

HARPER GREY LLP
3200 – 650 West Georgia Street
Vancouver, British Columbia, V6B
4P7
Canada

Tel: 604 687 0411
Fax: 604 669 9385

CASE SUMMARY: INDEPENDENT CLAIMS FOR CHARTER RELIEF CANNOT BE BROUGHT BY PETITION

The *Charter*, s. 24(1) does not direct the procedure by which a claim for *Charter* relief is brought; that procedure is directed by the rules of procedure of the applicable court. The British Columbia Supreme Court Civil Rules, Rules 1-2(4) and 2-1(2)(b), properly interpreted, do not permit a Charter relief to be brought by petition in the absence of a proper proceeding under the Judicial Review Procedure Act, R.S.B.C. 1996, c. 241.

Administrative law – Decisions reviewed – Municipal councils – Judicial review – Remedies – *Charter* relief

Redeemed Christian Church of God v. New Westminster (City), [2022] B.C.J. No. 1136, 2022 BCCA 224, British Columbia Court of Appeal, June 24, 2022, L.A. Fenlon, J.C. Grauer and P.G. Voith JJ.A.

In the Court below, the chambers judge held that the municipality’s decision to terminate a venue rental contract with the church was not amenable to judicial review. The municipality’s decision was not of a sufficiently public character to engage the JRPA, s. 2(2)(a); nor was the municipality’s decision an exercise of a statutory power of authority so as to engage the JRPA, s. 2(2)(b).

The chambers judge held that, even though remedies under the JRPA were not available, the *Charter*, s. 24(1) allowed an aggrieved party to bring an independent claim for declaratory relief by way of petition. The chambers judge went on to make a declaration that the municipality had breached the church’s s. 2(b) Charter right to freedom of expression. The chambers judge further declared that the church had standing to seek a declaration that the municipality had breached the church’s s. 2(a) *Charter* rights, and that the church was at liberty to convert the s. 2(a) claim into an action.

The municipality appealed. The primary issue on appeal was whether the *Charter*, s. 24(1) allowed a court to grant declaratory relief by way of petition where neither the Supreme Court Civil Rules Rule 1-2(4) and 2-1(2), nor the JRPA, apply.

The Court of Appeal held it did not.

Unlike the court rules in other provinces, including Ontario and Saskatchewan, the Supreme Court Civil Rules do not expressly permit applications for Charter relief to be commenced by petition. The question under the British Columbia Supreme Court Civil Rules was whether s. 24(1) of the Charter is an “enactment” that authorizes an application to the court pursuant to Rules 1-2(4) and 2-1(2)(b).

The Court of Appeal began its reasoning with the established proposition that the *Charter* does not direct the procedure by which a s. 24(1) claim is brought. Accordingly, the procedural means for bringing a s. 24(1) claim is to be found in the rules of procedure of the applicable court.

The Court of Appeal turned to the Supreme Court Civil Rules. Parsing the words of Rule 1-2(4) and 2-1(2)(b), and applying the applicable definitions from the *Interpretation Act*, R.S.B.C. 1996, c. 238, the Court of Appeal held that only Acts or regulations enacted in British Columbia can “authorize an application to the court” under the Rules. The Court further held that Rule 1-2(5) does not apply because, as noted, the Charter does not direct the procedure by which a s. 24(1) claim is brought. Accordingly, the Court of Appeal held that, in the absence of a properly brought judicial review proceeding, the church was not permitted to seek *Charter* relief by way of petition.

The Court of Appeal further held that the chambers judge ought not to have severed the issue of standing from the substantive portion of the church’s s. 2(a) *Charter* claim. The Court of Appeal held that the chambers judge erred in failing to consider various factors relevant to the question of severance, including that addressing the issue of standing separately could result in multiple appeals.

The Court of Appeal set aside the chambers judge’s declaration that the municipality had breached the church’s s. 2(b) *Charter* rights and the trial judge’s declaration that the church had standing to seek a declaration that the municipality had breached the church’s s. 2(a) *Charter* rights. The Court of Appeal dismissed the church’s petition without prejudice to the church’s right to commence an action seeking the same relief.

This case was digested by [Emilie LeDuc](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Emilie LeDuc at eleduc@harpergrey.com.