



Statement on HRT decision

July 31, 2014

Penticton – The City of Penticton has received clarity on its contractual relationship with the Penticton Hospitality Association through the B.C. Supreme Court, and is looking to move forward in a collaborative manner to achieve the common goal of bringing more tourists to the City of Penticton.

“This issue has been a very difficult one for the City of Penticton, as we have a duty to protect taxpayer funds and ensure they are being used in the proper way,” said Mayor Garry Litke. “That is why the City has been consistently asking the PHA for two things: provide further and better financial reporting, and sufficient assurances that it will improve its tourism marketing activities going forward. Although it has been a difficult process, the City believes the court process has ensured that the PHA takes its duties under the HRT Agreement and the applicable legislation seriously.”

The City filed a Petition in B.C. Supreme Court because, when it received the audited financial statements for 2012 from the PHA in October 2013, those statements confirmed that the PHA had only spent \$74,000 of the \$400,000 that the City had advanced to the PHA in 2012. This City was very concerned about what it perceived as a failure of the PHA to discharge its function of marketing the City for the benefit of all tourism stakeholders – some of whom specifically had come forward to the City with concerns to this effect.

In the fall of 2013 the City did not have confidence that the PHA would sufficiently improve their marketing efforts and they notified the PHA that they wished to bring the Agreement to an end and transition the tourism marketing to Tourism Penticton. The City asked the PHA to cooperate with that transition, however, the organization refused and demanded that the City continue to forward the funds. At that point, the PHA stopped providing monthly financial reporting. When the City later failed to receive a 2014 budget from the PHA, the City became even more concerned. Written communication between legal counsel for the two parties did not yield the necessary documentation to address the impasse; therefore, the City was left with no other recourse than to petition the B.C. Supreme Court.

Yesterday, reasons for judgment from the BC Supreme Court were provided on the petition hearing on the Additional Hotel Room Tax (AHRT) that proceeded in early February of this year.

In his reasons, Justice Betton does not determine whether the respective parties committed breaches of the Agreement between them. He focuses primarily on the two main issues: whether the agreement has been terminated and if there are any breaches significant or fundamental enough to bring an end to the agreement. Ultimately Justice Betton concluded that he could not find that the PHA had fundamentally breached its obligations or that the agreement was otherwise at an end.

Justice Betton noted several things in his reasons about the situation that confirmed the City's position:

- "There may well be room to be critical of the PHA and argue that it has not served the interest of the stakeholders by being as active in promoting new projects and marketing as possible. That however is not the task of this court..."
- "While it is apparent that the delivery of monthly financial statements was delayed, I am unable to characterize that breach as a fundamental breach, particularly in light of the Mediation and Action Plan that arose from it. If there has been a breach I cannot characterize it as a fundamental breach. The certification referred to appears to have been to satisfy a requirement of the province and could still be provided if needed. The extent of detail the City seeks regarding spending is understandable and something that can be addressed going forward."

Justice Betton also found: "It is apparent from the review of all of the material and hearing submissions from counsel for the parties that the relationship between these parties is not conducive to effective or efficient communication or collaboration to achieve the broad objectives for the tax scheme."

Mayor Litke acknowledges there is work to be done in terms of communications and relations. "Clearly both parties have a duty to improve this situation going forward," he said.

"What this means is that the parties can get their contractual relationship back on track. If the PHA provides to the City the monthly financial statements and the certification that the City has long requested, it is expected that the City should be able to resume its role as a conduit for funding," said Mayor Litke. "The City must continue to protect these taxpayer funds and exercise its role of oversight; however, the hope is that the legal battling can be brought to an end and both parties can work together to achieve the common goal of bringing more tourists to the City of Penticton."

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