

Dear Mayor and Council, the text that follows is my letter of today to the editor of Whistler Pique Newsmagazine. If anything, the discriminatory wording of the building bylaws of some local governments in BC has gotten far worse and far more blatant since my attempts to right the ship dating back to 1992. At least Whistler showed some leadership. But it appears few followed.

Yours truly,

David MacPhail

511 22638 119 AVE

Maple Ridge, BC V2X 4L1



Dear Editor

The majority of local governments in BC regulate construction by law for reasons of health, safety and the protection of persons and property. Persons in the context of such bylaws pertains to any human on earth, without limitation.

Building regulation bylaws typically mandate that any person who performs work regulated by the bylaw obtain the required permits. Issued permits make the owner of a property subject to the permit solely responsible for compliance. Owners can be a person, firm or corporation. Under building bylaws the owner is in control of the premises. Local governments are not required to enforce their building regulation bylaws. They provide a monitoring service consisting of limited spot-checks. Once a permit has been issued persons and their property should become passive beneficiaries of the regulatory process.

In 1987, UBCM created the Municipal Insurance Association in response to increasing difficulty some local governments were encountering in attempting to obtain adequate insurance coverage.

In July of 2002, the Municipal Insurance Association released the results of a building bylaw project prepared by Thomas W. Barnes of Barnes Twining & Short. Barnes cited the wording of the building bylaws of local governments as the greatest exposure to liability risks. The intent of

the Core Bylaw exercise was to minimize the risk by standardizing the wording of building bylaws. The source of liability exposure in the wording of the building bylaws of local governments in BC was stressed by Patricia Lust, a lawyer for Lidstone Young Anderson, in her presentation on day one of the annual Building Inspectors Conference, 'Amend your Building Bylaw NOW'.

As a sidebar, in 1992 Whistler Mayor & Council supported the writer in a program that critically reviewed the wording 20 building bylaws of local governments in BC in conjunction with Whistler' legal counsel. This exercise resulted a building regulation bylaw written from a clean sheet of paper that addressed the liability in the wording of building bylaws. This ground-breaking bylaw was adopted by Whistlers' Mayor & Council in 1995.

Fast forward to 2002. In critically reviewing the MIA Core Bylaw, the writer identified what appears to be a serious oversight. Section 6.1 (Prohibitions) prohibits any person from doing anything regulated by the bylaw unless a building official has issued a valid and subsisting permit for the work. But Section 6.2 prohibits any person from occupying or using any building or structure unless a valid and subsisting occupancy permit has been issued by a building official for the building or structure. This requirement could be construed as having the effect of transferring the responsibility for compliance with the bylaw from the owner to every person on earth including persons who have no legal right to permit records which are only available to the owner permit holder and who may have no knowledge of the status of any permits or whether permits are even required.

Prior to taking Whistler Building Bylaw 1617 based on the MIA Core Bylaw before Mayor & Council for adoption in 2002 the writer revised Section 6.2 to prohibit any owner from occupying or using or permitting others to use any building or structure unless a valid and subsisting occupancy permit has been issued by a building official for the building or structure.

UBCM attendees should check any discrimination tendencies they may have at the door and check their building regulation bylaws when they get home. Any form of discrimination is a serious matter, one that demands unrelenting diligence.

Yours truly,  
David MacPhail  
511 22638 119 AVE  
Maple Ridge, BC V2X 4L1  
