

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Cowichan Valley Regional District v.
Pacifica 8 Systems Inc.*,
2026 BCSC 1701

Date: 20260904
Docket: S-255601
Registry: Vancouver

Between:

Cowichan Valley Regional District

Petitioner

And

Pacifica 8 Systems Inc.

Respondent

Before: The Honourable Justice Giltrow

Reasons for Judgment

(In Chambers)

Counsel for the Petitioner:

S. Dubinsky

Counsel for the Respondent:

L.J. Alexander
J. Donaldson

Place and Date of Hearing:

Vancouver, B.C.
April 23, 2026

Place and Date of Judgment:

Vancouver, B.C.
September 4, 2026

Table of Contents

OVERVIEW.....	3
JUDICIAL REVIEW	4
ANALYSIS.....	4
1. Adjudicator’s determination of “use”	6
New argument not considered: ownership of structures	7
New argument not considered: RUR-1 zoning.....	9
Determination of “use” is reasonable	10
New evidence not considered.....	11
2. “Use” is the violation.....	12
3. No discretion to cancel the Notices	14
REMEDY	15
CONCLUSION.....	17

OVERVIEW

[1] Cowichan Valley Regional District seeks judicial review of a June 27, 2025 decision of an adjudicator, made pursuant to the *Local Government Bylaw Notice Enforcement Act*, S.B.C. 2003, c. 60 (the “Act”), setting aside 17 Bylaw Offence Notices (the “Notices”) issued by the Regional District to the respondent between October 2024 and March 2025. The Notices charged the respondent with ongoing contravention of the *South Cowichan Zoning Bylaw No. 3520, 2012* (the “Zoning Bylaw”) by carrying on a prohibited use of land contrary to s. 2.2(1) of the bylaw.

[2] A hearing was held June 25, 2025, to determine the respondent’s challenge to the Notices. The Regional District was represented by three staff members at the hearing: the manager of bylaw enforcement, the senior manager of the inspections and enforcement division, and a soil deposit bylaw officer. The respondent was assisted by legal counsel at the hearing. In advance of the hearing the Regional District delivered to legal counsel for the respondent and submitted to the adjudicator a document package that included an evidence package summary and 50 exhibits.

[3] In his reasons for decision, the adjudicator described the four key issues that the respondent argued rendered the Notices invalid as follows:

- a) The tickets were issued to Pacifica 8 Systems, not Pacifica 8 Systems, Inc. and as a result, seeing that the business name is incomplete, the tickets should be voided;
- b) The *Act* (subsection 4(4)(a)) requires that the Notice provide the “particulars of the contravention in sufficient detail that a recipient of the notice would be able to identify the bylaw and the contravention alleged”. The Disputant claimed that the Notices do not meet the standard as they only identify “Prohibited Use” as the contravention;
- c) The evidence provided by the Local Government does not prove that the Disputant was “using” the property; and,

- d) The Disputant challenged why the tickets were only issued to the Disputant, not other sub lessees on the property or the property owner.

[4] The adjudicator dismissed the first three grounds, but cancelled the Notices on the basis that they had been issued to a party “not legally responsible for the contravention”, as the disputant was a lessee of the property, and “the zoning requirement in question imposes obligations that rest solely with the property owner”, as the adjudicator put it.

JUDICIAL REVIEW

[5] The Regional District argues on judicial review that the adjudicator’s decision is unreasonable: Having found the disputant committed unauthorized use of the property contrary to the *Zoning Bylaw*, it was not open to the adjudicator to cancel the Notices because the owner was the party “legally responsible.”

[6] The respondent’s primary position is that the adjudicator’s cancellation of the Notices was reasonable for the reasons given by the adjudicator. The respondent also advances arguments challenging findings the adjudicator made against the respondent, as well as arguments that were not advanced before the adjudicator.

[7] For the reasons that follow, I am of the view that, having found the respondent was engaging in a prohibited use of the property, the adjudicator had no statutory authority to cancel the Notices.

ANALYSIS

[8] Both parties agree that the adjudicator’s decision should be upheld on judicial review if it falls within the range of reasonable outcomes, defensible in light of the facts and the law: *Romegioli v. Langley (Township)*, 2018 BCSC 1867 at paras. 30-36.

[9] The adjudicator’s authority in resolving a dispute is set out at s. 21 of the *Act*, which states in part:

Adjudicator determination

21 (1) The standard of proof for resolving a dispute referred to in section 14 [*local government dispute adjudication system*] is proof on a balance of probabilities.

(2) If, after the hearing required under section 18 [*adjudication procedures*] in respect of a dispute referred to in section 14 (a) [*local government dispute adjudication system*], the adjudicator is satisfied that the contravention alleged in the bylaw notice occurred as alleged, the adjudicator must order that the penalty set out in the notice is immediately due and payable to the local government indicated on the bylaw notice by the person to whom it was issued or deemed issued.

(3) If, after the hearing required under section 18 in respect of a dispute referred to in section 14 (a), the adjudicator is satisfied that the contravention alleged in the bylaw notice did not occur as alleged, the adjudicator must cancel the bylaw notice.

[Emphasis added.]

[10] Thus, the *Act* requires the adjudicator to determine whether “the contravention alleged in the bylaw notice occurred as alleged.” This is a question of fact or a question of mixed fact and law, reviewable on the reasonableness standard: *Romegioli* at para. 34. If the adjudicator finds the contravention occurred as alleged, he must order that the penalty is immediately due and payable; if he finds it did not occur as alleged, he must cancel the bylaw notice.

[11] The Notices cite s. 2.2(1) of the *Zoning Bylaw* as the provision under which the offences were committed. Section 2.2 of the *Zoning Bylaw* states, in part:

2.2 Prohibitions

1. Any use of land, or of a building or structure not expressly permitted in Part 4 of this Bylaw, or in the regulations applicable to a specific zone under this Bylaw, is prohibited.

[12] The *Zoning Bylaw* permits a variety of specific uses within the relevant I-1D zone (Business Park Manufacturing/ Commercial 1D); however, all uses within the zone are subject to a “condition of use” set out at s. 13.5(3) of the bylaw:

All parcels in the I-1D Zone shall be serviced by a community water system and a community sewer system as a condition of use. [Emphasis added]

[13] Section 2.4 of the *Zoning Bylaw* states in part:

2.4 Violation

1. Any person who:

- a. violates any provision of this Bylaw;
- b. causes or permits any act or thing to be done in contravention or violation of any provision of this Bylaw;
- c. neglects to do or refrains from doing any act or thing which is required to be done by any provision of this Bylaw;
- d. carries out, causes or permits to be carried out any development in a manner prohibited by or contrary to this Bylaw;

[...]

commits an offence against this Bylaw and is liable to the penalties imposed under this Bylaw.

2. Each day's continuance of an offence under Section 2.4.1 constitutes a new and distinct offence.

1. Adjudicator's determination of "use"

[14] The adjudicator found as a fact that the respondent was "using" the property within the meaning of the bylaw, and that this use was occurring in the absence of the property being serviced by any community water or sewer system. This question of whether the property was being "used" by the respondent was a contested fact before the adjudicator, who explained in his reasons:

During the Hearing, the Disputant made representation that the Local Government had not provided sufficient evidence that the Disputant was "using" the property. During the hearing, the Disputant stated that the business contract they had previously undertaken related to firewood supply had lapsed and as a result they were not operating the business during the period when the Notices were issued. The Local Government's evidence (pictures taken when each notice was issued) documented that there was a continued presence of the Disputant's structures and stored materials (e.g., firewood, shelter, metal receptacle) on the site. These activities constitute ongoing "use" under the Bylaw. Therefore, this argument is not valid.

[15] I pause here to address the respondent's argument on judicial review that the adjudicator did not have documentary evidence showing actual use of the property in question by the respondent, and that there was "no factual or legal foundation" for the adjudicator's finding that the firewood, shelter, and metal receptacle shown in photographs were the respondent's. This argument fails to address that the reasons state that the respondent admitted to having run a firewood supply business from the property. The respondent's argument before the adjudicator appears to have been that because the business was not operating, this was not "use" of the property at the times captured by the Notices. However, the adjudicator disagreed, and found that photographs demonstrated "that there was a continued presence of the Disputant's structures and stored materials (e.g., firewood, shelter, metal receptacle) on the site. These activities constitute ongoing 'use' under the Bylaw."

[16] It was well within reason for the adjudicator to draw an inference between the respondent's admitted previous use of the property to run a firewood supply business and the ongoing presence of firewood and related infrastructure to conclude that these were "the Disputant's structures and stored materials."

New argument not considered: ownership of structures

[17] The respondent also argues on judicial review that it was incorrect in law for the adjudicator to find these to be the "Disputant's structures" (although the respondent does not appear to challenge the finding about "stored materials"). The respondent says that the structures are fixtures under the "*Stack test*" referred to by the Court of Appeal in *Heywood v. Songhees*, 2026 BCCA 150, and therefore, as the respondent puts it in argument, "the structures referred to by the Adjudicator are owned by the landowner. The structures are not "the Disputant's."

[18] I decline to consider this argument on judicial review, as it was not raised before the adjudicator. The Legislature has entrusted the function of determining whether the "contravention alleged in the bylaw notice occurred as alleged" to the adjudicator under the *Act*. This involves interpreting the bylaw to determine what the alleged contravention is, as well as whether it occurred. This new argument goes to

the nature of the contravention, suggesting that a) “use” is determined by whether the structures whose presence is said to “use” the property are fixtures, and b) if they are fixtures, they are owned by the landlord, not the respondent.

[19] The adjudicator was given no opportunity to consider whether “use” under the *Zoning Bylaw* is contingent upon whether use is made by fixtures or chattels. Were I to allow this argument to be raised for the first time on judicial review, I would neither have the benefit of the adjudicator’s views on this interpretation of “use” under the *Zoning Bylaw*, nor would I be able to carry out my function on judicial review with appropriate deference to the adjudicator: see *McNeil v. British Columbia (Human Rights Tribunal)*, 2026 BCCA 296 at para. 52, *Canada Lands Company CLC Limited v. Schlieper*, 2025 BCCA 145 at paras. 54-55, and *Alberta (Information and Privacy Commissioner) v. Alberta Teachers’ Association*, 2011 SCC 61 at paras. 23-26.

[20] Knowing the adjudicator’s view on this argument would be important, not least because it is not apparent to me that the authority upon which the respondent relies to argue the structures were “owned” by the landowner is relevant to the interpretation of the *Zoning Bylaw* that was before the adjudicator. *Heywood* related to the termination of tenancies in a mobile home park. The question before the Court was what was to happen with the mobile homes because, as the Court explained:

[12] If a chattel is placed on the land by a tenant, and the tenancy is terminated, the tenant has an obligation to remove it or be liable in trespass. However, if an object is placed on property with the property owner’s consent, and it becomes a fixture, it has essentially become part of the property, and the tenant has no obligation to remove it when the tenancy ends (subject to an exception for trade fixtures).

[21] It is not obvious to me that this principle is relevant to whether the respondent, whose lease was ongoing (*i.e.*, not terminated) during the periods in which the Notices were issued, was “using” the property within the meaning of the bylaw by maintaining the ongoing presence of structures and stored materials. The *Zoning Bylaw* prohibits any land use that is not expressly permitted under the bylaw: s. 2.2(1) and makes all use contingent upon the appropriate servicing being in place (s. 13.5(3)). It does not, on its face, relate to whether the use is made by fixtures or

chattels, or ownership of either of these. To me, the respondent's new argument appears to have little merit. However, in order to respect the Legislature's assignment of the question of prohibited "use" to the adjudicator in first instance, I would want to understand the adjudicator's views on this question before undertaking judicial review of the determination. As those views are unavailable because the issue was not raised before the adjudicator, I decline to consider the argument on judicial review.

New argument not considered: RUR-1 zoning

[22] For the same reason, I decline to consider another new argument that the respondent seeks to raise for the first time on judicial review: that only a portion of the property is zoned I-1D and that the other portion is zoned RUR-1, upon which forestry and silviculture are allowed, and therefore harvesting firewood is, as the respondent puts it, "an obvious permitted (or at least not prohibited) use on forestry zoned land." The respondent concedes this argument was not raised before the adjudicator, but suggests this was due to the way the Regional District "and/or the Adjudicator" ran the hearing. I will address the respondent's submissions about the hearing at the conclusion of these Reasons. For now, it is sufficient to say that I am not persuaded that this is an instance where I should consider this new argument on judicial review. As Justice Kent put it in *Yard Investment Inc. v. Langley (Township)*, 2018 BCSC 1658:

[52] Judicial review of administrative proceedings are based on the record and are rooted in the arguments and evidence advanced before the tribunal or decision-maker at first instance. Subject to limited exceptions, judicial review is not the forum to advance new arguments or evidence that could have been marshalled before the tribunal or decision-maker below: *British Columbia Nurses' Union v. Health Sciences Association of British Columbia*, 2017 BCSC 343 at para. 48 and the extensive case law referred to therein.

[23] On the face of the record I was referred to by the respondent, it is not at all obvious that the impugned activities occurred, as the respondent now argues, in the portion of the property that is zoned RUR-1. In fact, the satellite imagery referred to by the respondent looks entirely consistent with the activity having occurred in the

area zone I-1D as the Regional District charged, and as was the premise of the adjudicator's decision. Even if the evidence supported finding the impugned activity happened entirely in the RUR-1 zone (and none in the I-1D zone), I do not have the benefit of the adjudicator's determination of whether the ongoing storage of firewood and related infrastructure meets the definition of permitted forestry within RUR-1, which according to the *Zoning Bylaw* "does not include any milling or wood products processing." All of this weighs against considering this new argument for the first time on judicial review.

Determination of "use" is reasonable

[24] The respondent does not expressly challenge the adjudicator's finding that the ongoing presence of the structures and stored material was "use" within the meaning of the bylaw. However, as this determination by the adjudicator is an important one for the disposition of this judicial review, I will confirm that I find this to be a reasonable determination. While firewood storage is not a specific use listed under the permitted uses for zone I-1D under the *Zoning Bylaw*, several other forms of "storage" are listed as permitted uses (all subject, of course, to the overarching requirement that permission for any use is contingent on water and sewer servicing being in place). For example: equipment storage; feed, seed, and agricultural storage; "lumber and storage yards"; "storage of retail or wholesale consumer products"; and "[w]arehousing, including mini-warehousing, self-storage" are all listed as permitted uses for this zone under the *Zoning Bylaw*. It is not relevant whether commercial firewood storage falls within a permitted use or not (which need not be determined here), but rather, whether it is reasonable to interpret "use" under s. 13.5(3) (the "condition of use" provision) to include the "ongoing presence of structures and stored materials", as the adjudicator did.

[25] Taking into account the text, context, and purpose of the *Zoning Bylaw* as required under the modern approach to statutory interpretation (see *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [Vavilov] at paras. 118, 120), including the nature of several of the "uses" listed under s. 13.5.1 of the bylaw, I find it was reasonable for the adjudicator to conclude that the ongoing

presence of the structures and stored material was “use” within the meaning of s. 13.5(3). This Court has endorsed a similar interpretation of the word “use” in the municipal bylaw context elsewhere. For example, Justice Fitzpatrick held in *Peace River (Regional District) v. Pringle*, 2023 BCSC 1172 [*Peace River*], aff’d 2024 BCCA 322:

[55] The Respondents argue that they were not “using” the campground and, as such, they were not in breach of the *Zoning Bylaw*. With respect, I do not accept that the simple non-use of a structure located on the Property that is a violation of the *Zoning Bylaw* means that the structures are still allowed. They are not. The *Zoning Bylaw*, properly interpreted, is that these further structures are not allowed to be “used” in the sense of them being located on the Property. Section 6 of the *Zoning Bylaw* speaks of “use ... [of] any land ...” and does not speak to the actual use of structures or “Dwellings” that are, or are not, allowed.

[56] Black’s Law Dictionary, 6th ed. (1991) defines “use” as the ability to avail oneself of, or to hold or in some way benefit from something. Similarly, the Oxford English Dictionary, 11th ed. (2008) defines “use” as the ability or power to exercise or manipulate something. Accordingly, even if there were no persons camping on the grounds, this does not necessarily lead to the conclusion that the campground was not being “used”. The Respondents exercised control over, and had the ability to benefit from, the campground. Its existence on the Property is sufficient to find a breach of the *Zoning Bylaw*.

[Emphasis added.]

New evidence not considered

[26] Finally, as the adjudicator’s determination that the property was being “used” by the respondent within meaning of the bylaw related to what the adjudicator found to be the ongoing presence of the respondent’s firewood and related structures, I need not address the parties’ arguments that arose in reply and sur-reply relating to ‘U-Pack’ storage activity on the property. Further, I decline to accept into evidence the additional affidavit the respondent sought to tender on this point, as this evidence was not before the adjudicator.

2. “Use” is the violation

[27] The adjudicator held that he was satisfied that the property was being used by the respondent in the absence of the zoning requirement that water and sewer systems be in place as a condition of any use.

[28] However, despite finding the respondent responsible for the use of the property, the adjudicator held that:

[...] considering the criteria identified in this zoning requirement, it is my belief that the responsibility for compliance with what can only be described as significant infrastructure servicing requirements, would rest with the registered property owner, who has legal authority over any development or long term land use decisions.

[...] I do find that the Notices were issued to a party not legally responsible for the contravention. The zoning requirement in question imposes obligations that rest solely with the property owner.

[29] The adjudicator canceled the Notices on the basis that legal responsibility for compliance with the *Zoning Bylaw* rested solely with the property owner and not with the lessee respondent, despite finding the property was being used by the respondent.

[30] With respect, this framing of the issue misconstrues the offence and is inconsistent with the language of the *Zoning Bylaw*. The violation is not the failure to install water and sewage system servicing. The property could have remained without such servicing without violating the bylaw. It is the use of the property in the absence of such servicing that violated the bylaw.

[31] Under the *Zoning Bylaw*, any use of land not expressly permitted is prohibited: s. 2.2(1). No use of land in Zone I-1D is permitted without water and sewage system servicing in place: s. 13.5(3). Such systems are a “condition of use.” Thus, the use of land in the absence of such systems is prohibited. The adjudicator found the respondent was committing such use. Having found that, it was not open to the adjudicator to cancel the Notices because, in his view, it would ultimately be the owner’s responsibility to install water and sewage systems.

[32] The owner may well have concurrent obligations under the *Zoning Bylaw*, but that does not obviate the legal responsibility of the respondent if that responsibility is otherwise established under the bylaw, which it is. To repeat, s. 2.4 of the *Zoning Bylaw* states in part:

2.4 Violation

1. Any person who:

- a. violates any provision of this Bylaw;
- b. causes or permits any act or thing to be done in contravention or violation of any provision of this Bylaw;
- [...]

[33] The bylaw expressly applies to “any person” who violates a provision of the bylaw or who “causes or permits” any act or thing to be done in contravention or violation of the bylaw. As I have explained, in this case, the violation is the use of the land without requisite water and sewer system servicing in place. The adjudicator found that the respondent was committing such use. The respondent was therefore a “person” who violated a provision of the bylaw (subsection (a)) or “caused” a thing to be done in contravention of the bylaw (subsection (b)).

[34] The owner may also have violated the bylaw by “permit[ting]” (subsection (b)) the thing to be done on their land (a finding I neither can nor need to make in this case)—however, the bylaw expressly captures both those who cause and those who permit the violation. The *Zoning Bylaw* does not restrict ‘legal responsibility’, as the adjudicator put it, to landowners. The owner’s legal responsibility was an irrelevant consideration as to whether, on a balance of probabilities, the respondent had used the property in contravention of the bylaw requirements.

[35] Furthermore, s. 4(3) of the *Act* permits a bylaw notice to be issued to “a person against whom a bylaw contravention is alleged.” As Justice Iyer (as she then was) held in *Romegioli* at para. 14: “This means that issuance of a bylaw notice is not restricted to particular classes of people, such as owners or tenants.”

[36] Accordingly, based upon the adjudicator's own findings, the respondent committed the violation of s. 2.2(1) of the *Zoning Bylaw* as alleged. That having been established, the adjudicator had no authority under the *Act* to cancel the Notices.

3. No discretion to cancel the Notices

[37] As the adjudicator correctly set out at the outset of his reasons, under the *Act*, he is tasked with determining whether the contraventions set out in the Notices occurred as alleged or not. As he explained, under s. 21 of the *Act*, an adjudicator "does not have discretionary authority under the legislation to dismiss or cancel tickets purely for sympathetic reasons or on compassionate grounds, nor can they vary or waive any penalty amounts if the tickets are determined to be valid." Section 21 of the *Act* requires that if the adjudicator is satisfied that the contravention occurred as alleged, the adjudicator must order that that the penalty set out in the notice is immediately due and payable to the local government. If the contravention did not occur, the adjudicator must cancel the notice. As Justice Fitzpatrick explained in *Peace River*, the adjudicator's jurisdiction is binary:

[47] I interpret ss. 21(2) and (3) of the *Bylaw Enforcement Act* as limiting the Adjudicator's jurisdiction in a binary fashion: if the Adjudicator is satisfied that the alleged contravention occurred, the Adjudicator "must order" and uphold the imposition of the penalty; or, if Adjudicator is satisfied that the contravention did not occur as alleged, the Adjudicator "must cancel" the bylaw notice: see *Romegioli v. Langley (Township)*, 2018 BCSC 1867 at para. 16; *Hildebrand v. Penticton (City)*, 2020 BCSC 353 at para. 32.

[38] Having found that the respondent had committed the violation of s. 2.2(1) of the *Zoning Bylaw* as alleged, the adjudicator had no discretion, choice, or authority under s. 21 of the *Act* other than to order the penalty set out in the Notices immediately due and payable. Cancelling the Notices on the basis of the owner's legal obligations was not within the range of reasonable outcomes, defensible in light of the facts and the law.

REMEDY

[39] Where a decision is found to be unreasonable on judicial review, the normal course is to quash the decision and remit the matter to the statutory decision maker to make a fresh decision informed by the reasons of this Court on judicial review. This is to preserve respect for the Legislature's choice to assign to the administrative body the role of decision maker at first instance, and to avoid having the Court step into the shoes of that decision maker.

[40] However, as the Supreme Court of Canada recognized in *Vavilov* at para. 142, there will be cases "where it becomes evident to the court, in the course of its review, that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose." Because of the binary nature of the adjudicator's jurisdiction under s. 21 of the *Act*, in my view, this is one of those cases. In light of the adjudicator's finding that the respondent committed a use prohibited under the *Zoning Bylaw*, there would be no utility in remitting the matter to the adjudicator, as the only outcome available to the adjudicator under the *Act* is to order the penalty set out in the Notices immediately due and payable to the Regional District under s. 21(2). Remitting the matter "would stymie the timely and effective resolution of matters in a manner that no legislature could have intended": *Vavilov* at para. 142.

[41] The respondent argues, however, that the Court should either not quash the decision at all or, if it does, should remit the matter to the adjudicator because of what he says is the strength of his argument that only a portion of the land parcel was zoned I-1D and that the RUR-1 zoning of the remaining portion of the parcel would have permitted the use the respondent was found to have made of the land. As I set out above, this argument was not raised before the adjudicator, and for this reason I have already declined to consider this new argument on judicial review. The respondent argues, however, that he did not raise this argument at the hearing because of how the hearing was run, and that the strength of this new argument should affect the remedy this Court grants if the Court is otherwise satisfied that the adjudicator's decision was unreasonable. The respondent argues that under s. 8 of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241, this Court has discretion

to refuse to grant relief on any ground, citing *Schnellert v. Kelowna (City)*, 2010 BCSC 1515.

[42] Assuming without deciding that I have the discretion to not grant any relief in the particular circumstances of this case, I would decline to do so. I am not persuaded that the respondent's arguments regarding why he did not raise the RUR-1 zoning argument before the adjudicator at first instance have merit. The respondent says that:

- a) Regional District employee "Rob Harris assembled the hearing package, but had no first-hand knowledge of the circumstances of the offences, and was therefore not permitted to complete his evidence." However, on judicial review, the respondent took the Court to documents in the hearing package pertaining to RUR-1 zoning and the split zoning of the property. The respondent did not explain what, if anything, was missing. As I have said, the satellite imagery with the zoning over-laid to which the respondent referred me does not appear consistent with the respondent's new argument that the impugned use occurred in the RUR-1 zone and not the I-1D zone.
- b) Regional District employee "Devon Warwick testified, but counsel for Pacifica 8 Systems Inc. was not permitted to cross-examine." Assuming no cross-examination was permitted, the respondent does not explain why or how Mr. Warwick's evidence was relevant to the issue of the zoning of the relevant land.
- c) "[The Regional District] did not allow for recording or transcription of the Hearing." The petitioner points out that under s. 18(5)(b) of the *Act*, it is the adjudicator, not the local government, that adopts the procedures for the hearing. In any event, the statutory scheme does not require a recording or transcript of the administrative hearing, and traditional common law requirements do not require it: *Canadian Union of Public*

Employees, Local 301 v. Montreal (City), 1997 CanLII 386 (SCC), [1997] 1 SCR 793 at para. 75.

[43] None of the respondents' arguments explain why the respondent did not raise the simple and fundamental allegations the respondent now makes that a) the relevant portions of the land were actually zoned RUR-1, not I-1D, and b) under the RUR-1 zoning, the respondent's use of the land was permitted. Nor, I add, does the respondent suggest that he ever raised this position throughout his dealings with the Regional District while the Notices were being served upon him. As the adjudicator said in his reasons:

[...] I also understand that the Issuing Officer spoke with the Disputant when each of the Notices was issued and explained why the Notices were being issued. During the Hearing the Disputant did not indicate that they were confused about the reason the Notices were issued.

[44] Refusing relief that would otherwise flow from a finding that the adjudicator's decision was unreasonable in order to allow the respondent to raise an argument before the adjudicator that he did not raise at first instance would be inconsistent with the principle of finality in administrative and judicial decision making and risks giving rise to "an endless merry-go-round of judicial reviews and subsequent reconsiderations" and the inefficient use of public resources: *Vavilov* para. 142.

CONCLUSION

[45] The petition for judicial review is allowed, and the adjudicator's decision is quashed. I decline to remit the decision to the adjudicator. Given the adjudicator's finding that the respondent used the land in the absence of the required condition of use being in place (that is, that the land be serviced by community water and sewer systems) in contravention of the *Zoning Bylaw*, the only outcome available to the adjudicator under the *Act* was to order the penalty set out in the Notices immediately due and payable under s. 21(2) of the *Act*. This is one of the rare instances in which there would be no utility in sending the matter back to the administrative decision maker. As such, I order that the penalty set out in the Notices is immediately due and payable by the respondent to the Regional District.

[46] The Regional District is entitled to its costs at Scale B.

“Giltrow J.”