

Citation: *City of Whitehorse v. McGinnis*, 2024 YKTC 22

Date: 20240625
Docket: 24-04119
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Worship Justice of the Peace Morrison

IN THE MATTER of an Information under the
City of Whitehorse *Maintenance Bylaw* 2017-09

CITY OF WHITEHORSE

v.

LEN McGINNIS

Appearances:
Luke Faught
Len McGinnis

Counsel for the City of Whitehorse
No one appearing

REASONS FOR JUDGMENT

[1] MORRISON J.P.T.C. (Oral): This is the matter of Len McGinnis that proceeded to an *ex parte* trial that commenced on June 4, 2024. Mr. Bradley Kaeding is the by-law officer who gave evidence with respect to this matter and the property located at Lot 194, Porter Creek, in the City of Whitehorse. Mr. McGinnis is on title as the owner of that property.

[2] Counsel, I am not going to review all of the evidence. It is clear from the undisputed evidence of Mr. Kaeding, — it was an *ex parte* trial — and the series of photographs that were taken on May 31, 2023, June 21, 2023, and July 30, 2023, that the property was not in compliance with the City of Whitehorse bylaws.

[3] Count 1 is an offence contrary to s. 8 of the City of Whitehorse *Maintenance Bylaw*. It is:

... [did] cause, permit or allow refuse to accumulate upon a highway or upon property owned or occupied by him or upon public adjoining property owned or occupied by [him] ...

[4] The definition of “accumulate” with respect to that count means:

to gather together or acquire an increasing number or quantity, and includes:

- (1) gathering together, either gradually or one at a time;
- (2) storing; or
- (3) allowing to remain on or in

[5] The definition of “refuse” with respect to the *Bylaws* is:

...means all domestic and commercial garbage and rubbish, including, without limiting the generality of the foregoing, organic and non-organic wastes, recyclable materials, junked vehicles, construction waste and discarded chattels.

[6] Again, with respect to the photographs that have been filed, it is clear from the photographs and the evidence of Mr. Kaeding that there is a massive amount, I would say, of scrap plastic, scrap metal, fuel drums, and scrapped lumber. There is an appliance in some of the photographs and also oil drums.

[7] Again, the photographs, in my view, as counsel has said, speak a million words. It is obvious from the evidence of the officer that there is refuse on many areas of the property.

[8] With respect to Count 3:

On or about or between May 31st, 2023 and February 05, 2024 ... did cause, permit, or allow property owned or occupied by them to be in bad repair or to constitute a danger, contrary to Section 51 ...

[9] Again, from the evidence of Mr. Kaeding, there are photographs of a building that obviously the roof has collapsed. There are windows in disrepair and part of the building with no windows. One photograph, in particular, depicts a beam that is holding up a significant structure, which in the opinion and evidence of the officer, was not sufficient to hold up the — and that would be from the photographs of February 5, 2024, Exhibit 2, a beam, a 6x6 beam holding up what appears to be a significant opening in the structure. There are stairs that have fallen off of the side of the building.

[10] Again, I am not going to read you all of the evidence. It is clear from the photographs and the officer's evidence, which is undisputed, that the one building specifically constitutes a danger to the public.

[11] There will be a finding of guilt with respect to counts 1 and 3.

MORRISON J.P.T.C.