

Memorandum

TO: Kim Stockdill
FROM: Guy Patterson
DATE: September 27, 2023
RE: Summary of DP exemption opinion
FILE No.: 00002-0958

You asked for a summary of our previous advice on whether the following proposed development permit exemption (the “proposed exemption”) would be valid:

Land owned by a person with federal Indigenous status living in their traditional territory with proof of family lineage.

We assumed the reference to land ownership meant ownership under the BC Torrens system for registration of title to land, and that a person’s entitlement to the exemption would not be called into question. We reviewed possible arguments in support of and against the validity of the exemption, including under the provincial *Human Rights Code* and the *Canadian Charter of Rights and Freedoms*, and concluded that it would likely be invalid, but severable.

The main reason we concluded it would likely be invalid was based on a theory that a local government’s authority to specify exemptions under a development permit scheme, although not subject to any express limits or criteria in the statute, would be interpreted in light of the development permit scheme more generally. The scope of that scheme, in our view, is limited to regulation of land development activities, and therefore granting an exemption based on the identity of a landowner might be considered as falling outside the powers the legislature intended to grant to local governments.

Despite our conclusion that the exemption would most likely be invalid, we suggested two potential arguments in favour of it. First, section 8.1 of the *Interpretation Act* says all legislation must be construed as being consistent with UNDRIP. We thought there might be some support in UNDRIP for the proposed exemption, in which case it might be open to the LTC to interpret the *Local Government Act* as authorizing the proposed exemption. Second, the LTC and the Islands Trust both have strong policy statements favouring reconciliation, and the proposed exemption might be defended based on those kinds of policies.