

A BID FOR FAIRNESS:

How \$10,000 in Property Tax
Debt Led to a Vulnerable
Person Losing Their Home



OMBUDSPERSON
BRITISH COLUMBIA

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OMBUDSPERSON
BRITISH COLUMBIA

December 2021

The Honourable Raj Chouhan
Speaker of the Legislative Assembly
Parliament Buildings
Victoria BC V8V 1X4

Dear Mr. Speaker,

It is my pleasure to present the Ombudsperson's Public Report No. 53, *A Bid for Fairness: How \$10,000 in property tax debt led to a vulnerable person losing their home.*

The report is presented pursuant to section 25(1) of the *Ombudsperson Act*.

Yours sincerely,

Jay Chalke
Ombudsperson
Province of British Columbia

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FROM THE OMBUDSPERSON

The property taxes collected each year by municipal governments pay for essential services in communities all over B.C. Every year, however, some property owners do not pay their property taxes. When those taxes remain unpaid, municipal governments can collect the outstanding taxes by selling the property at auction two years after those taxes are first due. Regardless of the value of the property, the minimum bid at auction is only the amount of the unpaid taxes, interest, penalties, plus a small amount for fees. If a person has accumulated significant equity in their home, they are at risk of losing that in a tax sale if the property is sold at the auction for less than fair market value.



A person's property may be their home and their only source of financial security. Selling it for unpaid taxes is an extraordinary power, and municipal governments must hold themselves to the highest standards when using it. Unfortunately, that is not what happened in this case.

We began an investigation into the City of Penticton after receiving a complaint from Ms. Allen. Ms. Allen's sister, Ms. Wilson, had lost her home through a tax sale auction. Unfortunately, the City had made multiple mistakes in communicating with Ms. Wilson about her unpaid taxes and the upcoming tax sale: its notices had referenced incorrect sections of the *Local Government Act* and, on three occasions, she was given incorrect deadlines. The cumulative impact of these errors made the process unfair to Ms. Wilson.

What happened to Ms. Wilson is tragic: she lost her home, and hundreds of thousands of dollars in equity – all over a tax debt of approximately \$10,000. In light of my findings about the mistakes that the City made and the unfair process that resulted as well as the City's failure to consider Ms. Wilson's circumstances, I have recommended that the City of Penticton compensate Ms. Wilson for a portion of the equity she lost. I am disheartened that the City has not accepted this recommendation, and has not taken any responsibility for its role in the unfairness of this tax sale.

While our investigation initially focused on the actions of the City of Penticton, we also considered the broader context within which the tax sale occurred. As a result, I made five recommendations to the Ministry of Municipal Affairs. When implemented, these systemic changes will protect people like Ms. Wilson by ensuring they are better informed about the process and that municipalities are better equipped to engage the appropriate agencies to assist homeowners.

We examined the legislative framework governing tax sales and found it wanting. Specifically, there is no requirement to provide specific notice to a homeowner of a pending tax sale – an essential step, given the potential consequences. I recommended that the Minister of Municipal Affairs bring forward legislative amendments to address this gap, and until these amendments are in place, the ministry develop best practice guidelines for municipalities.

When Ms. Wilson's home was sold, the starting bid was just over \$10,000, although her house was assessed at \$420,000. It sold for \$150,000, far less than the assessed value. This is entirely consistent with the legislation, but raises significant questions about whether the way minimum bids are calculated is fair to property owners. I have recommended that the ministry examine whether changes to the way the minimum bid is calculated are warranted. I expect the ministry to report the results of this review to me in a year.

Ms. Wilson was a vulnerable member of the community in a disadvantaged position. While she owned her home outright, her personal circumstances made her unable to take steps on her own to protect herself and avoid the loss of her home by paying her property taxes. Fortunately, in B.C. there are public bodies such as health authorities and the Public Guardian and Trustee who are mandated to assist vulnerable individuals. However, the City of Penticton did not take any steps to contact these public bodies during the one-year redemption period. One simple telephone call from the City to one of these agencies could have resulted in an entirely different outcome in this case. Ms. Wilson had the money to pay the outstanding taxes, but like many vulnerable adults, she just needed some help to take the necessary steps to resolve the tax debt and avoid the tax sale.

There is no consistent set of guidelines for municipalities to consider the interests of vulnerable individuals when using their power to auction a person's home. To help bridge this gap, I have recommended that the ministry develop best practice guidelines about how municipalities can protect the interests of vulnerable individuals when conducting tax sales.

The tax sale process is complicated. Ensuring that people who may lose their home through a tax sale have clear, consistent information about the process is essential to its fair operation. I have also recommended that the ministry develop, as part of a best practices guide, template letters for use by municipalities that explain, in plain language, each step in the tax sale process.

I am pleased that the Ministry of Municipal Affairs has accepted all of the five recommendations made to it. I want to acknowledge staff at the ministry who have already done work on this issue. We look forward to working with them further as the recommendations are implemented. And I continue to urge the City of Penticton to reconsider its rejection of my recommendation that it take some responsibility for its errors in this matter.

Municipalities need to be able to collect unpaid property taxes, but they need to do so fairly. Ms. Wilson, a vulnerable member of the community, deserved to be treated better. I have issued this report and made these recommendations to ensure that property taxes are collected fairly.

Sincerely,



Jay Chalke
Ombudsperson
Province of British Columbia

INTRODUCTION

When can a municipality sell a person's home because they have failed to pay property taxes? What safeguards should be in place to protect the owner and ensure that the sale process is fair? These are the questions raised in our investigation of a complaint from Ms. Allen about the actions of the City of Penticton (the City) in the tax sale of her sister's (Ms. Wilson's) home.

The names of the complainant and her sister have been changed to protect their identities.

Our investigation found that the process used by the City to sell Ms. Wilson's home was unfair. We found that the City did not take adequate steps to find out why Ms. Wilson had not paid her taxes, or use existing systems to determine if Ms. Wilson was vulnerable

so that it could decide whether or how to adjust its approach. We also found that the legislation that allows these sales to happen has a significant gap. The legislation does not require adequate notice to be given prior to auctioning the property, and the process as a whole does not adequately protect homeowners – especially those who, for various reasons, may be vulnerable in the tax sale process.¹

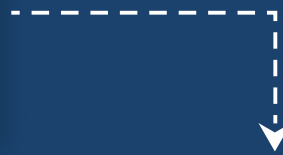
We have recommended that the City compensate Ms. Wilson for a portion of the equity she lost when the City sold her home at its tax sale auction. We have also made five recommendations to the Ministry of Municipal Affairs to address the systemic problems with the tax sale process that our investigation identified.



¹ The tax sale process used by municipal governments to collect unpaid property taxes for properties within municipal boundaries is different from the process used by the provincial government to collect unpaid property taxes for rural properties. Rural properties are those not located in a city, town, district or village. This report focuses on the municipal residential property tax sale process. It does not include consideration of residential property tax sales for rural property tax debt. For information about that process, see Government of British Columbia, "Property Taxes in Rural Areas," <https://www2.gov.bc.ca/gov/content/taxes/property-taxes/annual-property-tax/rural-area>.

HOW DOES A PROPERTY BECOME ELIGIBLE FOR TAX SALE?

Property taxes assessed yearly. Owners required to pay taxes by a set date. Taxes not paid by set date are assessed a penalty.



Taxes are considered 'owing' until December 31 of the year they are due.



YEAR 1

Unpaid taxes from Year 1 are considered 'in arrears' and interest accrues.



If taxes not paid by December 31 of this year, they are considered 'delinquent' and interest continues to accrue.

YEAR 2



If owner fails to pay delinquent taxes, the property becomes eligible for auction on the last Monday of September.

YEAR 3



MUNICIPAL PROPERTY TAXES IN B.C.

Municipal governments across British Columbia rely on revenues from property taxes to help pay for much-needed local services and public amenities.² As of January 4, 2021, there were more than 2.1 million rural and municipal properties in B.C. with assessed values,³ and in 2019 (the most recent year for which final statistics are available) municipal governments collected almost \$8 billion in property taxes.⁴ Municipalities have a clear interest in ensuring that property taxes are paid on time and in full so that they can continue to provide services and amenities to their residents.⁵ In 2019,

municipalities in B.C. were collectively owed about \$236 million in overdue property taxes.⁶

The amount of property tax an owner is required to pay is based on the assessed value of a property and the applicable property tax rate as set by the municipality.⁷ Each year, municipalities must send property owners a tax notice identifying the property taxes owed for that year and describing the penalties that will apply if the taxes are not paid on time.⁸ Property taxes are due on July 2 each year, unless the municipality has set an alternate due date by bylaw.⁹ In the City of Penticton,

² Municipalities collect taxes to pay for services they provide directly. They also collect taxes on behalf of other entities, including taxes that fund schools, policing, regional hospital districts and public transit. See Government of British Columbia, “Property Taxes in Municipalities,” <https://www2.gov.bc.ca/gov/content/taxes/property-taxes/annual-property-tax/municipality>.

³ BC Assessment, “Province-wide Property Assessments,” January 4, 2021, <https://info.bcassessment.ca/property-information-trends/property-assessment-of-bc/province-wide>.

⁴ Ministry of Municipal Affairs, *Municipal General and Financial Statistics*, “Revenue Schedule 706 – Taxes Imposed and Collected during the year 2019,” <https://www2.gov.bc.ca/gov/content/governments/local-governments/facts-framework/statistics/statistics>. In 2019, municipalities in B.C. levied taxes in the amount of \$9,121,630,956, of which \$7,923,889,404 were taxes for the 2019 tax year. This total excludes Pouce Coupe and Warfield, which did not submit data. Statistics for 2020 were still in draft form when we finalized this report.

⁵ Some owners who are unable to pay annual property taxes on their principal residence may qualify for the property tax deferment program; however, this program is not open to homeowners who have taxes in arrears: Government of British Columbia, “Apply for or renew a property tax deferment program application,” <https://www2.gov.bc.ca/gov/content/taxes/property-taxes/annual-property-tax/defer-taxes>.

⁶ Ministry of Municipal Affairs, *Municipal General and Financial Statistics*, “Revenue Schedule 706 – Taxes Imposed and Collected during the year 2019,” <https://www2.gov.bc.ca/gov/content/governments/local-governments/facts-framework/statistics/statistics>. This total excludes Pouce Coupe and Warfield, which did not submit data.

⁷ An owner’s property tax may be reduced if they are eligible for a home owner grant: Government of British Columbia, “Home Owner Grant,” <https://www2.gov.bc.ca/gov/content/taxes/property-taxes/annual-property-tax/home-owner-grant>.

⁸ *Community Charter*, S.B.C. 2003, c. 26, s. 237(1) and (2).

⁹ *Community Charter*, S.B.C. 2003, c. 26, s. 234(1). This date applies unless the municipality has established a bylaw with alternate dates for payment of taxes (s. 235).

taxes are due yearly on the last business day in July.¹⁰ If taxes are not paid on this date, a penalty of 10 per cent of the amount of unpaid taxes is automatically added to the tax bill.¹¹ Until December 31 of the year in which they are levied, any unpaid taxes are considered “owing.”

If taxes remain unpaid on December 31 of the year in which they are due, interest will begin to accrue, and they are considered taxes in arrears.¹² If the property owner does not pay the taxes in arrears by December 31 of the year following the year they were due, they are considered delinquent taxes and further interest will begin to accrue.¹³

Municipalities must send property owners a statement of outstanding taxes on or before the date they send the annual tax notice. The statement of outstanding taxes must identify any taxes in arrears and any delinquent taxes owing.¹⁴

Municipalities have several options to ensure payment of taxes that are due. The Ministry of Municipal Affairs does not collect statistical information about how often municipalities use each of the different property tax debt collection options. However, from speaking with the ministry during our investigation, we understand that tax sale auctions are the preferred method for municipalities to collect delinquent residential property taxes because they are more efficient than the other methods currently authorized by the legislation.

The process by which a municipality can sell a person’s house through a tax sale is at the heart of our investigation of Ms. Allen’s complaint.

Municipal Tax Sales

If an owner has failed to pay outstanding municipal property taxes and the taxes have become delinquent, a municipality offers the property for sale at its annual tax sale, which is held on the last Monday in September.¹⁵ Tax sales are run as auctions. The municipality sets the minimum bid and, if it chooses, acts as the auctioneer. The property is sold to the highest bidder.

Before the auction, the municipality must advertise the upcoming tax sale and identify the properties up for auction in two issues of a newspaper. One of the advertisements must run at least 3 days and not more than 10 days before the tax sale date.¹⁶ A municipality must directly notify an owner of any delinquent taxes. However, there is no similar requirement to directly notify an owner of a pending tax sale involving their home.

The municipality is authorized to recover from the proceeds of the tax sale an amount called the “upset price.”

¹⁰ City of Penticton, “Property Taxes,” <https://www.penticton.ca/city-services/property-taxes#:~:text=Property%20tax%20notices%20are%20issued,last%20business%20day%20in%20July>.

¹¹ *Municipal Tax Regulation*, B.C. Reg. 426/2003, s. 3.

¹² *Community Charter*, S.B.C. 2003, c. 26, s. 245(1)(a) and (b).

¹³ *Community Charter*, S.B.C. 2003, c. 26, s. 246(1)(a) and (b).

¹⁴ *Community Charter*, S.B.C. 2003, c. 26, s. 248(1)(a) and (b).

¹⁵ *Community Charter*, S.B.C. 2003, c. 26, s. 254; *Local Government Act*, R.S.B.C. 2015, c. 1, s. 645.

¹⁶ *Local Government Act*, R.S.B.C. 2015, c. 1, s. 647(1) and (2).

The **upset price** is the total of:

- the amount of delinquent and arrears taxes, including interest to the tax sale date
- taxes and penalties for the current tax year
- an administration fee of 5 per cent of the above-noted amounts
- any applicable fees under the *Land Title Act*¹⁷

The upset price is the minimum amount for which a property may be sold at a tax sale.¹⁸ In most cases, the upset price will be significantly below the assessed and/or fair market value of the property.

The successful bidder at a tax sale auction is the person who bids the highest amount above the upset price or, if there are no bids over the upset price, the bidder who offers the upset price.¹⁹ With the approval of council, the municipality may bid at its own tax sale auction up to a pre-authorized amount.²⁰ If there are no bidders at all, the municipality is declared the purchaser.²¹

The successful bidder must pay the municipality in full for the property on the day of the auction; however, title for the property is not transferred until one year after the auction date to provide the owner with an opportunity to retain title to the property by paying **all** outstanding taxes (not just delinquent taxes), costs and interest.²² This one-year period after the auction date is called the redemption period.

The municipality must notify the owner that the property has been sold at a tax sale no later than three months after the auction date. The notice must identify the date on which the redemption period ends and must be personally served on the owner or sent by registered mail.²³

During the redemption period, the owner will continue to receive their yearly residential property tax bill from the municipality and continues to be liable for those taxes.²⁴

If the owner does not redeem their property by paying all outstanding taxes and fees within the one-year period, the title for the property transfers to the successful bidder.²⁵

¹⁷ *Local Government Act*, R.S.B.C. 2015, c. 1, s. 649(1). These fees may include, for example, a fee of \$39.37, which is charged for filing a notice of tax sale: *Land Title Act*, R.S.B.C. 1996, c. 250, Schedule 2, s. 2(c).

¹⁸ *Local Government Act*, R.S.B.C. 2015, c. 1, s. 649(2).

¹⁹ *Local Government Act*, R.S.B.C. 2015, c. 1, s. 650(1).

²⁰ *Local Government Act*, R.S.B.C. 2015, c. 1, s. 648.

²¹ *Local Government Act*, R.S.B.C. 2015, c. 1, s. 650(2).

²² *Local Government Act*, R.S.B.C. 2015, c. 1, s. 650(4), 652 and 660.

²³ *Local Government Act*, R.S.B.C. 2015, c. 1, s. 657.

²⁴ *Local Government Act*, R.S.B.C. 2015, c. 1, s. 658.

²⁵ *Local Government Act*, R.S.B.C. 2015, c. 1, s. 663.

Municipal Property Taxes in B.C.

The previous owner is then entitled to any surplus from the sale (funds collected at the tax sale over and above the upset price and any additional costs that may be allowed), which they must claim from the municipality within nine months.²⁶ Any unclaimed funds after that time are transferred to the B.C. Unclaimed Property Society, which administers unclaimed property under the *Unclaimed Property Act*.²⁷

Our investigation began after we received a complaint from Ms. Allen, a sister of Ms. Wilson whose home was sold at tax auction by the City of Penticton. This report focuses on that tax sale, as it illustrates gaps in the statutory scheme under which municipalities can sell properties to collect unpaid taxes.



²⁶ *Local Government Act*, R.S.B.C. 2015, c. 1, s. 659(5) and (6). If surplus money remains unclaimed after six months, the municipality must publish a notice in a newspaper. If the surplus remains unclaimed three months after the notice is published, it must be transferred to the administrator under the *Unclaimed Property Act*.

²⁷ British Columbia Unclaimed Property Society, <https://unclaimedpropertybc.ca/>.

HOW TAX SALES WORK

ELIGIBILITY FOR TAX SALE

Unpaid property taxes have become delinquent.

NOTICE

Municipality gives public notice of properties subject to tax sale in two issues of a newspaper.

STARTING BID SET

Starting bid called "upset price" is the sum of all taxes owing (delinquent, arrears, current year), interest and penalties, and prescribed fees.

AUCTION

Tax sale held on last Monday in September. At the sale, the property is sold to the highest bidder.

REDEMPTION PERIOD (1 YEAR)

Owner can prevent sale by paying municipality upset price + maintenance costs incurred by the purchaser + property taxes paid by purchaser + interest.

If this amount is not paid over the redemption period of one year, title transfers to the purchaser at the end of the redemption period.

The previous owner can apply in writing to council to receive any surplus from the sale above the redemption amount.

THE TAX SALE OF MS. WILSON'S HOME BY THE CITY OF PENTICTON

Ms. Wilson and her mother had lived in their home in Penticton for many years and owned it outright. When her mother died in March 2013, Ms. Wilson remained in the home as the sole owner and occupant and was responsible for paying the property taxes.

Ms. Wilson did not pay the property taxes in 2015 or 2016, so the City auctioned the property at its annual tax sale on September 25, 2017. The upset price was \$10,083.26, and the property sold for \$150,000. The assessed value of the property as of July 1, 2017, was \$420,000.

Ms. Wilson did not pay the outstanding tax debt during the redemption period; therefore, in September 2018, the property's title

transferred to the successful bidder. Ms. Allen told us the police were called to assist in removing Ms. Wilson from her now former home once the title had transferred to the new owner. In October 2018, with assistance from Ms. Allen, who had only learned of the sale after it was complete, Ms. Wilson received the surplus funds from the sale of her house. The net payout from the City to Ms. Wilson was \$138,154.24, which Ms. Allen estimated to be approximately \$340,000 below the property's fair market value at the time of the transfer. According to a realtor Ms. Allen consulted, the estimated fair market value of the property in November 2018 was between \$485,000 and \$492,000. On June 2, 2020, a subsequent owner sold the property for \$498,000.²⁸



²⁸ According to the property's sales history as listed by BC Assessment, <https://www.bccassessment.ca/>.

Ms. Allen explained to us that the sale of the home had significant, life-altering negative personal and financial consequences for Ms. Wilson. A vulnerable 60-year-old woman was evicted from her home and lost at least \$270,000 of the equity in her property. As a result, she no longer had financial security or the independence that comes from home ownership – all because of about \$10,000 in property tax debt, which she had the resources to pay.

In the last 32 years, the City has sold 152 properties at a tax sale auction, but only two other property owners had failed to redeem their properties before the deadline. Ms. Wilson was the third.

We looked at whether the City had followed fair procedures in selling Ms. Wilson's home at the September 2017 tax sale. We also investigated the overall fairness of the tax sale process and whether the governing legislation contains sufficient safeguards to protect people in vulnerable circumstances from losing their homes because of unpaid property taxes.

Notice Provided to Ms. Wilson Before the Tax Sale

Ms. Wilson did not pay her 2015 property taxes. When those taxes remained unpaid on December 31, 2016, they became delinquent. As a result, her house was subject to sale at the next tax auction, scheduled for September 25, 2017.

It is an important principle of procedural fairness that a person whose rights or interests may be affected by a decision be provided with prior notice and the opportunity to respond. A person is owed greater procedural protections when the decision being made has significant consequences for them. Accordingly, our investigation focused on the information the City provided to Ms. Wilson prior to the tax sale. The correspondence from the City to

Ms. Wilson is set out in Table 1. Between June 2015 and July 2017, the City sent Ms. Wilson six pieces of correspondence – two tax notices and four statements of outstanding taxes – that detailed the status of her property taxes. These notices were intended to satisfy the City's obligations under the *Community Charter* to notify a property owner of unpaid taxes.

The first reference to the pending tax sale was contained in Ms. Wilson's 2017 tax notice, dated June 14, 2017. A small note at the top of the tax notice stated:

DELINQUENT TAXES – This property will be sold for taxes on September 25, 2017 unless the delinquent taxes, together with interest are sooner paid.

The City sent Ms. Wilson three further notices prior to the sale on September 25, 2017. Each of these notices contained errors, as detailed in Table 1.

In addition, these notices did not clearly explain key aspects of the tax sale:

1. They did not state that the starting bid for the auction of Ms. Wilson's home would be set at the upset price.
2. They did not define the upset price or provide an estimate of the dollar amount of the upset price, which, although not yet fully known because of accruing interest, could nonetheless have been estimated with a significant degree of certainty. Providing this information could serve as a warning about the potential consequences of failing to address the outstanding taxes.

As a result, the City did not fully inform Ms. Wilson of the magnitude of the financial jeopardy she faced by virtue of the fact that the starting bid at auction for her home was going to be approximately \$10,000.

Table 1: The City of Penticton's Communication with Ms. Wilson Before the Tax Sale

Date	Type of correspondence (Delivery method)	Details	Errors and omissions
June 12, 2015	2015 tax notice (regular mail)	2015 taxes (\$2,685.19) due July 31, 2015	
August 6, 2015	2015 statement of outstanding taxes (regular mail)	2015 taxes remain unpaid; interest will start to accrue if unpaid by December 31, 2015	
November 16, 2015	2015 statement of outstanding taxes (regular mail)	2015 taxes remain unpaid; interest will start to accrue if unpaid by December 31, 2015	
June 13, 2016	2016 tax notice (regular mail)	2016 taxes (\$2,947.95) due July 31, 2016; 2015 taxes (\$3,050.31) in arrears	
August 11, 2016 (See Appendix A)	Statement of outstanding taxes (regular mail)	2015 taxes in arrears of \$3,065.49, including interest to August 31, 2016	Did not state that if taxes in arrears remained unpaid as of December 31, 2016, they would become delinquent and the property would be eligible for tax sale
November 8, 2016 (See Appendix A)	2016 statement of outstanding taxes (regular mail)	2015 taxes in arrears of \$3,121.61, including interest to December 31, 2016	Did not state that if taxes in arrears remained unpaid as of December 31, 2016, they would become delinquent and the property would be eligible for tax sale
June 14, 2017 (See Appendix A)	2017 tax notice (regular mail)	Stated, "DELINQUENT TAXES – This property will be sold for taxes on September 25, 2017 unless the delinquent taxes, together with interest are sooner paid" Amount of unpaid delinquent taxes is \$3,224.94	
August 9, 2017 (See Appendix A)	2017 statement of outstanding taxes (regular mail)	Stated that 2014 taxes were delinquent in the amount of \$3,240.06, and 2015 taxes were in arrears in the amount of \$3,365.30 Included a general statement that "properties with outstanding Delinquent Balances will be sold at Tax Sale on the last Monday of September"	Ms. Wilson's 2014 taxes had been paid; it was the 2015 taxes that were delinquent and the 2016 taxes that were in arrears Did not specifically identify Ms. Wilson's home as at risk of tax sale

Table 1 Continued

Date	Type of correspondence (Delivery method)	Details	Errors and omissions
August 24, 2017 (See Appendix A)	Tax sale notice (regular mail)	<p>Set out all taxes owing (delinquent, arrears and current taxes plus interest and penalties) of \$9,480.40</p> <p>Stated, “This letter is official notice of intent to offer for sale at TAX SALE on September 25, 2017, . . . the above-mentioned property pursuant to section 254 of the <i>Community Charter</i> and in accordance with Section 403 of the <i>Local Government Act</i>”</p> <p>Stated that the minimum amount required to prevent the property from being sold was the payment of delinquent taxes and interest (\$3,252.25)</p> <p>Stated that payment of the amount owing would be accepted up to September 22, 2017, at 4:30 pm</p>	<p>The sections of the <i>Local Government Act</i> referenced in the letter were incorrect</p> <p>Provided an incorrect date by which Ms. Wilson could pay the outstanding delinquent taxes in order to prevent the sale (September 22 instead of September 25)</p>
September 6, 2017 (See Appendix A)	Tax sale notice (regular mail)	<p>Set out all taxes owing (delinquent, arrears and current taxes plus interest and penalties) of \$9,480.40</p> <p>Stated, “This letter is official notice of intent to offer for sale at TAX SALE on September 25, 2017, . . . the above-mentioned property pursuant to section 254 of the <i>Community Charter</i> and in accordance with Section 403 of the <i>Local Government Act</i>”</p> <p>Stated that the minimum amount required to prevent the property from being sold was the payment of delinquent taxes and interest (\$3,252.25)</p>	<p>The sections of the <i>Local Government Act</i> referenced in the letter were incorrect</p> <p>Provided an incorrect date by which Ms. Wilson could pay the outstanding delinquent taxes in order to prevent the sale (September 22 instead of September 25)</p>

Notice Provided to Ms. Wilson Following the Tax Sale

Ms. Wilson’s property went up for auction at the City’s tax sale on September 25, 2017. The City set the starting bid at the upset price of \$10,083.26, which was the sum of the taxes owed, including interest and penalties, land title fees, and a 5 per cent administration fee. The property was sold to the highest bidder for \$150,000.

The City’s correspondence with Ms. Wilson after the auction is set out in Table 2.

Table 2: The City of Penticton’s Communications with Ms. Wilson After the Tax Sale

Date	Notice (Delivery method)	Details	Errors and omissions
September 26, 2017 (See Appendix A)	Tax sale redemption notice (registered mail)	Letter informed Ms. Wilson that the property had been sold at auction, set out the redemption period, and stated that if the property was not redeemed title would transfer to the purchaser	Referenced section 414 of the <i>Local Government Act</i> as authority for the sale, which was incorrect Provided upset price and sale price, but did not state redemption amount or estimate
October 30, 2017 (See Appendix A)	City telephoned Ms. Wilson	According to the City’s notes of the call, Ms. Wilson stated that she had received correspondence regarding the tax sale and would address the matter. Staff member told her that if she did not deal with outstanding taxes before September 24, 2018, the house would transfer	Provided incorrect redemption date (September 24 instead of September 25)
June 18, 2018 (See Appendix A)	2018 tax notice (regular mail)	Set out 2018 taxes owing Stated, “SOLD FOR TAXES – this property was sold for taxes on September 25, 2017 and the redemption period ends on September 25, 2018. Redemption should be effected before payment of the current taxes is made”	Did not inform Ms. Wilson of consequences of failure to redeem the property

Table 2 Continued

Date	Notice (Delivery method)	Details	Errors and omissions
<p>September 28, 2018 (See Appendix A)</p>	<p>Letter regarding non-redemption of property (regular mail)</p>	<p>Confirmed sale of property in 2017 and transfer of title to new owner</p> <p>Informed Ms. Wilson that she was entitled to \$139,916.74, which was the surplus from the sale</p> <p>Stated that in order to receive these funds from the City, she <i>must</i> provide a written request to the City within 90 days of the date of the letter</p>	<p>Incorrectly cited the legal authority under which the City had sold Ms. Wilson's property (referenced section 403 of the <i>Local Government Act</i>)</p> <p>Did not identify the legal basis on which the City was requesting that she make the payout request within 90 days</p> <p>Provided incorrect deadline of 90 days; Ms. Wilson had 9 months to claim the money from the City, after which she could make a claim to the Unclaimed Property Office</p> <p>Did not explain the consequences of failing to meet the deadline for claiming the surplus</p> <p>Did not explain how the City had determined the amount of the surplus</p> <p>Letter was sent to Ms. Wilson at her old address after title to the property had transferred to the new owner</p>

Analysis: The Process Used by the City of Penticton in Selling Ms. Wilson's Property

Before the tax sale occurred, the City sent Ms. Wilson several notices detailing her unpaid taxes and describing the upcoming tax sale. However, our investigation found that there were multiple errors in some of these notices and, in particular, in the three notices that the City sent to Ms. Wilson in the two months preceding the sale. The City referenced the incorrect statutory authority to conduct the tax sale, stated the wrong year for which taxes were delinquent, and set an incorrect date by which Ms. Wilson could pay the outstanding delinquent taxes in order to prevent the sale.

Following the tax sale in September 2017, the problems continued. Again, the City incorrectly referenced its statutory authority to conduct the sale, a staff member verbally gave Ms. Wilson an incorrect redemption date, and the 2018 tax notice, sent in June 2018, did not set out the consequences of Ms. Wilson failing to redeem the property. Although the main purpose of the June 2018 notice was to inform Ms. Wilson that property taxes continued to accrue and were owed on her property, given the context in which it was sent, the City could also have used it to reiterate what steps Ms. Wilson could take to redeem her property before the redemption period expired.

On September 25, 2018, title to the property transferred to the person who had purchased the property at the tax sale.

On September 28, 2018, the City sent Ms. Wilson a non-redemption letter by regular mail to her old address, knowing that she no longer owned the home and was likely no longer living there. This letter, described in Table 2, incorrectly cited the legal authority under which the City had sold Ms. Wilson's

property, gave an incorrect deadline by which Ms. Wilson had to claim the surplus from the sale, and did not explain the consequences of failing to meet that deadline. Importantly, the notice did not contain any explanation of how the City had determined the amount of the surplus payout. The City did not take any further steps to notify Ms. Wilson of the surplus.

Taken together, these errors and omissions raise significant questions about whether the City followed a fair process in this sale.

In response to our investigation, the City recognized that the sale was "unfortunate," but told us these inaccuracies were minor and that it had met the statutory requirements. The City emphasized that Ms. Wilson had been informed of the sale of her property, the amount of the sale and the redemption deadline. The City explained that she could have contacted staff to determine the amount she needed to pay to redeem the property. The City stressed that it took the extra step to call Ms. Wilson during the redemption period to ensure that she was aware of the tax sale and the redemption period. The City also maintained that there was no evidence that Ms. Wilson was harmed by any of the errors contained in their notices, either before or after the tax sale.

Having considered the City's position, we are unable to conclude that it fairly discharged its duty to notify Ms. Wilson. When a municipality is selling a property at a tax sale, it is held to a strict duty of compliance with statutory requirements.²⁹ In a recent case, the B.C. Supreme Court found that an inadvertent error in a notice sent by a municipality after a tax sale (listing the date by which the property could be redeemed as September 29 instead of September 30) was sufficient to invalidate the sale of the property.³⁰ As the courts

²⁹ *Gray v. Langley (Twp.)*, 1986 CanLII 832 (B.C.C.A.).

³⁰ *521006 B.C. Ltd. v. Village of Pemberton and Donna Siu*, 2019 BCSC 526.

have emphasized, “compliance with notice requirements is fundamentally important in a statutory scheme that separates private property from its owner.”³¹

These legal requirements underpin a broader duty of fairness that a municipality selling a property at a tax sale owes to the property owner. When a municipality conducts a tax sale, it does not need the approval of the court or any other external body that can consider whether the owner's interests have been fairly considered. At the same time, a municipality selling a person's property for far less than the assessed value has significant, potentially irreversible, consequences. The seriousness of the action, together with the lack of oversight of the process, means that a municipality must, at a minimum, provide timely, clear and accurate notice to the property owner so that they can understand and respond. The more detailed, clear and accurate the notice, the greater the assistance it will be to the person receiving it.

These principles of fairness apply to all communications from a municipality, whether they are required by the statutory scheme or not. A person should not be required to try and discern which of the notices they receive are legally required and which ones are sent as a mere courtesy. In our view, all communications by a municipality in relation to a tax sale of a property must be accurate, complete and written in plain language that is easily understood.

In this case, the City's errors in communication were not a mere technicality but instead were central to the tax sale process. It was not Ms. Wilson's responsibility to guess about the City's authority to sell her home at a tax sale, or to research whether the City had accurately described her rights during the redemption period. Rather, the City had a duty to ensure that its notices contained accurate information, explaining clearly and correctly

the legal authority under which it acted, so Ms. Wilson could understand her position and the steps she needed to take to retain ownership of her house. The inadequate, inaccurate and inconsistent descriptions of the tax sale process in the City's correspondence with Ms. Wilson made the process unfair.

Finally, while it did not form part of the sale process, the notice that the City sent to Ms. Wilson after title to the property transferred contained incorrect information, such as the deadline for claiming the surplus, and did not explain how the surplus had been calculated. Further, the notice was sent to Ms. Wilson at a property she no longer owned, and the City made no attempt to follow up with her to ensure that she had received it.

Finding 1: The inadequate, inaccurate and inconsistent descriptions of the tax sale process in the City of Penticton's correspondence with Ms. Wilson made the process unfair.

The City's Consideration of Ms. Wilson's Circumstances

Through the tax sale process, it was not apparent that the City had considered whether Ms. Wilson's circumstances impacted her ability to pay her taxes or to respond to the tax sale.

We learned from Ms. Allen that Ms. Wilson lived with lifelong health issues. Ms. Allen told us that she had only realized in 2018 the full extent of her sister's limitations and vulnerabilities.

Until 2013, Ms. Wilson had lived with their elderly mother. Ms. Allen explained that following their mother's death in 2013, and prior to the tax sale, she was in contact with her sister, which included travelling to Penticton to visit her and to inquire about her well-being. Based on Ms. Wilson's

³¹ *Re Maple Ridge*, 2020 BCSC 1473, para. 36.

assurances, Ms. Allen understood that she was managing well. She told us that the home was well kept and she had no reason to suspect that Ms. Wilson needed Ms. Allen to assist her in managing her affairs. In 2016, Ms. Wilson had granted Ms. Allen power of attorney. It is important to note that when a person is designated under a power of attorney, they have no positive obligation to manage a capable person's financial affairs. At the time, Ms. Allen was not aware that her sister had not been paying her taxes despite having the financial resources to do so.

Ms. Allen learned after the sale of the house that her sister's health concerns had made it hard for her to understand the tax notices sent to her home, and to respond appropriately to the other communications she had with the City about her tax situation. Her health concerns also made it difficult for her to actively seek assistance from Ms. Allen or take other steps to protect herself. Because Ms. Wilson had not asked her for help, Ms. Allen did not realize that her sister's ownership of the house was in jeopardy.



Analysis: The City's Consideration of Ms. Wilson's Circumstances

The City did not have clear information suggesting that Ms. Wilson lived with health issues that might have adversely impacted her ability to pay her taxes or to respond to its correspondence. Moreover, the City was not required to continuously monitor Ms. Wilson's ability to respond throughout the redemption period. According to the City, Ms. Allen should have advised it that she had been designated under a power of attorney so that the City could have worked with her to pay Ms. Wilson's taxes. During our investigation, the City pointed to section 657(3) of the *Local Government Act* to support its view that it did not need to take any other steps to inform Ms. Wilson about the tax sale.³² This section establishes the requirements to notify an owner in writing of a tax sale and the redemption period.

However, it is also clear that property owners rarely fail to redeem their properties; as noted above, Ms. Wilson was only the third person in 32 years who had failed to redeem her property. In addition, the City knew the value of the property and could therefore have understood the significant financial repercussions for Ms. Wilson if she failed to redeem the property. It was City staff – not Ms. Allen – who knew that Ms. Wilson had not paid her taxes and that continued failure to pay would result in the loss of her house. It should have been clear to the City that Ms. Wilson's home and her independence were at stake.

In our view, municipalities need to be attentive to situations where meeting the statutory notice requirements related to tax sales is not, in itself, enough to avoid an unjust and irreversible outcome. Even though section

³² Section 657(3) of the *Local Government Act* states, "No liability or responsibility other than as set out in subsection (1) rests with the collector or municipality to give notice of the sale for taxes." Section 657(1) contains the requirement to give the owner of the property written notice of the sale and of the day the redemption period ends.

657(3) of the *Local Government Act* does not oblige a municipality to provide any further written notice to the owner of a property involved in a tax sale, the City could have done more to assist Ms. Wilson.

As a matter of fairness, the City should have taken steps to understand why Ms. Wilson had not paid her taxes. In the circumstances, the City should have satisfied itself that Ms. Wilson's failure to pay her taxes was not due to some factors beyond her control. For example, Ms. Wilson was owed more than a single phone call in the 11 months before the expiration of the redemption period. Put another way, the City should have seen this tax sale as more than a collection effort: staff should have recognized that the tax sale could leave a person without a home or financial security. The City should have done more to ensure that the use of this extraordinary power was scrupulously fair.

The City could have taken steps that would have protected its right to collect the property taxes owed while also protecting Ms. Wilson's interests as a property owner. For example, the City could have asked Ms. Wilson if she had any family members who could assist her in addressing her tax matters. Similarly, it could have considered contacting the Public Guardian and Trustee or Interior Health to raise questions about whether Ms. Wilson might be a vulnerable adult in need of assistance or protection. The *Adult Guardianship Act* establishes a process by which a person who is concerned that an adult is facing neglect and is unable to seek "support and assistance," including because of a physical disability or mental illness or incapacity, may report the circumstances to a designated agency.³³ The Public Guardian and Trustee told us that it routinely receives notifications of this type from a variety of sources and frequently makes inquiries to

satisfy itself as to whether its intervention, notification of near relatives, or other supports are necessary.³⁴

In this case, had the City made a report to the Public Guardian and Trustee or Interior Health (which is a designated agency under the *Adult Guardianship Act*), it might well have been discovered that Ms. Wilson had the funds to pay the outstanding tax debt and that there was a person holding a power of attorney – Ms. Allen – who could have assisted her in paying the funds owed to the City.

As a result of the tax sale, Ms. Wilson lost more than half of the equity in her home. Because of the circumstances in which this occurred, we have concluded that it is appropriate for the City to compensate her for a portion of the equity she lost when her home was sold at its tax auction. We have reached this conclusion for two reasons:

1. The communications the City sent to Ms. Wilson about the impending tax sale of her house contained inaccuracies. The communications did not reflect the standard of care expected of a public authority exercising such a significant power, and they did not serve their primary purpose, which was to inform Ms. Wilson. The errors in the communications made the tax sale process unfair.
2. In this context, the City should have considered the possibility that Ms. Wilson could be a vulnerable member of its community and ensured, to the extent possible, that she understood the consequences of the measures the City was taking. The City knew that it was extraordinarily rare for a property owner to lose their property through the tax sale process because it had occurred only twice in 152 tax sales in the previous 32 years. The disparity between the

³³ *Adult Guardianship Act*, R.S.B.C. 1996, c. 6, s. 46(1).

³⁴ Public Guardian and Trustee, *BC's Adult Guardianship Laws: Supporting Self Determination for Adults in British Columbia*, <http://www.trustee.bc.ca/Documents/adult-guardianship/Protecting%20Adults%20from%20Abuse,%20Neglect%20and%20Self%20Neglect.pdf>.

The Tax Sale of Ms. Wilson's Home by the City of Penticton

value of the property taxes owed (just under \$10,000, of which only \$3,252 was delinquent and led to the sale) and the 2017 assessed value of the property (\$420,000) showed the magnitude of the loss Ms. Wilson faced. There is no judicial or other oversight of the tax sale process. Instead, it is entirely the responsibility of the municipality, which only heightens its obligation to be fair.

In the circumstances, the City had a responsibility to consider Ms. Wilson's interests by inquiring about the reasons why she had not paid her taxes for so long and contacting someone who could assist her in meeting those financial obligations.

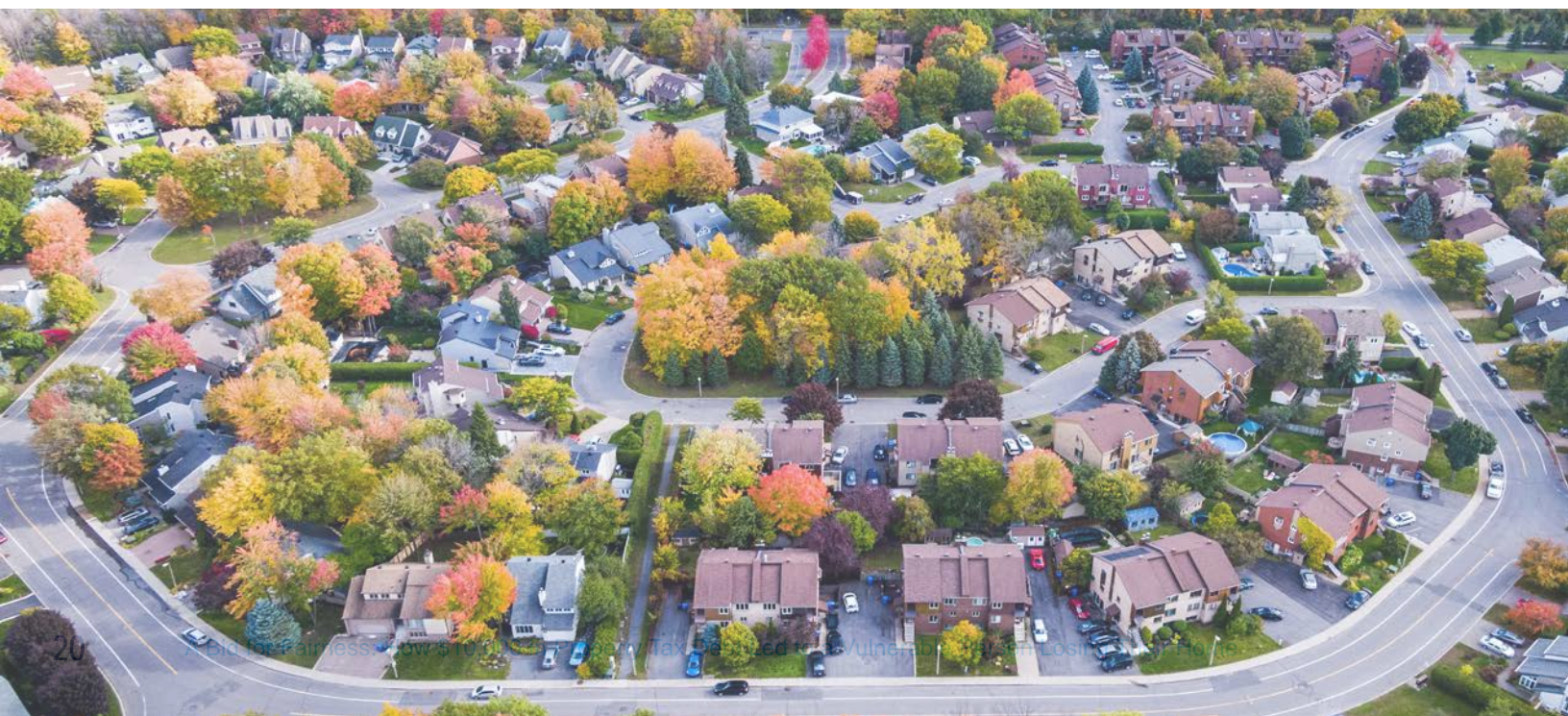
Entities like the Public Guardian and Trustee were created to protect the rights and interests of vulnerable people, including in cases where they are not meeting their financial obligations. Had the City contacted the Public Guardian and Trustee or Interior Health, the City would likely still have been able to collect the property taxes it was owed while also protecting Ms. Wilson's financial interest in her home.

For these reasons, we have recommended that the City compensate Ms. Wilson for a portion of her financial losses due to

the tax sale of her home. In making this recommendation, we are mindful of the City's need to be responsible stewards of public funds and to protect the interests of all residents in Penticton. However, Ms. Wilson was also a member of the community, and we have concluded that compensating her is appropriate in this case because of the shortcomings in the City's process and the significant financial losses that Ms. Wilson faced when the City sold her house at its tax auction.

Finding 2: The City of Penticton's failure to take any meaningful steps during the one-year redemption period to inquire as to whether Ms. Wilson might be an adult in need of protection or assistance, or to notify the appropriate authorities that she might require such protection or assistance, was unreasonable.

Recommendation 1: By September 30, 2021, the City of Penticton compensate Ms. Wilson in the amount of \$140,922.88, being 50 per cent of the difference between the assessed value of the property as of July 1, 2017, of \$420,000, and the surplus of \$138,154.24 that she already received.



GAPS IN THE TAX SALE FRAMEWORK

In our investigation into Ms. Allen's complaint about the sale of her sister's home, it became clear that the way in which the City handled the tax sale was part of a larger issue. As a result, our investigation also looked at the fairness of the municipal tax sale process as set out in the *Community Charter* and *Local Government Act*. In our view, the *Local Government Act* fails to protect the interests of owners in the tax sale process in two key ways:

1. The Act contains insufficient requirements for municipalities to notify owners about the tax sale process and the significance of the action being taken.
2. Because the Act allows municipalities to set the upset price based only on the amount of taxes owed, with no consideration of the market value of the home, it is more likely that owners will lose significant equity in the sale process.

Under the *Ombudsperson Act*, we may find that a statutory provision on which a decision is based is "unjust."³⁵ A law may be unjust when it is incompatible with principles of equity and fairness, which require proportionality in the exercise of government authority. The absence of procedural protections in the

legislation governing tax sales, combined with a lack of other options through which municipalities can collect delinquent taxes, means that the statutory tax sale scheme set out in the *Community Charter* and the *Local Government Act* can lead to disproportionate and unfair outcomes for homeowners.

The statutory scheme provides municipalities with extraordinary power to sell a person's house without sufficient safeguards to prevent disproportionate and unfair outcomes from the application of that power. For this reason, we have concluded that the statutory scheme is unjust. We have recommended the *Local Government Act* be amended to add a key safeguard: a requirement for personal notice to the affected individual of the pending tax sale. We have also recommended that the Ministry of Municipal Affairs closely review the use of the upset price with a view to determining whether the amount of the upset price should be increased.

In addition, the statutory scheme is not accompanied by any clear and consistent guidelines as to how municipalities can fairly and appropriately address questions of a person's vulnerability that may arise in the tax sale process. We have concluded that

³⁵ *Ombudsperson Act*, R.S.B.C. 1996, c. 340, s. 23(1)(a)(iii).

³⁶ *Ombudsperson Act*, R.S.B.C. 1996, c. 340, s. 23(1)(a)(v).

the lack of guidelines for a process that is so consequential is unreasonable in accordance with the *Ombudsperson Act*.³⁶

Finding 3: The statutory scheme in the *Local Government Act* and the *Community Charter* that authorizes the use of tax sales to collect delinquent property taxes is unjust.

Finding 4: There is no consistent set of guidelines for municipalities to follow in conducting a tax sale and, as a result, the interests of vulnerable individuals are not adequately considered. Given the significant consequences of a tax sale for property owners, the lack of such guidelines is unreasonable.

Adequate Notice to the Property Owner

Providing adequate notice is a fundamental requirement of procedural fairness. The current legislative requirements are not procedurally fair, given the power being exercised by the municipality and the potential negative impacts on the property owner.

A municipality is only required, by law, to provide notice directly to the property owner *after* the tax sale has occurred. We are troubled by the fact that a municipality can place a property owner's home up for sale without giving specific notice to the property owner by personal service or, at minimum, by registered mail. The current scheme relies, instead, on newspaper advertisements. Although these ads may sometimes appear in online as well as print editions of newspapers, in a world where people rely increasingly on electronic sources of news, this is antiquated as well as unfair. The fact that the legislation does not ensure that property owners receive direct notification of a pending tax sale means that the legislative scheme simply fails to account for the serious jeopardy property owners in this situation face.

The fact that an owner can still redeem a property after the tax sale does not make it any less important to provide notice before that date. A tax sale can be avoided by the owner paying the amount of delinquent taxes (which, by definition, will be taxes for only one year). After the tax sale, however, the owner must pay the upset price plus other fees; in Ms. Wilson's case, that included three full years of property taxes. It may be significantly more challenging for an owner to pay the full redemption amount (as opposed to just the delinquent taxes) and, accordingly, more difficult for them to maintain ownership. A legal requirement to provide clear notice before the tax sale is therefore an essential procedural safeguard. Adequate notice is such a fundamental part of a fair process that we believe this requirement must be embedded in the legislative scheme for tax sales. As an interim measure, however, we have recommended that the Ministry of Municipal Affairs develop best practice guidelines for the provision of notice.

Further, if a property sold at a tax sale is not redeemed, municipalities must be required to take all reasonable measures to directly notify the person entitled to the surplus funds and inform them of the amount of the funds, how they may collect them, what due dates apply and what happens with the funds if they are not collected.

The errors and omissions in the notices that the City sent to Ms. Wilson also point to the need for better information to be provided to property owners whose taxes go unpaid. While the City of Penticton was relying on its standard forms and processes, in our view, this is not enough. Municipalities should have access to province-wide templates and best practice guidelines that help them explain, in plain language, the tax sale process and potential consequences.

In this respect, it is relevant to note that a significant portion of British Columbians live with literacy challenges. People who cannot

read or understand written English-language notices are especially vulnerable in the context of a legislative scheme that relies on the provision of written notice. People who have literacy challenges might have difficulty following the complex instructions the tax sale notices contain, or they might not be able to respond by the deadlines. For example, people with low literacy or low numeracy may have difficulty with text and calculations that are not presented in a clear and simple way. They may also face challenges organizing information or knowing where to seek advice if they have questions. Low literacy and low numeracy create obvious barriers to accessing and understanding information in newspapers and letters dealing with complex issues like tax sales.³⁷

Recommendation 2: By June 30, 2022, the Ministry of Municipal Affairs develop, as part of a best practices guide, plain language template letters for use by municipalities that include all applicable timelines, reference the statutory authority for the step being taken, and explain in plain language each action the municipality intends to take or has taken. At a minimum, the ministry develop template letters to:

- a. advise the property owner of the steps they must take to prevent the sale of their property at auction
- b. advise the property owner of the steps they must take during the redemption period to prevent the transfer of their property to the tax sale purchaser
- c. advise the property owner, in cases where the property is not redeemed, about the calculation and payment of surplus funds

Recommendation 3: By June 30, 2022, the Ministry of Municipal Affairs issue best practice guidelines for municipalities to notify a property owner by personal service or registered mail before holding a tax sale in relation to their property.

This recommendation is to serve as an interim measure until the amendments in Recommendation 4 come into force.

Recommendation 4: By October 31, 2022, the Minister of Municipal Affairs reconsider the *Local Government Act* by introducing amendments to require a municipality to provide notice of the pending tax sale to the owner of a property subject to a tax sale by a set time frame prior to the sale, and to provide notice by personal service or registered mail.

The Upset Price as Starting Bid

With no requirement for municipalities to consider the market value of the home in determining the starting bid at a tax sale auction, property owners, especially those who do not have a mortgage or other encumbrances, may lose a significant amount of equity if their house is sold at the auction.

In Ms. Wilson's case, the upset price for her property and therefore the starting bid at the auction was \$10,083.26. The house sold for \$150,000. In contrast, the assessed value of the property on July 1, 2017, was \$420,000. In June 2020, the house sold for \$498,000. The difference between the amount paid for the property at the tax sale and both the 2017 assessment value and the June 2020 sale price is substantial.

³⁷ Literacy and Policing Project, *Literacy and Policing in Canada: Target Crime with Literacy*, 2008, Chapter 1, Factsheet 3, http://policeabc.ca/files/factsheets_englishPDFs/Literacy_factsheets_eng.pdf; Literacy BC, "Literacy in British Columbia," <http://www.literacybc.ca/Info/literacyinbc.pdf>.

This can be compared with a mortgage foreclosure, where ordinarily the court must be satisfied that an offer represents fair market value before approving a foreclosure sale.³⁸ The judicial supervision of the sale process helps to protect the interests of the property owner as well as the mortgage holder.

Unlike foreclosures, municipal tax sales are not subject to judicial oversight. In Alberta, municipal councils conducting a tax sale auction must set a reserve bid that is “as close as reasonably possible to the market value of the property.”³⁹ In determining the market value, a municipality may use the current assessed value or seek an independent appraisal.⁴⁰

We acknowledge that if a person knows they will receive the market value of their home if it is sold through a tax sale, this may act as a disincentive to paying taxes.

However, the financial impacts of a sale for far less than the market value are significant. To help inform the government’s decision making on this matter, the ministry should conduct a careful review of this matter, using data from property tax auctions in B.C. and elsewhere in Canada. The purpose of this review and resulting report would be to identify whether and to what extent changes to the amount of the upset price are warranted.

Recommendation 5: By October 31, 2022, the Ministry of Municipal Affairs complete, and provide to our office, a report examining whether the *Local Government Act* should be amended to establish an upset price that better reflects the assessed value of a property subject to a tax sale. In completing the review, the ministry should obtain data about the sale prices and assessed values of properties sold at tax sales in BC, and in provinces that require a minimum bid based on fair market value or similar measure.

Procedural Protections for Vulnerable Citizens

The current legislative scheme assumes that individual property owners understand their obligations, have the capacity to act to protect their interests and understand what will happen if they fail to take the steps necessary to protect those interests within the tax sale process. However, some owners may be vulnerable within this scheme because they have health-related or other challenges that make it difficult for them to pay delinquent taxes or to act within the one-year redemption period to prevent the sale from finalizing.

The current legislative scheme fails to recognize that without some underlying

³⁸ For example, in *Providus Mortgage Investment*, 2016 BCSC 955, the court rejected an offer that it considered to be too low based on the value of the property. See also Law Society of British Columbia, *Practice Checklists Manual*, “Foreclosure Procedure,” September 1, 2020, 9.2, which reiterates that “the court’s main concern will be with the adequacy of the sale price.”

³⁹ *Municipal Government Act*, R.S.A. 2000, c. M-26, s. 419.

⁴⁰ Alberta Municipal Affairs, *A Guide to Tax Recovery in Alberta*, August 2019, <https://open.alberta.ca/dataset/564abe15-4057-4db1-974a-4af7b3230ec8/resource/28b5508c-cc21-405e-b593-c339e581b5e5/download/a-guide-to-tax-recovery-in-alberta.pdf>.

vulnerability, a person who has significant equity in their home would almost never deliberately lose that home through a tax sale. Currently, municipalities are not required under the legislation to consider whether a property owner's failure to pay their property taxes is due to diminished cognitive capacity, self-neglect, mental illness or another similar reason. Similarly, municipalities are not required to consider whether a property owner requires support or assistance to understand and resolve the outstanding tax debt or to redeem their property after a tax sale.

Even without any legal requirements, however, a municipality could ask a property owner whether they understand the notices they have received and, if not, whether they have anyone who could assist them.

Within the existing legislative scheme, a municipality could also contact the Public Guardian and Trustee or a health authority to report that the property owner may be a vulnerable adult in need of assistance or protection. If a person has failed to pay their taxes because of an underlying vulnerability, there is a clear benefit to municipalities involving, early in the process, an agency that has a mandate to protect the interests of vulnerable individuals, as the municipality is much more likely to receive the outstanding taxes sooner and without having to do the extra work involved in a tax sale. Both the Public Guardian and Trustee and the health authorities can locate and contact family members who may be able to assist the adult in managing their affairs through, for example, a power of attorney. In cases where no power of attorney is in place, where warranted, the

Public Guardian and Trustee may consider using powers under the *Public Guardian and Trustee Act* or the *Adult Guardianship Act* to inquire into the property owner's capacity to protect their interests and, where appropriate, act to protect those interests. Seniors, people with disabilities, people isolated from family or community supports, and individuals with mental health or substance use issues are among those who may be particularly vulnerable to losing their house in a tax sale scheme that, as currently established, does not require municipalities to consider their particular circumstances. For example, 29 per cent of households in British Columbia are one-person households.⁴¹ While not all are property owners, and not all will have challenges in managing their financial affairs, this statistic suggests that Ms. Wilson's situation is likely not unique.

The extraordinary power of a municipality to sell a person's home, coupled with the lack of oversight of this process, requires safeguards to protect vulnerable people. Municipalities should, as a matter of best practice, notify an authority that can assist or support an individual if the municipality has concerns that they have failed to pay their property taxes because of some form of vulnerability or disability.

We recognize that municipalities may be hesitant to take such action out of a concern that they would be making assumptions about a person's capacity or the reasons why they have not paid taxes. It is important to emphasize that, in making this recommendation, we are not expecting municipal staff to act as social workers,

⁴¹ Statistics Canada, "Chart 2, Percentage of one-person households, Canada, provinces and territories, 2016," <https://www150.statcan.gc.ca/n1/daily-quotidien/170802/cg-a002-eng.htm>.

to make determinations of capacity or to obtain information (such as about a power of attorney) to which they are not otherwise entitled. Instead, our intent is to ensure that municipalities know about the agencies that can assist vulnerable individuals in their communities who have failed to pay property taxes and make a report to those agencies when they have reasonable concerns about the underlying reasons why a person's taxes remain outstanding. The agencies that have been notified can then follow their existing legislation and processes to determine whether assistance is truly needed.

Recommendation 6: By October 31, 2022, the Ministry of Municipal Affairs, in consultation with the Office of the Public Guardian and Trustee, issue best practice guidelines about how municipalities may protect vulnerable property owners within the tax sale scheme, including inquiring about whether a property owner's failure to pay their property taxes is due to some aspect of vulnerability or disability and, if so, notifying a person or authority that can assist that individual.



APPENDICES

Appendix A: Tax Notices from the City of Penticton to Ms. Wilson

We have edited these notices to remove any information that may identify Ms. Wilson or her property. We have added highlighting and comments (marked by our logo) to point to errors or omissions in the City's communications with Ms. Wilson.

STATEMENT OF OUTSTANDING TAXES
STATEMENT DATE: Aug 11, 2016

Delinquent Taxes (2014)	0.00
Interest on Delinquent Taxes	0.00
Arrears Taxes (2015)	2,953.71
Interest on Arrears Taxes	111.78 (Interest To Aug 31, 2016)
SubTotal	3,065.49
Current Taxes	2,947.95
Penalty on Current Taxes	294.80
Total	6,308.24

NOTE: If you are eligible for a Home Owner Grant and have not yet claimed it, please fill out the form and bring it into City Hall or mail it. You can also claim it online at www.penticton.ca - I want to - Claim my Home Owner Grant.

If the Current Taxes owing remain unpaid at December 31 of this year, interest at prescribed rates will begin to accrue.

If you have any questions regarding this notice, please contact the Tax Department at 250-490-2485 or email at taxclk@penticton.ca.

Notice does not state that if taxes remain unpaid as of December 31, 2016, they will become delinquent and the property will be eligible for tax sale.

STATEMENT OF OUTSTANDING TAXES	
Total	
Outstanding	\$6,308.24
Amount Paid	

FOLIO:
PID:
CIVIC:
OWNERS:
Make Cheque Payable to:
The City of Penticton
171 Main St
Penticton, BC V2A 5A9

STATEMENT OF OUTSTANDING TAXES

STATEMENT DATE: Nov 08, 2016

Delinquent Taxes (2014)	0.00
Interest on Delinquent Taxes	0.00
Arrears Taxes (2015)	2,953.71
Interest on Arrears Taxes	167.90 (Interest To Dec 31, 2016)
SubTotal	3,121.61
Current Taxes	2,947.95
Penalty on Current Taxes	294.80
Total	6,364.36

NOTE: If you are eligible for a Home Owner Grant and have not yet claimed it, please fill out the form and bring it into City Hall or mail it. You can also claim it online at www.penticton.ca - I want to - Claim my Home Owner Grant.

If the Current Taxes owing remain unpaid at December 31 of this year, interest at prescribed rates will begin to accrue.

If you have any questions regarding this notice, please contact the Tax Department at 250-490-2485 or email at taxclk@penticton.ca.

Notice does not state that if taxes remain unpaid as of December 31, 2016, they will become delinquent and the property will be eligible for tax sale.

STATEMENT OF OUTSTANDING TAXES

Total	
Outstanding	\$6,364.36
Amount Paid	

FOLIO:
 PID:
 CIVIC:
 OWNERS:
 Make Cheque Payable to:
 The City of Penticton
 171 Main St
 Penticton, BC V2A 5A9

2017 TAX NOTICE

DUE DATE: Monday, July 31, 2017

The first notice to Ms. Wilson that her house could be subject to a tax sale. Size of font used for this message does not reflect the seriousness of the situation.

DELINQUENT TAXES - This property will be sold for taxes on September 25, 2017 unless the delinquent taxes, together with interest are sooner paid.

LEGAL DESCRIPTION			
TOTAL NET ASSESSED VALUES FOR TAXATION PURPOSES			
CLASS	GENERAL	SCHOOL	HOSPITAL
1 - Res	356,000	356,000	356,000

FOLIO NUMBER	ACCESS	COLUMN A	COLUMN B	COLUMN C
PROPERTY ADDRESS		NO GRANT	BASIC GRANT	ADDITIONAL GRANT
PID				

TAXES COLLECTED FOR THE PROVINCE OF B.C.			
School	664.55	664.55	664.55
TAXES COLLECTED FOR OTHER AGENCIES			
Regional District Levies (Includes 9-1-1, Mosquito Control and S.I.R.)	81.35	81.35	81.35
Regional Hospital	110.43	110.43	110.43
BC Assessment	15.38	15.38	15.38
CITY OF PENTICTON TAXES			
General Municipal (includes MFA)	1,542.37	1,542.37	1,542.37
CITY SERVICES			
Garbage Base Fee	132.00	132.00	132.00
Recycling Base Fee	45.00	45.00	45.00
GROSS CURRENT TAXES	2,591.08	2,591.08	2,591.08
Less: Northern & Rural Home Owner Grant		-770.00	-1,045.00
NET CURRENT TAXES (Jan 1, 2017 to Dec 31, 2017)	2,591.08	1,821.08	1,546.08
Tax Prepayments (Including Interest/Adjustments)	0.00	0.00	0.00
Unpaid Arrears Taxes (Including Interest to Jul 31, 2017)	3,349.60	3,349.60	3,349.60
Unpaid Delinquent Taxes (Including Interest to Jul 31, 2017)	3,224.94	3,224.94	3,224.94
TOTAL TAXES DUE BY JULY 31, 2017	9,165.62	8,395.62	8,120.62

You are not currently enrolled in the Pre-authorized Payments Plan. If you were to enroll your estimated monthly payment amount for next year's taxes would be \$260.00. Please contact the Tax Department to enroll.

STATEMENT OF OUTSTANDING TAXES

STATEMENT DATE: Aug 09, 2017

Incorrect tax details stated: 2014 taxes had been paid; 2015 taxes were delinquent and 2016 taxes were in arrears.

Delinquent Taxes (2014)	3,122.07
Interest on Delinquent Taxes	117.99 (Interest To Aug 31, 2017)
SubTotal	3,240.06
Arrears Taxes (2015)	3,242.75
Interest on Arrears Taxes	122.55 (Interest To Aug 31, 2017)
SubTotal	3,365.30
Current Taxes	2,591.08
Penalty on Current Taxes	259.11
Total	9,455.55

Properties with outstanding Delinquent Balances will be sold at Tax Sale on the last Monday of September.
 NOTE: If you are eligible for a Home Owner Grant and have not yet claimed it, please fill out the form and bring it into City Hall or mail it. You can also claim it online at www.penticton.ca - I want to - Claim my Home Owner Grant.
 If the Current Taxes owing remain unpaid at December 31 of this year, interest at prescribed rates will begin to accrue.

If you have any questions regarding this notice, please contact the Tax Department at 250-490-2485 or email at taxclk@penticton.ca.

Notice does not specifically identify Ms. Wilson's home as at risk of tax sale.

STATEMENT OF OUTSTANDING TAXES

Total	
Outstanding	\$9,455.55
Amount Paid	

FOLIO:
 PID:
 CIVIC:
 OWNERS:
 Make Cheque Payable to:
 The City of Penticton
 171 Main St
 Penticton, BC V2A 5A9



City of Penticton
 171 Main St. | Penticton B.C. | V2A 5A9
 www.penticton.ca | ask@penticton.ca

TAX SALE NOTICE

STATEMENT DATE: Aug 24, 2017

9

Delinquent Taxes (2015)	3,122.07
Interest on Delinquent Taxes	130.18 (Interest To Sep 25, 2017)
SubTotal	3,252.25
Arrears Taxes (2016)	3,242.75
Interest on Arrears Taxes	135.21 (Interest To Sep 25, 2017)
SubTotal	3,377.96
Current Taxes	2,591.08
Penalty on Current Taxes	259.11
TOTAL	9,480.40

This reference to section 405 of the Local Government Act is incorrect.

This reference to section 403 of the Local Government Act is incorrect.

Please accept this letter as official notice of intent to offer for sale at TAX SALE on Monday September 25, 2017 at 10:00 a.m., the above-mentioned property pursuant to Section 254 of the Community Charter and in accordance with Section 403 of the Local Government Act.

The minimum amount required to prevent this property from being sold is the sub-total of delinquent taxes and delinquent interest and payment must be in the form of cash, money order or certified cheque. Should the delinquent portion and the interest thereon remain unpaid as of SEPTEMBER 7, 2017, the property in question will be advertised in local newspapers for sale as per Section 405(1) and (2) of the Local Government Act. Even after the property has been advertised for tax sale in the local newspapers, payment after September 7, 2017 can still be paid to the Collector at City Hall in the form of CASH, MONEY ORDER OR CERTIFIED CHEQUE ON OR BEFORE 4:30 P.M. SEPTEMBER 22, 2017. If making a payment electronically or by a direct deposit, please advise the Revenue Supervisor by 9 AM Monday September 18, 2017 by telephone (250-490-2485), fax (250-490-2422), email (taxclk@penticton.ca) or in person at 171 Main Street, Penticton, B.C. Should any further information be required, please contact the Tax Department at City Hall at (250) 490-2485.

Yours truly,
 Property Tax Department

NOTICE OF TAX SALE

Certified payment only to be made payable to:

The City of Penticton
 171 Main St.
 Penticton BC V2A 5A9

STATEMENT DATE: Aug 24, 2017

DETACH THIS PORTION AND RETURN WITH YOUR PAYMENT

Total Outstanding \$9,480.40

AMOUNT PAID

The due date for final payment of outstanding delinquent taxes included here is incorrect. Should state September 25 instead of September 22.



City of Penticton
 171 Main St. | Penticton B.C. | V2A 5A9
 www.penticton.ca | ask@penticton.ca

TAX SALE NOTICE

STATEMENT DATE: Sep 06, 2017

9

This reference to section 403 of the *Local Government Act* is **incorrect**.

This reference to section 405 of the *Local Government Act* is **incorrect**.

Delinquent Taxes (2015)	3,122.07
Interest on Delinquent Taxes	130.18 (Interest To Sep 25, 2017)
SubTotal	3,252.25
Arrears Taxes (2016)	3,242.75
Interest on Arrears Taxes	135.21 (Interest To Sep 25, 2017)
SubTotal	3,377.96
Current Taxes	2,591.08
Penalty on Current Taxes	259.11
TOTAL	9,480.40

We currently show that you have an interest in this property, and as a result, this letter is official notice of intent to offer for sale at TAX SALE on September 25, 2017 at 10:00 a.m., the above-mentioned property pursuant to Section 254 of the Community Charter and in accordance with **Section 403 of the Local Government Act.**

The minimum amount required to prevent this property from being sold is the sub-total of delinquent taxes and delinquent interest and payment must be in the form of cash, money order or certified cheque. Should the delinquent portion and the interest thereon remain unpaid as of SEPTEMBER 7, 2017, the property in question will be advertised in local newspapers for sale as per **Section 405(1) and (2) of the Local Government Act.** Even after the property has been advertised for tax sale in the local newspapers, payment after September 7, 2017 can still be paid to the Collector at City Hall in the form of CASH, MONEY ORDER OR CERTIFIED CHEQUE ON OR BEFORE 4:30 P.M. **SEPTEMBER 22, 2017.**

If making a payment electronically or by a direct deposit, please advise the Revenue Supervisor by 9AM Monday September 18, 2017 by telephone (250-490-2485), fax (250-490-2422), email taxclk@penticton.ca or in person at 171 Main Street, Penticton, B.C. Should any further information be required, please contact the Tax Department at City Hall at (250) 490-2485.

Yours truly,
 Property Tax Department

NOTICE OF TAX SALE

Certified payment only to be made payable to:

The City of Penticton
 171 Main St.
 Penticton BC V2a 5A9

STATEMENT DATE: Sep 6, 2017

DETACH THIS PORTION AND RETURN WITH YOUR PAYMENT

Total Outstanding \$9,480.40

AMOUNT PAID

The due date for final payment of outstanding delinquent taxes included here is **incorrect**. Should state September 25 instead of September 22.



171 Main Street
 Penticton, B.C. V2A 5A9
 Phone: 250-490-2485 ~ Fax: 250-490-2422
 Email: taxclk@penticton.ca

TAX SALE REDEMPTION NOTICE

Reference to section 414 of the *Local Government Act* as authority for the sale is **incorrect**.

Dear Sir/Madam:

Pursuant to section 414 of the *Local Government Act* the below described property in which you have a registered interest was sold by public auction. The period to redeem this property will expire at 10:00 a.m. on the "Redeemable until Date" noted below. If this property is not redeemed within this period, title to this property will be transferred to the tax sale purchaser.

It is to your advantage to redeem this property as early as possible since interest charges are based on the selling price from the date of sale on a per diem basis until the date payment is received by the City of Penticton. The interest rate is prescribed under Section 11(3) of the Taxation (Rural Area) Act.

Please contact the City of Penticton upon receipt of this letter at (250) 490-2485 to determine the amount required for redemption.

Upset Price:	10,083.26
Sold on Date:	Sep 25, 2017
Sold for Price:	150,000.00
Redeemable until Date:	Sep 25, 2018

Letter does not state redemption amount, actual or estimated.

Dated Sep 26, 2017

 City of Penticton

Sent registered mail Sept 26/17

Comment Details

Record # 1 Comment Type LAND

Folio

Comment Category TAX SALE - SOLD

Start Date Oct 30, 2017 Display at Till

Stop Date Print on Tax Cert

Com

Called and spoke with , said she did not have time to talk, I told her I was calling to make sure she received the correspondence we sent from the tax department regarding the sale of her property, she said she received it and that she was going to deal with it. I told her that the reason for my call was to make sure that she understood the documents, she said she did however did not want to discuss it. I reminded her that if she did not deal with the outstanding taxes before the 24th (last Monday) of September 2018 that the house would transfer.

Stated date of September 24 was incorrect; redemption date was September 25.

2018 TAX NOTICE

DUE DATE: Tuesday, July 31, 2018

Notice does not inform Ms. Wilson of consequences of failure to redeem the property. Size of font used for this message does not reflect the seriousness of the situation.

SOLD FOR TAXES - This property was sold for taxes on September 25, 2017 and the redemption period ends on September 25, 2018. Redemption should be effected before payment of the current taxes is made.

				LEGAL DESCRIPTION			
				TOTAL NET ASSESSED VALUES FOR TAXATION PURPOSES			
				CLASS	GENERAL	SCHOOL	HOSPITAL
				1 - Res	420,000	420,000	420,000
TAX SALE				COLUMN A	COLUMN B	COLUMN C	
FOLIO NUMBER		ACCESS		NO GRANT	BASIC GRANT	ADDITIONAL GRANT	
PROPERTY ADDRESS							
PID							

TAXES COLLECTED FOR THE PROVINCE OF B.C.			
School	706.94	706.94	706.94
TAXES COLLECTED FOR OTHER AGENCIES			
Regional District Levies (Includes 9-1-1, Mosquito Control and S.I.R.)	87.72	87.72	87.72
Regional Hospital	119.70	119.70	119.70
BC Assessment	16.93	16.93	16.93
CITY OF PENTICTON TAXES			
General Municipal (includes MFA)	1,648.79	1,648.79	1,648.79
Storm Water Credit	-10.00	-10.00	-10.00
CITY SERVICES			
Garbage Base Fee	140.00	140.00	140.00
Recycling Base Fee	31.00	31.00	31.00
Storm Water - Single Family Dwelling	10.00	10.00	10.00
GROSS CURRENT TAXES	2,751.08	2,751.08	2,751.08
Less: Northern & Rural Home Owner Grant		-770.00	-1,045.00
NET CURRENT TAXES (Jan 1, 2018 to Dec 31, 2018)	2,751.08	1,981.08	1,706.08
Tax Prepayments (Including Interest/Adjustments)	0.00	0.00	0.00
TOTAL TAXES DUE BY JULY 31, 2018	2,751.08	1,981.08	1,706.08

You are not currently enrolled in the Pre-authorized Payments Plan. If you were to enroll your estimated monthly payment amount for next year's taxes would be \$276.00. Please contact the Tax Department to enroll.



City of Penticton
171 Main St. | Penticton B.C. | V2A 5A9
www.penticton.ca | taxclk@penticton.ca

September 28, 2018

This letter was sent to Ms. Wilson at her old address after title to the property had transferred to the new owner.

The notice **incorrectly** cites section 403 of the *Local Government Act* as the legal authority under which the City had sold Ms. Wilson's property.

Re: Non-redemption of property.

In accordance with **section 403 of the Local Government Act**, the above property was sold in our 2017 Property Tax Sale.

The redemption period of one year expired September 25, 2018.

Accordingly the property has now been registered with the Land Title and Survey Authority in the name of the purchaser.

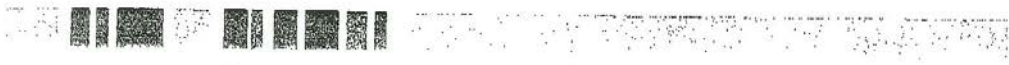
As the previous owner, you are entitled to receive the surplus that resulted from the sale of the property. The amount is \$139,916.74. In order to receive the funds you MUST provide a written request to the City of Penticton within 90 days of the date on this letter.

Should you have any questions, please call 250-490-2485 or email taxclk@penticton.ca.

Yours truly,

City of Penticton

- The notice does not identify the legal basis for the 90 day payout deadline.
- The 90-day deadline is incorrect as Ms. Wilson had 9 months to claim the money from the City, after which she could make a claim to the Unclaimed Property Office.
- The notice does not explain the consequences of failing to meet the deadline for claiming the surplus.
- The notice does not contain an accounting of how the City had determined the amount of the surplus.



Appendix B: Findings and Recommendations

Findings

1	The inadequate, inaccurate and inconsistent descriptions of the tax sale process in the City of Penticton’s correspondence with Ms. Wilson made the process unfair.
2	The City of Penticton’s failure to take any meaningful steps during the one-year redemption period to inquire as to whether Ms. Wilson might be an adult in need of protection or assistance, or to notify the appropriate authorities that she might require such protection or assistance, was unreasonable.
3	The statutory scheme in the <i>Local Government Act</i> and the <i>Community Charter</i> that authorizes the use of tax sales to collect delinquent property taxes is unjust.
4	There is no consistent set of guidelines for municipalities to follow in conducting a tax sale and, as a result, the interests of vulnerable individuals are not adequately considered. Given the significant consequences of a tax sale for property owners, the lack of such guidelines is unreasonable.

Recommendations

<p>1</p>	<p>By September 30, 2021, the City of Penticton compensate Ms. Wilson in the amount of \$140,922.88, being 50 per cent of the difference between the assessed value of the property as of July 1, 2017, of \$420,000, and the surplus of \$138,154.24 that she already received.</p>
<p>2</p>	<p>By June 30, 2022, the Ministry of Municipal Affairs develop, as part of a best practices guide, plain language template letters for use by municipalities that include all applicable timelines, reference the statutory authority for the step being taken, and explain in plain language each action the municipality intends to take or has taken. At a minimum, the ministry develop template letters to:</p> <ul style="list-style-type: none"> (a) advise the property owner of the steps they must take to prevent the sale of their property at auction (b) advise the property owner of the steps they must take during the redemption period to prevent the transfer of their property to the tax sale purchaser (c) advise the property owner, in cases where the property is not redeemed, about the calculation and payment of surplus funds
<p>3</p>	<p>By June 30, 2022, the Ministry of Municipal Affairs issue best practice guidelines for municipalities to notify a property owner by personal service or registered mail before holding a tax sale in relation to their property.</p> <p>This recommendation is to serve as an interim measure until the amendments in Recommendation 4 come into force.</p>
<p>4</p>	<p>By October 31, 2022, the Minister of Municipal Affairs reconsider the <i>Local Government Act</i> by introducing amendments to require a municipality to provide notice of the pending tax sale to the owner of a property subject to a tax sale by a set time frame prior to the sale, and to provide notice by personal service or registered mail.</p>

5	By October 31, 2022, the Ministry of Municipal Affairs complete, and provide to our office, a report examining whether the <i>Local Government Act</i> should be amended to establish an upset price that better reflects the assessed value of a property subject to a tax sale. In completing the review, the ministry should obtain data about the sale prices and assessed values of properties sold at tax sales in BC, and in provinces that require a minimum bid based on fair market value or similar measure.
6	By October 31, 2022, the Ministry of Municipal Affairs, in consultation with the Office of the Public Guardian and Trustee, issue best practice guidelines about how municipalities may protect vulnerable property owners within the tax sale scheme, including inquiring about whether a property owner's failure to pay their property taxes is due to some aspect of vulnerability or disability and, if so, notifying a person or authority that can assist that individual.

Appendix C: Response from the City of Pentiction

We carefully considered the City's letter and attachment in finalizing this report. We have not published the attachment here, because it contained personal details about Ms. Wilson that we did not want to disclose publicly, and the letter sufficiently set out the City's response to our report.



City of Pentiction
171 Main St. | Pentiction B.C. | V2A 5A9
www.pentiction.ca | ask@pentiction.ca

September 9, 2021

Jay Chalke, Ombudsperson
Province of British Columbia
PO Box 9039 STN PROV GOVT
Victoria, BC V8W 9A5

Dear Mr. Chalke:

RE: File 19-171206

We have received the final report regarding the investigation your office has undertaken into the complaint about the City of Pentiction's 2017 tax sale, and the sale and resulting transfer of [REDACTED]'s property to the tax sale purchaser.

At the outset I would like to state that the City fully appreciates the seriousness of the situation, and the impact the loss of her home through the tax sale process has had on [REDACTED]. This is a most unfortunate situation but from the City's perspective it is important to bear in mind that City staff had no information to suggest that [REDACTED] was a vulnerable person in need of support or assistance until after the conclusion of the tax sale process. The City is fully supportive of your recommendations that the Province consider amendments to the tax sale legislation, and that the Province consult with the Office of the Public Trustee concerning best practices guidelines for protection of vulnerable property owners.

As a result of your investigation, the City has spent significant time and resources reviewing its internal processes, and responding to your office's requests for information. The City recognizes that some improvements could be made to its property tax notices, and the City has already implemented those changes. However, for the reasons outlined in the attachment to this letter:

1. With respect to your finding that the tax sale process was unfair as a result of deficiencies in the City's notices to and other correspondence with [REDACTED], the City maintains that it fulfilled its legal obligations under the *Local Government Act*, and conducted the tax sale and provided notice to [REDACTED] in accordance with the requirements of the legislation, and that any minor errors or deficiencies in the City's notices and correspondence to [REDACTED] did not affect the fairness of the process.
2. The City does not accept the report's conclusion that in the circumstances the City ought to have inquired as to whether [REDACTED] might be an adult in need of protection or assistance. The City would welcome the development of best practice guidelines to assist municipal staff



in recognizing situations where contacting the health authority or Public Trustee may be warranted.

3. The City does not accept your recommendation that compensation be paid to [REDACTED].

The attachment to this letter contains a more detailed response to the recommendations in the report.

We appreciate the opportunity to provide comments and clarifications on the matter.

Sincerely,



Donny van Dyk

Chief Administrative Officer

cc: Kaye Krishna, Deputy Minister
Tara Faganello, Assistant Deputy Minister

Att.

Appendix D: Response from the Ministry of Municipal Affairs



October 6, 2021

Ref: 268352

Jay Chalke, Ombudsperson
 Province of British Columbia
 PO Box 9039 Stn Prov Govt
 Victoria BC V8W 9A5

Dear Mr. Chalke:

Thank you for the letter of September 28, 2021, and the letters of July 30, 2021 and August 5, 2021 from your office, regarding a final draft report of your office's findings and recommendations arising from a complaint regarding a tax sale in the City of Penticton. The loss of property in Penticton was very unfortunate and we look forward to working with municipalities and others to make improvements to the tax sale system.

I appreciate the work of your office in investigating and developing this report to bring the issue to the City's and the Ministry of Municipal Affairs' attention. I also very much appreciate the opportunity to review and respond to the draft recommendations. As a result of our work together, the ministry has a clearer understanding of the tax sale process and how it can be improved in relation to potential impacts specific to vulnerable persons.

Research by ministry staff indicates that very few homeowners in British Columbia lose their primary residence to tax sale. Relatively few properties go to tax sale and of those that do, the vast majority are redeemed. While not possible to quantify (given the challenges of finding consistent measures to determine vulnerability), the number of owners who lose their home due to diminished capacity would be much smaller still.

Our research indicates that the tax sale system in British Columbia is relatively protective of property owners when compared with other provinces. B.C. has a comparatively generous redemption period. The location of property that may go to tax sale is not centrally published, providing some measure of privacy protection for property owners. Also, it is clear that municipal staff work hard within their jurisdiction and capacity to prevent properties going to tax sale and being lost to the owner. For example, recent webinars on tax sales for municipal staff presented by the Government Finance Officers Association of BC (GFOABC) have included representatives of the Public Guardian and Trustee (PGT), speaking to their role and the processes for connecting with them if there is reason for concerns about a taxpayer's capacity.

.../2

Ministry of Municipal Affairs

Office of the
 Deputy Minister

Mailing Address:
 PO Box 9490 Stn Prov Govt
 Victoria BC V8W 9N7
 Phone: 250 387-9108
 Fax: 250 387-7973

Location:
 6th Floor, 800 Johnson Street
 Victoria BC V8W 9N7
<http://www.gov.bc.ca/muni>

Jay Chalke, Ombudsperson

Page 2

The tax sale system is integrated, balancing the interests of all parties involved including property owners, municipalities, municipal taxpayers and potential bidders. Changes to the system to provide greater protection to one of those interests must consider impacts on all of those interests and make every effort not to undermine the essential purpose or fundamental elements of the system. The essential goal of tax sales is for municipalities to recover the tax revenue which is vital for the provision of core services. Without tax revenues, services such as sewer, water, local roads and recreation cannot be provided for all community members.

As such, the goal of our responses is to develop approaches and solutions that are appropriate, targeted, practical and effective. We wish to address the nature of the problem of potential tax sale impacts on vulnerable persons with best practices guidance and potential legislative change. We will support what municipalities across B.C. are already doing to minimize tax sales and enhance those practices.

Ministry staff will consult with their municipal counterparts, including municipal tax collectors through the GFOABC and others, including the PGT, to ensure the greatest likelihood of success of actions taken in response to the report. Such consultations will help determine the specific shape those actions ultimately take. Additionally, the province has a statutory obligation to consult with local governments through the Union of BC Municipalities (UBCM) before government introduces changes to local government legislation. The ministry cannot determine the timing or content of government's legislative agenda.

The ministry takes the issues and recommendations raised in your report seriously. The responses to the draft recommendations addressed to the ministry follow.

Recommendation 2: By June 30, 2022, the Ministry of Municipal Affairs develop, as part of a best practices guide, plain language template letters for use by municipalities that include all applicable timelines, reference the statutory authority for the step being taken, and explain in plain language each action the municipality intends to take or has taken. At a minimum, the ministry develop template letters to:

- (a) advise the property owner of the steps they must take to prevent the sale of their property at auction**
- (b) advise the property owner of the steps they must take during the redemption period to prevent the transfer of their property to the tax sale purchaser**
- (c) advise the property owner, in cases where the property is not redeemed, about the calculation and payment of surplus funds**

Response: Accept in concept, with details to be determined following above-noted consultations. For example, to minimize the additional administrative burden for municipalities, ministry staff could develop templates for wording of notices already required (property tax notice, statement of outstanding taxes and notice of tax sale) to include the recommended information, rather than additional letters.

.../3

Jay Chalke, Ombudsperson

Page 3

Recommendation 3: By June 30, 2022, the Ministry of Municipal Affairs issue best practice guidelines for municipalities to notify a property owner by personal service or registered mail before holding a tax sale in relation to their property.

This recommendation is to serve as an interim measure until the amendments in Recommendation 4 come into force.

Response: Accept in concept, with details to be determined following above-noted consultations. For example, ministry staff could develop a best practice guideline that illustrates and recommends a notice to be sent prior to the tax sale, probably at the same time the tax sale notice is published publicly under section 647 of the *Local Government Act*.

Recommendation 4: By October 31, 2022, the Minister of Municipal Affairs reconsider the *Local Government Act* by introducing amendments to require a municipality to provide notice of the pending tax sale to the owner of a property subject to a tax sale by a set time frame prior to the sale, and to provide notice by personal service or registered mail.

Response: Accept in concept, with details to be determined following above-noted consultations on the best practice guideline. Ministry staff will examine this recommendation from a policy perspective and develop a legislative approach. As noted, this will additionally require consultation with UBCM as statutorily mandated.

Recommendation 5: By October 31, 2022, the Ministry of Municipal Affairs complete, and provide to our office, a report examining whether the *Local Government Act* should be amended to establish an upset price that better reflects the assessed value of a property subject to a tax sale. In completing the review, the ministry should obtain data about the sale prices and assessed values of properties sold at tax sales in B.C., and in provinces that require a minimum bid based on fair market value or similar measure.

Response: Accept the concept of preparing a report. The scope of that report, and the availability and relevance of any data for such a report especially from other jurisdictions, would need to be determined after initial scoping work.

A change to the upset price would be a fundamental change to the tax sale system, as it is integral to the core feature of an auction-based mechanism for determining tax sale price. As such, the upset price component cannot be examined in isolation from other components of the tax sale system nor from the essential goal of tax sales noted earlier. It would be important to understand the impacts on all parties with interests in the tax sale system, as well as the similarities and differences between the B.C. tax sale system as a whole and any other system to which it is compared. As noted above, the ministry does not determine the timing or content of government's legislative agenda.

.../4

Jay Chalke, Ombudsperson

Page 4

Recommendation 6: By June 30, 2022, the Ministry of Municipal Affairs, in consultation with the Office of the Public Guardian and Trustee (PGT), issue best practice guidelines about how municipalities may protect vulnerable property owners within the tax sale scheme, including inquiring about whether a property owner's failure to pay their property taxes is due to some aspect of vulnerability or disability and if so, notifying a person or authority that can assist that individual.

Response: Accept in concept, with details to be determined following above-noted consultations. Ministry staff will need to determine the impact of other considerations such as privacy rules on the extent of outreach that a municipality may make. Staff will consult with the PGT and other parties, such as GFOABC and potentially the Office of Information and Privacy Commissioner, to determine how they may be involved and how information may best be provided. This may include other channels such as web pages, educational sessions, etc.

The ministry believes that the actions to be taken on the recommendations from the report will assist to further reduce the already rare occurrence of loss at tax sale of a primary residence owned by a vulnerable person. The ministry again thanks your office for bringing those recommendations to its attention.

Sincerely,



Okenge Yuma Morisho
Deputy Minister

pc: Their Worship Mayor John Vassilaki, City of Penticton
Donny van Dyk, Chief Administrative Officer, City of Penticton
Tara Faganello, Assistant Deputy Minister, Local Government Division



OMBUDSPERSON

B R I T I S H C O L U M B I A