretation is supported by *Randhawa v. The Pepsi Bottling Group (Canada) Co.*,² where the BC Court of Appeal upheld an arbitrator’s finding that it could not infer a power that was not expressly described in the enabling provision.

That assumption is supported by the records of the Legislature’s intention when drafting the relevant provisions of the *Administrative Tribunals Act*.

Hansard records from the second reading of the *Administrative Tribunals Appointment and Amendment Act* (which created what is now section 8 of the *Administrative Tribunals Act*) indicate that the Act constituted a clear effort to improve independence in decision-making of tribunals through security of members’ tenure. In particular, then Attorney General Hon. Geoff Plant stated:

Let me say something about *term appointments and the principle of independence*. Having established the principle of attracting and retaining qualified tribunal members, it is also essential, in my view, that once they are appointed, tribunal members be able to make *impartial decisions* in an atmosphere free from concerns about the terms of their appointments. *This bill creates the conditions for independent decision-making by giving tribunal*

¹ CBC News, “Richard Bullock, fired Agricultural Land Reserve chair speaks out” (15 May 2015), online: <http://www.cbc.ca/news/canada/british-columbia/richard-bullock-fired-agricultural-land-reserve-chair-speaks-out-1.3076459>.

² 2006 BCCA 273, para 9.

members tenure for fixed terms as opposed to tenure at pleasure. This legislation will end that time-honoured practice of at-pleasure appointments, because that is a practice which can create uncertainty for tribunal members and thereby potentially undermine their decision-making independence. Under this bill, tribunal chairs and members will now have the certainty of fixed-term appointments ...

...At the same time, the bill includes specific legislative provisions that will foster the independence of administrative tribunals and *protect the security of tenure of tribunal members* [emphasis added].³

According to the modern principle of statutory interpretation, “[t]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.” Moreover, section 8 of the BC *Interpretation Act*, states “must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.”

In this case, the Hansard debates, along with a plain and ordinary reading of the ATA and ALC Act provisions, clearly demonstrate the intention of the Legislature to preserve the integrity of the ALC Chair and shield it from actual or threats of political interference by not permitting the government to terminate an appointment without cause.

In conclusion, as it appears that Mr. Bullock’s appointment as ALC Chair was terminated without cause, neither the *ALC Act* nor the *Administrative Tribunals Act* provide a legal basis for the Termination Order. We respectfully request that you rescind the Order and reinstate Mr. Bullock to his appointment until the end of its term on November 30, 2015.

In the alternative, we ask you to explain your legal authority in terminating the ALC Chair.

Thank you for your time. We look forward to your reply.

Sincerely,



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³ British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 37th Parl, 4th Sess, Vol 16 No 10 (7 October 2003) at 7212 (Hon G Plant).