

JUL 26 2017



S-177029

No. ....  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

RE: An application by the Corporation of the District of  
West Vancouver under s. 184 of the *Community Charter*  
S.B.C. 2003, c. 26

PID: 011-645-326 and PID: 011-645-342 Amended Lots 5  
and 6 (Explanatory Plan 4235) Block 3A Eastern Part of  
District Lot 815 Plan 4327

**PETITION TO THE COURT**

ON NOTICE TO:

**Attorney General of British Columbia**  
PO Box 9290 StnProvGovt  
Victoria BC V8W 9J7

**This proceeding is brought for the relief set out in Part 1 below by**

the person(s) named as petitioner(s) in the style of proceedings above

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner(s)
  - (i) 2 copies of the filed response to petition, and
  - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

**Time for response to petition**

A response to petition must be filed and served on the petitioner(s),

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,

(b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the petition anywhere else, within 49 days after that service, or

(d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: 800 Smithe Street, Vancouver, B.C. V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the petitioner(s) is:  c/o Lidstone & Company Barristers and Solicitors Suite 1300 – 128 Pender Street West Vancouver, B.C. V6B 1R8
(3)	The name and office address of the petitioner's lawyer is:  Paul A. Hildebrand Lidstone & Company Barristers and Solicitors Suite 1300 – 128 Pender Street West Vancouver, B.C. V6B 1R8

### Claim of the Petitioner

#### Part 1: ORDERS SOUGHT

1. An order varying the terms on which the Petitioner holds the lands legally known and described as:

PID: 011-645-326

Amended Lot 5 (Explanatory Plan 4235) Block 3A Eastern Part of District Lot 815 Plan 4327

PID: 011-645-342

Amended Lot 6 (Explanatory Plan 4235) Block 3A Eastern Part of District Lot 815 Plan 4327

(collectively the "Property")

and in particular permitting the Petitioner to:

- (i) dispose of an area comprising approximately 50% of the Property as shown in Schedule "A" by either sale or lease; and
  - (ii) use the proceeds of disposition to acquire additional park land within the boundaries of the Petitioner, whether by payment of the acquisition cost of such additional park land, or repayment of funds borrowed for such acquisition, or reimbursement of funds used for the cost of such acquisition from a reserve fund of the Petitioner or other source.
2. Such further Declarations, Orders or Directions as this Court deems to be appropriate.

## **Part 2: FACTUAL BASIS**

1. The Petitioner, the Corporation of the District of West Vancouver (the "District") is a municipal corporation duly constituted pursuant to the laws of British Columbia, having its principal place of business at 750 17<sup>th</sup> Street, West Vancouver, B.C.
2. The Property is a 2.4 acre site in West Vancouver with civic addresses 2519 and 2539 Rosebery Avenue. The Property was previously the residence of Pearley Ransdell Brissenden and his wife Clara Norine Brissenden. The Property is approximately 2.4 acres in area, and has one single family residence on it, but is otherwise undeveloped. The Property is adjacent to the Upper Levels Highway, and in a predominantly residential area.
3. During their lifetimes, the Brissendens advised the District of their intention to bequeath the Property to the District for park purposes, and on September 11, 1989, the municipal council of the District resolved to accept the bequest, and that following transfer of the Property to the District, the Property would be known as Brissenden Park.
4. Mr. Brissenden predeceased his wife and Mrs. Brissenden passed away on or about June 5, 1990. By her will, Mrs. Brissenden bequeathed the Property to the District to be used and maintained by it for public park purposes.
5. By reason of the foregoing, the District holds the Property under a charitable purpose trust.
6. The Property is not well suited for use as a public park. The terrain is steep, and the Property is relatively difficult to access, as it is not on any public transit lines. The Property has no public amenities, facilities, or defined public parking, and has never been developed for park use. The Property has not been widely used as a park, and is unlikely ever to be widely used as a park in the future.
7. Over a number of years, the District has assembled several waterfront parcels of park land in the Ambleside area, and seeks to expand its park land in that area. To date, the District has acquired 30 of 32 formerly privately held properties in the area. The

waterfront parks in Ambleside are among the most widely used in West Vancouver, and connect to the Centennial Seawalk, also a popular public amenity. Expansion of the Ambleside waterfront parks has required, and continues to require, substantial capital funding, as the properties being acquired are developed residential lots in desirable waterfront locations.

8. In January 2017, the municipal council of the District decided to initiate a public consultation process to investigate the suitability of disposing of some or all of the Property to raise funding for additional park land in the Ambleside area. The public consultation process included the following steps:

- (a) Public information meetings held February 7 and 8, 2017.
- (b) Meetings with residents of the local neighborhood on February 21, 22, 23 and March 13, 2017.
- (c) A public survey, conducted both in hard copy and online.
- (d) Review of correspondence submitted by residents.

The results of the public consultation process were generally in favor of disposing of some or all of the Property in order to acquire additional park land in the Ambleside area.

9. Following the public consultation described above, the municipal council of the District resolved to pursue the following course of action, subject to obtaining court approval:
  - (a) Dispose of (by sale or lease) approximately 50% of the Property to raise funds to purchase additional park land in the Ambleside area.
  - (b) Retain the balance of the Property as a local park.

With respect to point (a), although the two parcels comprising the Property are east and west of each other, District staff have determined that it would be more appropriate to divide the property north-south for purposes of disposition. Accordingly, the area which the District seeks to dispose of is approximately as shown on Schedule "A".

10. The municipal council of the District has directed staff to take steps to acquire the remaining two privately held properties in the vicinity of Ambleside park when an appropriate opportunity arises. Accordingly, the District may acquire one or both of those properties prior to completing the disposition of Brissenden Park, in which case the District seeks to use the proceeds to repay any borrowing incurred to fund the purchase of such property, or for the reimbursement of funds used for the cost of such acquisition from a reserve fund of the District or other source.
11. The course of action set out above is in the best interests of the District and its residents in that it meets the following objectives.

- (a) Substantial additional funding can be generated to expand the District's park land along the Ambleside waterfront, which is one of the best utilized and most popular park areas in the District.
- (b) The part of the Property which the District will retain will be sufficient to provide a walking trail within a smaller, local park.
- (c) The course of action is also consistent with the District's Parks Master Plan, which contemplates disposing of park land to enhance the District's park inventory.

### **Part 3: LEGAL BASIS**

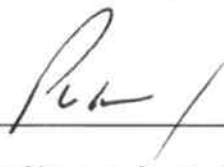
1. The circumstances of the acquisition of the Property give rise to a charitable purpose trust: *The Sidney and North Saanich Memorial Park Society v. British Columbia (Attorney General)* 2016 BCSC 589; *Save the Heritage Simpson Covenant Society v. City of Kelowna*, 2008 BCSC 1084; *O'Neill Community Ratepayers Assn. v. Oshawa (City)*, 1995 CanLii 7170 (ON SC); *Save the Waterfront Parks Society v. The City of Vancouver et al*, 2004 BCSC 430.
2. The court has jurisdiction to vary the terms of the trust under s. 184(2) of the *Community Charter*, S.B.C. 2003, c. 26.
3. *Trustee Act* R.S.B.C. 1996, c. 464, s. 86.
4. The inherent jurisdiction of the court.

### **Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Mark Chan;
2. Affidavit #1 of Anne Mooi;
3. Affidavit #1 of Loreen May Williams;
4. Affidavit #1 of John Elwick;
5. Affidavit #1 of Robin Phillips.

The petitioner estimates that the hearing of the petition will take **30 minutes.**

Date: July 19, 2017

  
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Signature of lawyer for the Petitioner

# Schedule "A"



TITLE: **Brissenden Park**  
 2519 & 2539 Rosebery Avenue

DATE:	REV: 0
FILE:	----

***To be completed by the court only:***

Order made

in the terms requested in paragraphs ..... of Part 1 of this petition

with the following variations and additional terms:

.....  
.....  
.....

Date: .....[dd/mmm/yyyy].....

.....

Signature of  Judge  Master

No.  
Vancouver Registry

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of the District of West Vancouver  
under s. 184 of the *Community  
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011-645-342 Amended Lots 5  
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**PETITION**

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Barristers & Solicitors  
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Fax: (604) 899-2281

**Attention: Paul Hildebrand**