Court of Queen's Bench of Alberta

Citation: Alberta Health Services v Shah, 2019 ABQB 360

Date:20190515
Docket: 1703 20117, 1703 13687
Registry: Edmonton

Docket: 1703 20117

Between:

Alberta Health Services

Applicant

- and -

Abdullah Shah, Sarah Fassman, Shairose Esmail, Tasneem Gohar, Jennifer Vuong, 1443028 Alberta Ltd., 1443024 Alberta Ltd., 1159877 Alberta Ltd., and 912715 Alberta Ltd.

Respondents

- and -

Attorney General of Alberta

Intervenor

Docket: 1703-13687

Between:

Alberta Health Services

Applicant

- and -

Jennifer Vuong and Abdullah Shah, also known as Carmen Pervez

Respondents

- and -

Attorney General of Alberta

Intervenor

Reasons for Decision
of the
Honourable Madam Justice M.D. Slawinsky

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INTRODUCTION

[1] Can Alberta public health authorities routinely inspect residential rental accommodations for the purposes of enforcing public health and safety standards, without prior legal authorization or the consent of owners or tenants? The short answer is yes, the discretionary legislation empowering them to do so is constitutionally valid. However, that discretion must be exercised reasonably.

[2] Housing standards related to the protection of the public health and safety in Alberta are governed by the *Public Health Act*, RSA 2000, c-P-37 (the Act), together with the Act's *Housing Regulation*, (AR 173/1999) and associated *Minimum Housing and Health Standards* (M.O. 57/2012).

[3] Responsibility for ensuring compliance with public health standards is currently vested with Alberta Health Services (AHS). AHS may inspect all residential housing to ensure compliance with the legislation, whether owner occupied or tenancy accommodation.

[4] Public places, defined in the Act to include all rental accommodations, may be routinely inspected at the discretion of AHS during reasonable hours, pursuant to s. 59 of the Act. In the case of

private dwellings, s. 60 of the Act provides that inspection can only occur with the consent of the owner, or a court order obtained on reasonable and probable grounds.

[5] AHS seeks an Order under s. 61 of the Act to require the alleged owners of residential accommodations, the Respondents in this application, to facilitate inspections of all residential rental accommodations that they own, manage or control. AHS also seeks an order compelling any tenants of those accommodations to cooperate with such inspections, relying on s. 17 of the *Minimum Housing and Health Standards* which requires tenants to allow access to rental accommodations for repairs. AHS takes the position that all rental accommodations are specifically included in the definition of "public places" in the Act, and that no consent or court order is required for AHS to enter and exercise its powers under s. 59 of the Act.

[6] The Respondents argue that AHS must have either the consent of an "owner," or a court order based on reasonable and probable grounds, to inspect residential rental accommodations because they meet the definition of "private places" in the Act. The Respondents take the position that the same rules applying to inspection of owner-occupied dwellings under s. 60 of the Act should also apply to tenant occupied accommodations. Many of the Respondents also allege that they are improperly included in these actions, because they deny that they are "owners" of the rental properties as contemplated by the Act. Section 61 of the Act only allows the court to make orders against "owners."

[7] The Respondents further argue that if the right of routine monitoring inspection without consent or court order does extend to residential rental accommodations, the legislation is unconstitutional because it authorizes unreasonable searches in breach of the privacy rights of the tenants contrary to s. 8 of the *Canadian Charter of Rights and Freedoms*. They seek a declaration of invalidity of the legislation as it relates to residential rental accommodations under s. 52(1) of the *Constitution Act*, 1982. The Respondents concede that they themselves have no privacy interests in the rental accommodations. They do not seek public interest standing with respect to their constitutional challenge, and have abandoned their s. 7 *Charter* application, relying solely on s. 8.

[8] No tenants have been named in these proceedings, nor have any been served with the applications or cross-applications.

[9] The Attorney General of Alberta (the Minister) defends the constitutionality of the legislation. The Attorney General of Canada, although served, has not intervened.

PRELIMINARY MATTERS

[10] In Action #1703-13687, Clackson J granted an interim order on July 21, 2017. That order permitted AHS to inspect a particular residential rental accommodation and included provisions for enforcement of the inspection. In Action #1703-20117, Belzil J granted an interim order on November 7, 2017. That order permitted AHS to inspect all residential rental accommodations owned or managed by any of the Respondents and included provisions for enforcement of the inspections.

[11] AHS seeks an order confirming the Belzil Order. The Respondents seek to quash both Orders. These two applications, each commenced by AHS by Originating Notice, were heard together.

[12] The evidence consisted of filed affidavits by an AHS Executive Officer in both actions, together with questioning transcripts, responses to undertakings and further exhibits. The Respondents filed no affidavit evidence in response to the applications and no questioning of them has occurred. The evidence of AHS is therefore the only evidence before me and is uncontradicted.

[13] Evidence in support of applications commenced by Originating Notice is governed by Rule 3.8(2) of the *Alberta Rules of Court*, which normally requires that the supporting affidavit must be confined to facts within the personal knowledge of the person swearing the affidavit and any other evidence that the person could give at trial.

[14] Despite potential evidentiary compliance issues, the Respondents abandoned their initial challenge under Rule 3.8(2) to the admissibility of portions of AHS's evidence. The Respondents instead took the position during argument that any issues regarding the evidence of AHS should go to weight. They also acknowledged that some evidence of AHS may constitute admissible business records.

[15] Generally speaking, I accept the evidence presented by AHS, except where I specifically indicate to the contrary, determine that it should be given little or no weight, or find that the evidence is otherwise unreliable.

ISSUES

[16] The issues to be determined in these applications are:

1. Are the Respondents "owners" within the definition of the Act and therefore subject to proceedings under s. 61?
2. Does the Act allow routine inspection of residential rental accommodations under s. 59?
3. If the Act allows routine inspection of residential rental accommodations under s. 59, do the Respondents have standing to challenge the constitutional validity of s. 59 of the Act by asserting the privacy rights of the tenants?
4. Is s. 59 of the Act inconsistent with s. 8 of the Charter as it applies to residential rental accommodations and therefore of no force and effect?
5. Did the "owners" of Property A in action #1703-13687, refuse to allow AHS to exercise its powers under s. 59 or 60, or hinder or interfere with AHS's exercise of those powers?
6. Did the "owners" of Property B in action #1703-20117, refuse to allow AHS to exercise its powers under s. 59 or 60, or hinder or interfere with AHS's exercise of those powers?
7. What relief against the Respondents is AHS entitled to in these applications?
8. Should any orders be made against non-party tenants?

ANALYSIS

1. Are the Respondents "owners" within the definition of the Act and therefore subject to proceedings under s. 61?

[17] Section 61 of the Act allows the court to order "owners" of both public and private places to do or refrain from doing anything the court considers necessary for AHS to carry out its inspection powers "where the owner of a public place or a private place refuses to allow an executive officer to exercise the executive officer's powers under section 59 or 60 or hinders or interferes with the executive officer in the exercise of those powers." The court may make orders on the *ex parte* application of AHS where proper to do so.

[18] An "owner" is defined in s. 1(ff) of the Act to mean "the registered owner, and any person in the actual or apparent possession or control of land or a premises." AHS takes the position that all of the Respondents are owners within the meaning of the Act. Some of the Respondents concede that they meet the definition of "owner", while others take the opposite position. It is not disputed that registered owners, and tenants in actual possession of the premises, are both "owners" under the definition.

[19] Recently, the Alberta Court of Appeal in ***Alberta Health Services v Wang***, 2018 ABCA 339 declined to determine the meaning of an "owner" of rental accommodations for the purposes of s. 61 of the Act. Leave to appeal to the Supreme Court of Canada was denied.

[20] It is also important to note that an "owner" is defined more restrictively in s. 1(c) of the Act's *Housing Regulation*, where owners are defined as "the registered owner and any agent of the owner in actual or apparent possession or control of land or premises." Section 3 of the *Housing Regulation* imposes on these owners the obligation to meet certain building requirements, and s. 4 specifically requires owners to comply with the *Minimum Housing and Health Standards* set from time to time by the public health minister. The legislative scheme is that requirements and obligations of owners under the *Housing Regulation* and the *Minimum Housing and Health Standards* are intended only to apply to those who own rental accommodations and their agents, because the *Housing Regulation* applies only to accommodations that are not owner-occupied. This is not in dispute.

a. Background in Action #1703-13687

[21] AHS alleges in this action that in July, 2017 it was unable to inspect a specific residential rental property located at 10856 – 93 Street, Edmonton (Property A). AHS names Jennifer Vuong (Vuong) and Abdullah Shah, aka Carmen Pervez (Shah) as Respondents in the action. Shah concedes that Abdullah Shah and Carmen Pervez are the same person.

[22] Property A has a history of AHS involvement from 2015, when the basement suite was found to be unfit for human occupation. At the time, Shah was listed in AHS records as the manager of the property, and his name remained in the records in 2017. However, AHS acknowledges that their electronic information system is not always current or updated in a timely fashion.

[23] As a result of new complaints received by AHS, AHS attempted to inspect Property A on July 4, 2017. Property A is a three-level residence which consists of separate suites on each level. AHS was granted access to the main level suite by the tenant. This tenant advised AHS that there were occupants in both the second floor and basement suites, and that "Carmen" was the landlord. AHS was unsuccessful in obtaining access to the basement suite or the second-floor suite, although the AHS officer did speak to someone exiting the basement suite who told AHS to return another time.

[24] That same day, AHS arranged with Vuong, the registered owner of Property A, to inspect the property on July 6, 2017. AHS attended on July 6 with two police officers to meet Vuong, who said that she did not have any keys to the property to facilitate the inspection. While AHS was present, Shah arrived and told the AHS officer that counsel for Vuong had sent an email to AHS counsel regarding the inspection request. From this I infer that Shah had knowledge of the inspection and the communications between Vuong and AHS, and some level of involvement or interest in the inspection.

[25] AHS returned on July 10, 2017 to inspect the property, again attending with police officers. On that date, Vuong, Shah and counsel for Vuong were present. The second-floor tenant refused to allow access to the upper suite. Shah stated that the main floor suite and the basement suite were vacant and that they did not need inspection. AHS was refused access to the vacant suites. Shah also accurately provided the names of two tenants in the upstairs suite.

b. Jennifer Vuong as "owner" of Property A in Action #1703-13687

[26] There is no issue that Vuong is an "owner" of Property A, because she is the registered owner.

c. Abdullah Shah as "owner" of Property A in Action #1703-13687

[27] AHS submits that Shah is a "person in the actual or apparent possession or control of land or a premises" within the meaning of the Act. AHS records list Shah as a property manager for Property A in both 2015 and 2017. Someone named "Carmen" was identified to AHS as the landlord of Property A by the main floor tenant on July 4, 2017. While this statement cannot be admitted for its truth, I accept that it was in fact made. I infer that "Carmen" refers to Shah. There is no other reasonable inference to be drawn based on the evidence before me.

[28] Additionally, Shah was present on both July 6 and 10, 2017 during AHS attempts to inspect the property. Shah knew two of the names of the second-floor tenants. Shah was aware on July 6 that counsel for Vuong had sent correspondence to AHS regarding inspection of Property A, and made a point of attending the inspection at the scheduled time to convey that information. Shah advised AHS on July 10 which suites were vacant, and took the position that no inspection of them was necessary.

[29] Vuong and Shah argue that Shah is not an "owner" under the Act with respect to Property A. They rely on an email sent by Vuong to AHS a year earlier in 2016 with respect to different property owned by her, located at 11019-95 St., Edmonton (Ex. D-1to Questioning of Meaghan Allen Oct. 25, 2017 in Action #1703-20117). In that email, Vuong advised AHS that she manages her own properties. She stated that Home Placement Systems (a trade name for a number of the Respondent corporations in Action #1703-20117) and Sarah Fassman (Fassman - a Respondent in Action #1703-20117) have never had anything to do with her properties. The email further stated that she hires Home Placement Systems to do renovations but not to provide management services. Vuong gave no evidence in these proceedings.

[30] Vuong and Shah also argue that Vuong has challenges understanding the English language and requires third party assistance for that purpose only to deal with AHS. Neither Shah nor Vuong filed any evidence on this or any other point, but AHS does acknowledge some language barrier exists.

[31] I give no weight to the records of AHS from 2015 for Property A, which are irrelevant to the issue of Shah's status in July, 2017. I also give no weight to the AHS records in 2017 with respect to Shah's status relating to this property. Based on the evidence of AHS regarding its records system updates, I am not satisfied that the information was current.

[32] I give little weight to Vuong's email to AHS, and to various other emails in 2016 from other Respondents to AHS purporting to define the involvement of Shah and other Respondents with Vuong's properties. Vuong's email was sent a year earlier than the inspection request at issue, and related to a completely different property. It has little relevance to the issue of determination of Shah's status in July, 2017 with respect to Property A. This and other emails authored by various Respondents are hearsay, unsworn and not tested by cross-examination. It was open to Vuong and Shah to provide current evidence regarding Shah's status, but they chose not to do so.

[33] On the evidence that I do accept, I am satisfied that Shah was a person who was in apparent possession or control of Property A. The definition does not require that such a person be in exclusive control or possession, and in fact such interpretation would not be possible in the case of occupied rental accommodation where the registered owner and the tenants would also each have some degree of control or possession. The evidence supports a finding that Shah had a degree of control over Property A, and that his involvement was more than that of an interpreter or hired renovator.

[34] In summary, I find that both Vuong and Shah were "owners" of Property A in July, 2017 within the meaning of the Act when AHS attempted to conduct inspections of the property.

d. Background in Action #1703-20117

[35] On July 21, 2017, AHS attempted to inspect property located at 95A Street, Edmonton (Property B), following receipt of two anonymous service requests.

[36] AHS names Shah, Vuong, Fassman, Shairose Esmail (Esmail), Tasneem Gohar (Gohar), 1443028 Alberta Ltd. (3028 Corp), 1443024 Alberta Ltd. (3024 Corp), 1159877 Alberta Ltd. (9877 Corp) and 912715 Alberta Ltd. (2715 Corp) as Respondents in this action. AHS seeks relief with respect to any and all rental properties owned or managed by any of these Respondents, and any other residential rental property that AHS believes on reasonable grounds to be owned, operated or managed by any of the Respondents.

[37] I infer from the evidence that this blanket approach was taken by AHS because of the issues already raised in Action #1703-13687, the attempts to inspect Property B, and AHS's past interactions with some or all of the Respondents.

i. Property triggering the action - 11217-95A Street (Property B)

[38] 3028 Corp., operating as Home Placement Systems, is the registered owner of Property B, which is a five-suite residential rental accommodation with common areas. On July 21, 2017, AHS attended at Property B with police officers to conduct an inspection. AHS was able to inspect the common areas. Suite #1 on the main floor was also inspected after entry was granted by the tenant.

[39] Suite #2 on the second floor was padlocked, no one answered the door, and AHS did not attempt to gain entry. The tenant in Suite #3 on the second floor said that the timing was inconvenient and did not allow AHS to enter or inspect this suite. There was no answer at the door of Suite #4 on the main floor and AHS did not enter or inspect this suite. Suite #5 in the basement appeared to be vacant and some inspection of it was conducted by AHS.

[40] AHS contacted Home Placement Systems on August 1, 2017, telling them of the July 21 inspection and requesting that a follow up inspection be scheduled. Shah arranged for the inspection to occur on August 3, 2017. Shah advised that he needed to give 24 hours' notice to the tenants of the intended inspections. AHS attended on August 3, 2017 with police. Fassman, Esmail and various tenants were present, and Shah arrived shortly thereafter. Esmail advised AHS that it could enter Property B to conduct inspections, but that the police would be required to remain in the common areas. Upon his arrival, Shah then asked the officers to leave the common areas, which they did.

[41] The tenant in Suite #1 refused to allow AHS entry, stating that a court order was required. The tenants in Suite #2 and Suite #3 also both refused to allow AHS to enter their suites. The tenant in Suite #4 refused entry, stating that a warrant was needed. Suite #5 was now occupied, but the tenant was not home. Fassman and Esmail advised that they did not have a key to the suite in order to allow AHS to enter and inspect.

[42] On September 28, 2017, AHS requested from Home Placement Systems an inspection of Property B. Shah responded, advising that the tenants did not consent to entry to the property by AHS. During subsequent e-mails, Shah referred to himself personally as the property owner and outlined what he was not willing or able to do with respect to facilitating an inspection of Property B. (Ex. J to Affidavit of Meaghen Allen sworn October 5, 2017).

ii. Summary of Other Specific Properties identified by AHS

[43] In addition to the properties already identified in these Reasons, AHS alleges that some or all of the Respondents own, manage or operate the following certain specific properties (all located within the city of Edmonton):

Property Identifier	**Property Address**	**Registered Owner as at August 23, 2017 as per Certificate of Title**	**Registered owner since**
A (subject of first application)	10856-93 St. (3 suites)	Vuong	2015
B (subject of the second inspection)	11217-95A St. (5 suites)	3028 Corp	2013
C	11019-95 St.	Vuong	2015
D	11843-79 St.	Vuong	2015
E	11444-90 St.	Vuong	2016
F	10019-153 St.	Vuong	2015
G	11213-93 St.	1478876 Alberta Ltd.	N/A – not a party
H	11240-86 St.	3028 Corp	2014
I	10648-95 St.	3028 Corp	2012
J	11443-101 St.	3028 Corp	2014
K	12008-58 St.	3028 Corp	2011
L	10727-93 St.	3028 Corp	2011
M	10741-93 St.	3028 Corp	2014
N	11238-86 St.	3028 Corp	2014
O	12040-65 St.	3028 Corp	2012
P	11721-94 St.	3028 Corp	2011
Q	11234-86 St.	3028 Corp	2014
R	9319-111 Ave.	3028 Corp and Ralf Hoffman – 50% each	2013 – commercial building
S	9343-106A Ave.	Robbie & Kellie Puluso	N/A – not a party

iii. Evidence relating to other specific properties

[44] Vuong is the registered owner of Property C. AHS alleged (in Exhibit D-2 to the Questioning on Affidavit of Meaghen Allen sworn October 25, 2017) that tenants of this property told AHS that Fassman and other representatives of Home Placement Systems are their primary contact. While this is hearsay, AHS further stated that Fassman and others have attended inspections of Property C with AHS in place of Vuong, and I note that Fassman has responded to AHS on Property C from the Home Placement Systems email box.

[45] Vuong takes the position that she alone manages her properties, relying on the 2016 email sent by her to AHS and other correspondence sent by various Respondents and counsel. Again, this information is hearsay, unsworn, and untested by cross-examination. There is no evidence relating to management of this property in 2017 when the application was commenced.

[46] Vuong is also the registered owner of Property F. AHS provides evidence that in response to inquiries about the owner, the tenant of this property gave Fassman's name and number to AHS.

e. "Owners" of Property B in Action #1703-20117

[47] As the registered owner, 3028 Corp is an "owner" of Property B. I am also satisfied on the evidence before me that Shah, Fassman and Esmail are all persons who were in apparent possession or control of Property B at various times during the inspection attempts. It is clear that they all had decision-making involvement that would exceed that of a simple bystander, witness or support person. I find that they are also "owners" of Property B.

f. Jennifer Vuong as "owner" generally in Action #1703-20117

[48] As the registered owner of Properties A, C, D, E and F, Vuong concedes that she is an "owner" under the Act. This is not in dispute and I therefore find that she is an owner of those properties for purposes of considering relief under the Act. The evidence discloses that Vuong was also at one time a director of 3028 Corp, but that such directorship ended by October 20, 2016. This predates the events giving rise to these applications. There is no evidence that Vuong was involved with any of the other listed properties, and I therefore find that she is not an "owner" of any listed properties other than the ones for which she is the registered owner.

g. 3024 Corp and 2715 Corp as "owners" generally in Action #1703-20117

[49] Shah was the sole Director and Shareholder of both 3024 Corp. and 2715 Corp. Both corporations operated with the registered trade name of "Home Placement Systems." It was not entirely clear to me on what basis AHS initially included them in this action. Both corporations were struck from Corporate Registry for failure to file annual returns - 2715 Corp in 2012 and 3024 Corp on June 2, 2017. Neither corporation appears to be an owner of any of the listed properties and they were not formally represented in these applications.

[50] Counsel confirmed that neither corporation was formally served with notice of the action, but I am satisfied that these corporations were fully aware of the proceedings throughout because their sole shareholder and director Shah was served. To the extent it is necessary for them to have notice, I deem service on these two corporations good and sufficient.

[51] I find that neither corporation is an "owner" of any of the listed properties.

h. 3028 Corp, 9877 Corp and Home Placement Systems as "owners" generally in Action #1703-20117

[52] 3028 Corp owns 100% of the shares of 9877 Corp. Both corporations operate with the registered trade name "Home Placement Systems." Gohar is the sole director of both corporations and the sole shareholder of 3028 Corp. While not in evidence, counsel for the Respondents advised that Gohar is the wife of Shah.

[53] As the registered owner of properties B, and H through R, 3028 Corp concedes that it is an "owner" under the Act. This is not in dispute and I therefore find that it is an owner of those properties for purposes of considering relief under the Act.

[54] There is no evidence that 9877 Corp is the registered owner of any of the listed properties or had any direct involvement with them. I therefore find that it is not an "owner" of any of those properties.

[55] Home Placement Systems provides property management services for a variety of rental properties. Home Placement Systems also communicates with AHS regarding properties owned by others, including Vuong. Corporate Registry searches for both 3028 Corp and 9877 Corp indicate that both corporations have registered "Home Placement Systems" as a trade name. The Respondents have elected not to file any evidence that would clarify the status of the property management operations. I find that 3028 Corp and 9877 Corp are "owners" of any listed properties for which they are the registered owner, and of any rental properties to which they provide property management services, either under their corporate name or under the trade name of Home Placement Systems.

i. The Respondent Gohar as "owner" generally in Action #1703-20117

[56] Gohar is not the registered owner of any listed properties. She denies that she is an "owner" within the meaning of the Act. There is no evidence before me that AHS has had any direct dealings with Gohar in any capacity. There is no evidence of any communications or correspondence between Gohar and AHS, and no evidence that she was present at any property inspections. Counsel confirmed in submissions that she is the corporate officer and representative for 3028 Corp and 9877 Corp, but there is an absence of evidence tying her in her personal capacity to any property that is the subject of these proceedings, or any other property dealt with by AHS and the Respondents. I find that Gohar is not an "owner" within the definition of s. 1(ff) of the Act.

j. The Respondent Shah as "owner" generally in Action #1703-20117

[57] Shah argues he is not an "owner" of any of the properties identified in Action #1703-20117. He initially conceded he was an "owner" of Property B, but after a brief adjournment to obtain instructions, counsel advised that Shah denies meeting the definition with respect to any of the properties.

[58] There is no evidence that Shah is the registered owner of any properties identified in these applications. There is no evidence that Shah is the registered owner of any other rental accommodations. There is some evidence that Shah has in the past been an owner of rental accommodations, either directly or through corporations he controlled, and that AHS has had previous dealings with him.

[59] With respect to the rental accommodations owned by 3028 Corp, Shah advises through counsel that he is hired from time to time by the corporation to do renovations to the properties, but he denies that he is in care and control of any of them. He submits that he is simply contracted to perform specific tasks delegated by the registered owners. However, none of those representations are in evidence, and neither Shah nor 3028 Corp have chosen to file any evidence on this point.

[60] The evidence of AHS provides some assistance on this issue. As previously noted, Corporate Registry searches reveal that 3028 Corp uses the trade name "Home Placement Systems", as does 9877 Corp. Shah was the sole director and shareholder of the two corporations struck from corporate registry, 3024 Corp and 2715 Corp. Those corporations also used the trade name "Home Placement Systems." Emails sent to the attention of Home Placement Systems at two different email addresses all appear to be answered by either Shah or Fassman. Shah has written letters for 3028 Corp, and has attended AHS inspections of properties owned by 3028 Corp, without the corporate representative Gohar. Shah has given AHS information on vacancies and the names of tenants. He has responded to requests for inspections and has refused entry to vacant suites. Exhibit D-2 from the Questioning on the July 19, 2017 Affidavit of Meaghen Allen relating to Property "P" contains a lengthy 2016 email from Shah to AHS directing that in the future all requests and communication for 3028 Corp should be sent to Shah's attention at homeplacement@inbox.com.

[61] On the totality of the evidence before me, I am satisfied that Shah appears to have care and control of properties owned or managed by 3028 Corp, 9877 Corp and Home Placement Systems and that he therefore meets the definition of "owner" within the meaning of the Act. To the extent it may be necessary, I also find that he is an agent of 3028 Corp and therefore also meets the definition of "owner" in the *Minimum Housing and Health Standards*.

[62] There is also some evidence of involvement by Shah in other properties owned by Vuong. It is unnecessary for purposes of this application for me to determine whether he is also an "owner" of those properties.

k. The Respondent Fassman as "owner" generally in Action #1703-20117

[63] Fassman is not a registered owner of any of the listed properties. However, she appears to have direct operational involvement with Home Placement Systems as has already been identified in these Reasons. She has answered emails from AHS relating to inspection issues. She has attended inspections and given instructions to AHS and the police. Tenants of some properties have identified her to AHS as a landlord. On the totality of the evidence I am satisfied that she is a person appearing to have care and control of properties owned or managed by 3028 Corp, 9877 Corp and Home Placement Systems. I therefore find her to meet the definition of "owner" of properties for purposes of the Act. To the extent it may be necessary, I also find that she is an agent of 3028 Corp and therefore also meets the definition of "owner" in the *Minimum Housing and Health Standards*.

[64] There is also some evidence of involvement by Fassman in other properties owned by Vuong. It is unnecessary for purposes of this application for me to determine whether she is also an "owner" of those properties.

l. The Respondent Esmail as "owner" generally in Action #1703-20117

[65] Esmail is not a registered owner of any of the listed properties. I am advised that she attends with Vuong at AHS inspections of Vuong's properties to deal with language issues, but again the Respondents have elected not to confirm this in sworn evidence. I have found Esmail to be an "owner" of Property B, but there is no other significant evidence tending to suggest that she has care or control of any of the other listed properties, or any decision-making authority delegated from any of the registered owners. There are vague references to other AHS proceedings involving Esmail, but no evidence specific to these applications or to tie her to these properties or registered owners. On the totality of the evidence I am not satisfied that Esmail is an "owner" within the meaning of the Act with respect to properties registered to the other Respondents other than Property B.

m. Summary

[66] In summary, I find that:

a. In Action #1703-13687, both Vuong and Shah were "owners" within the meaning of the Act with respect to Property A at the time of the inspection attempts in 2017;

b. In Action #1703-20117, Shah, Fassman, Esmail and 3028 Corp were "owners" within the meaning of the Act of Property B at the time of the inspection attempts in 2017;

c. In Action #1703-20117, Vuong was the "owner" within the meaning of the Act of the properties registered in her name as set out in the table of listed properties;

d. In Action #1703-20117, Shah, Fassman and 3028 Corp were "owners" within the meaning of the Act of the properties registered to 3028 Corp as set out in the table of listed properties.

e. In Action#1703-20117, Shah, Fassman, 3028 Corp and 9877 Corp are "owners" within the meaning of the Act with respect to any rental properties that are owned or managed by 3028 Corp, 9877 Corp, and Home Placement Systems; and

f. In Action #1703-20117, 3024 Corp, 2715 Corp, and Gohar in her personal capacity are not "owners" within the meaning of the Act with respect to any of the properties set out in the table of listed properties.

[67] Hereafter, references to "Respondent Owners" mean the Respondents who have been found to be owners within the meaning of the Act.

2. Does the Act allow routine inspection of residential rental accommodations under s. 59?

[68] AHS argues that under s. 59 of the Act, it has authority to routinely inspect all residential rental accommodations because they are included in the definition of "public places" in s. 1(ii) of the Act. AHS submits that when read together, the Act, the *Housing Regulation* and the *Minimum Housing and Health Standards* prescribe a clear legislative scheme to exclude rental properties from the requirements of s. 60, which applies to owner-occupied residences. Unlike inspections under s. 59, entry for inspection under s. 60 requires belief on reasonable and probable grounds of a nuisance or contravention of the Act, together with consent or a court order.

[69] The Respondent Owners argue that residential rental accommodations are "private places" within the meaning of s. 1(hh) of the Act, and that therefore s. 60 Act governs. They further submit that s. 60 is not restricted to owner-occupied dwellings. The Respondent Owners rely on comments of Slatter J (as he then was) in ***BPCL Holdings Inc. v Alberta***, 2006 ABQB 757, at para 27, to argue there is ambiguity in the legislation with respect to the two definitions as they relate to residential rental accommodations.

[70] However, in the appeal of the ***BPCL*** decision, the majority of the Alberta Court of Appeal specifically found that the definition of "public place" in the Act encompasses property that could otherwise fall within the definition of "private place" and that it includes residential rental accommodations (***BPCL Holdings Inc. v Alberta***, 2008 ABCA 153 at paras 11-12). This position was reiterated in ***Wang*** (at para 9). I am bound by that finding.

[71] I find that the Act allows routine inspection of residential rental accommodations under s. 59.

3. If the Act allows routine inspection of residential rental accommodations under s. 59, do the Respondents have standing to challenge the constitutional validity of s. 59 of the Act by asserting the privacy rights of the tenants?

[72] Having found that s. 59 of the Act allows routine inspection of residential rental accommodations, the Respondent Owners challenge the provision's constitutional validity. They submit that s. 59 is inconsistent with the s.8 *Charter* right to be secure from unreasonable search and seizure, and therefore should be declared to be invalid and of no force or effect.

[73] The Respondent Owners concede they themselves have no privacy interests in the residential rental accommodations they own or manage, and they do not seek public interest standing. They instead argue that they are entitled to advance the privacy interests of the tenants in their homes, relying on ***R v Big M Drug Mart Ltd.***, [1985] 1 SCR 295, and ***Canadian Egg Marketing Agency v Richardson***, [1998] 3 SCR 157. Recognizing that no one can or should be convicted of an offence under an unconstitutional law regardless of whether the law applies to them, the Supreme Court defined an exception to the normal rules regarding personal interest standing in ***Big M Drug Mart*** (at paras 38-39).

[74] The standing issue in the context of civil proceedings arose in ***Canadian Egg Marketing***. There, the Supreme Court extended its reasoning in ***Big M Drug Mart*** to grant personal interest standing as of right to respondents involuntarily brought before the court by a branch of the state seeking injunctive relief under a regulatory regime. Standing was granted because the proceedings put the respondents in jeopardy and subjected them to possible contempt proceedings (***Canadian Egg Marketing*** at para 40).

[75] Applying ***Canadian Egg Marketing***, I find the Respondent Owners have standing to challenge the constitutionality of s. 59 of the Act. AHS has brought them before the court involuntarily, seeking injunctive relief, police enforcement, and contempt sanctions for failure to comply. AHS argues that the Respondent Owners cannot be arrested under the Act or under the interim orders that have been granted in these actions. However, in both actions AHS has specifically asked for police enforcement clauses including the power to arrest and to pursue contempt proceedings, and the Belzil J order does in fact provide for arrest for non-compliance with the order. Both interim orders also contemplate contempt proceedings for non-compliance. One of the available sanctions for civil contempt is jail.

[76] I conclude that the Respondent Owners have private interest standing to challenge the validity of s. 59 of the Act.

4. Is s. 59 of the Act inconsistent with s. 8 of the *Charter* as it applies to residential rental accommodations and therefore of no force and effect?

[77] Section 8 of the *Charter*, which guarantees the right to be secure against unreasonable search and seizure, concerns the protection of individuals from unjustified intrusions upon their privacy. Next to bodily integrity, it has long been recognized that a person has no greater expectation of privacy than in one's own home (***R v Silviera*** [1995] 2 SCR 297 at para 148; ***R v Feeney*** [1997] 2 SCR 13 at para 43; ***R v Tessling*** [2004] 3 SCR 432 at 440 and 444).

[78] The Respondent Owners submit that s. 59 is inconsistent with s. 8 of the *Charter* because it allows the state to enter and search the homes of tenants without notice, without consent, without reasonable and probable grounds, and without judicial authorization. They argue that such activity is unreasonable in the case of residential rental accommodations.

[79] Section 59 specifically reads as follows:

Inspection of place other than private dwelling

59(1) An executive officer may inspect any public place for the purpose of determining the presence of a nuisance or determining whether this Act and the regulations are being complied with.

(2) An executive officer making an inspection under subsection (1) may

(a) at any reasonable hour enter in or on the public place that is the subject of the inspection;

(b) require the production of any books, records or other documents that are relevant to the purpose of the inspection and examine them, make copies of them or remove them temporarily for the purpose of making copies;

(c) make reasonable oral or written inquiries of any person who the executive officer believes on reasonable grounds may have information relevant to the subject-matter of the inspection;

(d) inspect and take samples of any substance, food, medication or equipment being used in or on the public place;

(e) perform tests, take photographs and make recordings in respect of the public place.

(3) Where an executive officer removes any books, records or other documents under subsection (2)(b), the executive officer shall

(a) give to the person from whom the items were taken a receipt for the items, and

(b) forthwith return the items to the person from whom they were taken when they have served the purpose for which they were taken.

[80] Section 59 gives broad authority to the state to enter residential rental accommodations without prior judicial authorization, so long as the entry is conducted during reasonable hours, which is undefined. Indeed, during argument AHS took the position that the legislation authorizes AHS to enter by force if the circumstances so justify.

[81] The Respondent Owners argue that s. 59 infringes s. 8 of the *Charter* based on the high expectation of privacy in residential rental accommodations and the degree of intrusiveness of the inspections by AHS. They submit that these searches contemplate an invasion of every nook and cranny of the home, including ventilation, floor coverings, plumbing and electrical systems, fixtures, cupboards and windows and screens throughout the personal living space of the tenants.

[82] The Respondent Owners refer to AHS evidence which confirms that police officers are sometimes requested by AHS inspectors to accompany them, as was the case with respect to the inspections of Property A and Property B in these actions. AHS evidence also confirms that on other unidentified occasions the police have entered premises, cleared residences prior to inspection, and on at least one occasion treated tenants disrespectfully.

[83] AHS admitted that in other cases staff from Alberta Works, a separate government department, have attended and gathered personal information from tenants. The Respondent Owners also submit that AHS inspections are a guise for other purposes such as criminal investigations. While concerning, the evidence does not allow me to draw that inference.

[84] The constitutionality of regulatory inspections of residential accommodations is the subject of a number of court decisions. In ***R v Bichel***, (1986) 29 CCC (3d) 438, 33 DLR (4th) 254 (BCCA)(WL), the British Columbia Court of Appeal held that a warrantless search of residential premises by a building inspector for the purpose of investigating compliance with a municipal zoning by-law did not constitute a breach of the homeowner's s. 8 *Charter* rights and that therefore the legislation was not invalid under s. 52(1). In doing so, the Court relied on the exception to judicial pre-authorization for search and seizure set out in ***Hunter v Southam***, [1984] 2 SCR 145, in the regulatory context (at paras 31 and 33).

[85] The Supreme Court of Canada in ***Thomson Newspapers Ltd. v Canada (Director of Investigations & Research),*** [1990] 1 SCR 425, and ***R v McKinlay Transport Ltd.***, [1990] 1 SCR 627, recognized that the standard of reasonableness in the criminal context will not usually be appropriate in determining the reasonableness of a warrantless administrative or regulatory search or seizure, and that determining reasonableness must be flexible and contextual.

[86] In ***Arkinstall v City of Surrey***, 2010 BCCA 250, a five-member panel revisited the issue in ***Bichel.*** The Court found that the *Safety Standards Act* inspection of electrical systems in private residences for safety risks associated with marijuana grow-operations required a warrant. Such inspections were not random or routine, and in fact targeted individuals suspected of committing a criminal offence. The legislation authorizing warrantless searches in that specific circumstance was held to infringe s. 8 of the *Charter*, but the Court recognized that there is a general exception to the ***Southam*** criteria for regulatory inspections in other circumstances (at para 55).

[87] ***Amzallag v Ville de Sainte-Agathe-des-Monts***, 2018 QCCA 1439, considered a challenge under s. 24(1) to a warrantless search of property which included residential rental accommodations. Entry was gained by force following the landlord owner's refusal to allow access. The Court confirmed that s. 8 of the *Charter* permits administrative inspections without prior authorization or notice, citing ***Comité paritaire de l'industrie de la chemise v Potash***, [1994] 2 SCR 406. It endorsed ***Rossdeutscher v Ville de Montreal***, 2016 QCCS 513 at para 239, which enumerated the factors from ***Potash*** in determining whether a warrantless entry of premises without reasonable and probable grounds was permissible. These factors included "workplace versus home, no stigma resulting from the inspection, inability to force the door if the inspectors are refused entry, reasonable hours of inspections, penalties exclusively in the form of fines without prison sentences." The Quebec Court of Appeal found the search was unlawful because the entry by force was not specifically authorized by the inspection legislation. The evidence gathered during the inspection was nevertheless admitted in the s. 24(1) analysis.

[88] In ***Wang***, the Alberta Court of Appeal observed the broad discretion conferred by s. 59 of the Act is limited to its purpose and must be exercised consistently with *Charter* values and the values underlying the grant of discretion. The Court concluded that weighing of those values "has to be done on a case by case basis in the particular factual and statutory context of the exercise of the discretion" (at para 14).

[89] The Minister argues that s. 59 confers a discretionary power to inspect and therefore a number of principles support a finding of constitutionality. The Minister submits that discretion granted by a statute must be exercised for the purposes for which it is granted, and that imprecise statutory discretion must be interpreted, in so far as possible, consistently with the *Charter*, citing ***Doré v Barreau du Québec***, [2012] 1 SCR 395.

[90] The Minister also submits that in challenging the constitutionality of the legislation itself rather than the constitutionality of a particular inspection, the Respondent Owners must show that s. 59 itself either expressly confers the power to infringe s. 8 of the *Charter*, or that such power is necessarily

implied (***Eldridge v British Columbia (Attorney General)***, [1997] 3 SCR 624, at para 22, citing ***Slaight Communications Inc. v Davidson***, [1989] 1 SCR 1038, at 1078).

[91] The Act protects public health and safety, and falls within the well-recognized regulatory exception for the requirement for prior judicial authorization. The stated purpose of s. 59 is "for the purpose of determining the presence of a nuisance or determining whether this Act and the regulations are being complied with." The state has a legitimate interest in ensuring that places made accessible to the public, including living accommodations rented to the public, are safe to visit or inhabit. Owners who rent those accommodations must comply with *Minimum Housing and Health Standards* established by the state in furtherance of those objectives. None of this is challenged by the Respondent Owners.

[92] I find the searches authorized by s. 59 are reasonable according to the ***Southam*** factors, applied in ***Bichel***, ***Arkinstall*** and ***Amzallag***. Section 59 of the Act, when read on its face, does not confer a power to conduct unreasonable inspections of residential rental accommodations. Nor, in my view, is such power necessarily implied. While the privacy interest of tenants is high, such routine inspections are for an exclusively regulatory purpose, and must be conducted during reasonable hours, ordinarily with prior notice.

[93] While the Act provides little guidance, AHS has a wide range of options open to it to carry out inspections in a reasonable way that would not offend s. 8 of the *Charter*. Many of these options were in fact illustrated during AHS attempts to inspect Property A and Property B, including notice to the Respondent Owners, requests for the owners to give notice to the tenants, arrangements with the Respondent Owners to meet AHS to provide access, arrangements directly with tenants to return at a more convenient time, and ultimately these applications to the court for judicially authorized entry.

[94] The Respondent Owners argue that the legislation is unconstitutional because the possibility exists for AHS to conduct an unconstitutional search in the exercise of the s. 59 inspection powers. They do not suggest AHS has done so in these applications, but they assert AHS has acted unconstitutionally in conducting other inspections.

[95] I do not agree with the argument advanced by the Respondent Owners on this point. The court must determine whether the legislation can be interpreted in conformity with the *Charter*. In the absence of facts to the contrary, the Court must adopt a *Charter*-compliant interpretation of the powers of the Act based on guiding principles of constitutional interpretation (***Eldridge***, above). There is no evidence that the inspections are targeted for an impermissible "dual purpose" that would run afoul of s. 8 of the *Charter*, unlike the legislation in ***Arkinstall*** which related to the possibility of conducting an ostensible criminal search.

[96] There is also no evidence that AHS has adopted and is operating under any binding policies or rules of general application that would be subject to scrutiny under s. 52(1), as was the case in ***Greater Vancouver Transportation Authority v Canadian Federation of Students — British Columbia Component***, [2009] 2 SCR 295.

[97] The exercise of inspection powers under s. 59 does not necessarily result in an unreasonable intrusion into the privacy rights of tenants of residential rental accommodations. Tenants are required under s. 23(3) of the *Residential Tenancies Act*, SA 2004 c. R-17.1 to allow access to their landlords on 24 hours' notice for a variety of purposes, including inspection, repair and pest control. Landlords are required under both the *Residential Tenancies Act* and the *Housing Regulation* to comply with the *Minimum Housing and Health Standards.* Tenants are required under s. 17 of the *Minimum Housing and Health Standards* to allow access for repairs or pest control in accordance with the *Residential*

Tenancies Act. Landlords can give the required notice and provide access if they chose to cooperate with a health inspection. AHS can and does make arrangements directly with tenants for inspection at convenient times. AHS can apply for judicial authorization for access if it is refused entry.

[98] The Respondent Owners submit that only the landlord has the right to enter and inspect on notice under the *Residential Tenancies Act*, and that AHS cannot bootstrap itself into the landlord's position to gain access by requiring landlords to give 24 hours' notice on AHS's behalf. However, the *Residential Tenancies Act* does not limit or narrow the types of inspections that may be carried out, and it does not restrict entry to only the landlord. To the contrary, it contemplates entry by others such as prospective tenants and purchasers. Following the rationale of the Respondent Owners, only landlords personally would be able to complete repairs and conduct pest control because others would not have the right of entry. This surely was not the intention of the legislature in creating the right of entry for landlords.

[99] While the Act itself could have clearer notice provisions or guidelines regarding the right of entry for health and safety inspection purposes, that is a matter for the legislature to consider.

[100] The Act is concerned primarily with the protection of tenants to ensure they are being provided with healthy and safe accommodation. Tenants are not responsible for meeting those standards, and are not subject to penalties for noncompliance with those standards. The state cannot use these inspections in furtherance of a criminal or other investigation. Against that backdrop, it is possible to carry out the discretionary inspection power without unduly intruding upon the privacy rights of tenants.

[101] The Minister further submits that s. 24(1) of the *Constitution Act, 1982* is the available remedy for s. 59 inspections that actually contravene s. 8. The Supreme Court of Canada in ***R v Ferguson***, 2008 SCC 6 at para 60, highlighted the distinction between s. 52(1) and s. 24(1) remedies, holding that when a government agent applies a discretion conferred by law that would otherwise be constitutional in an unconstitutional manner, s. 52(1) does not apply and the proper remedy stems from s. 24(1).

[102] I concur with the position of the Minister that s. 59 of the Act is constitutionally valid. As stated, this power of inspection is capable of being interpreted and carried out in ways that do not offend s. 8 of the *Charter*. To the extent that the inspection power may be exercised in other cases contrary to s. 8 of the *Charter*, affected parties have a remedy available under s. 24(1).

[103] This decision does not in any way attempt to define what will constitute *Charter*-compliant exercise of the discretionary inspection power conferred by s. 59 in particular circumstances. I also do not sanction AHS' description of its powers in a number of respects. For example, I am not convinced that, except in exigent circumstances, s. 59 authorizes AHS in all cases to use force to gain entry to residential rental accommodations without prior notice or authorization.

[104] I am also troubled by the some of the evidence relating to police attendance, involvement and apparent conduct at inspections generally. This is especially so because the evidence strongly suggests that AHS decisions to seek police assistance are almost completely subjective and not governed by any standard policy or operating procedure.

[105] Additionally, AHS's evidence and arguments strongly suggest that there may be significant gaps in employee awareness, training and experience with privacy rights. In particular, AHS argued that the tenants do not require notice of proceedings and are treated as "irrelevant" to the issues before the court because the inspections only target owner compliance.

[106] Finally, the evidence presented by AHS was in many respects incomplete, inaccurate or conclusory without factual support. The inclusion in these proceedings of specific properties clearly not registered to or connected with any of the Respondents is but one example.

[107] These and other concerns will no doubt be addressed in proceedings under s. 24(1) should they arise. They do not arise in these applications because no person asserting a privacy interest has alleged an actual breach of s. 8 of the *Charter* or requested relief. Whether the legislation adequately addresses the particular intricacies associated with regulating public premises that are highly private to their occupants is a matter for the legislature to consider.

5. Did the "owners" of Property A in action #1703-13687, refuse to allow AHS to exercise its powers under s. 59 or 60, or hinder or interfere with AHS's exercise of those powers?

[108] There is no question that both Vuong and Shah had direct and personal notice of AHS's desire to inspect Property A. I accept the evidence of AHS regarding its attempts to arrange with the owners to do so and the events that occurred during the two meetings at the premises.

[109] I am satisfied on the evidence that both Vuong and Shah refused to allow AHS to exercise its powers under s. 59 by refusing to allow access to the vacant suites. Actual occupancy of residential rental accommodations is not a prerequisite to inspection under the Act. In fact, it is an opportune time to inspect for housing standard deficiencies as no privacy rights of tenants are at stake.

[110] I am also satisfied that the conduct of both Vuong and Shah constituted hindrance or interference with AHS's exercise of its inspection powers under s. 59. I do not accept that an owner of rental accommodation who arranges to meet AHS at the property can then assert the lack of a key as a reasonable excuse for failing to facilitate an inspection.

[111] The unwillingness of these two Respondent Owners to provide access to vacant suites, and to exercise their right of entry on notice to the tenants in order to facilitate inspections, also calls into question the motivation of the Respondent Owners to oppose entry.

[112] If I had found s. 59 inapplicable or unconstitutional, or if I had not determined that the owners refused, hindered or interfered with AHS under s. 59, I would nevertheless have reached the same conclusions under s. 60 of the Act. I accept the evidence of AHS regarding the complaints received about Property A and the conditions it observed during its first visit to the property. I find that AHS had reasonable and probable grounds in any event to inspect the property, whether or not it was entitled to perform a routine inspection.

[113] I therefore find that AHS is entitled to seek relief under s. 61 of the Act in Action #1703-13687.

6. Did the "owners" of Property B in action #1703-20117, refuse to allow AHS to exercise its powers under s. 59 or 60, or hinder or interfere with AHS's exercise of those powers?

[114] There is no doubt that the desire by AHS to also inspect Property B was well known to the owners of Property B. I accept the evidence of AHS regarding its attempts to arrange with the owners to do so and the events that occurred during its attendances at the premises. The statements by the tenants are of course considered not for the truth of their contents but for the fact that they were made.

[115] Similar to Property A, I do not accept that an owner of rental accommodation who arranges to meet AHS at the property can then assert the lack of a key as a reasonable excuse for failing to facilitate an inspection. I also note Shah advised AHS that he needed to give the tenants 24 hours' notice, which clearly related to the landlord's right of entry under the *Residential Tenancies Act*. Upon compliance with the notice requirements of that legislation, a tenant must allow entry. Failure of the owners to insist on their right of entry in my view constituted refusal to allow AHS to exercise its powers under s. 59. That refusal was confirmed by Shah's email indicating he would not facilitate access without the consent of the tenants.

[116] In addition, it appears highly likely that the owners of Property B played a role in the decision of the tenants to refuse to allow AHS entry to their suites. Shah advised that he was giving notice to the tenants of entry to the suites. The tenant in Suite #1 then refused access in the absence of a court order, despite having given AHS voluntary access 13 days earlier. The tenants in Suites #2, #3 and #4 all refused access, with the tenant in Suite #4 citing the need for a warrant. Having regard to these facts, the events at Property A a few weeks earlier, and the positions taken by various Respondent Owners in the multitude of communications with AHS contained in the evidence, I infer that the tenants of Property B were advised, encouraged or influenced by some or all of the owners of the property to deny access, thereby hindering or interfering with AHS's exercise of its inspection powers under s. 59.

[117] If I had found s. 59 inapplicable or unconstitutional, or if I had not determined that the owners refused, hindered or interfered with AHS under s. 59, I would nevertheless have reached the same conclusions under s. 60 of the Act. I accept the evidence of AHS regarding the anonymous complaints received about Property B and the conditions it observed during its first visit to the property. I find that AHS had reasonable and probable grounds to inspect the property in any event, whether or not it was entitled to perform a routine inspection.

[118] I therefore find that AHS is entitled to seek relief under s. 61 of the Act in action #1703-20117.

7. What relief against the Respondent Owners is AHS entitled to in these applications?

[119] I presume that any specific relief required to deal with inspections of Property A and Property B have been addressed with the interim orders that were previously granted in these actions. This decision will deal with the broader relief requested by AHS.

[120] During oral argument, the Respondent Owners conceded that they have no privacy interests at stake and indicated that they do not oppose entry by AHS for inspection purposes. They allege that they simply wish to advance the privacy rights of their tenants, who are often marginalized or vulnerable individuals, and that they are concerned about their own liability to the tenants.

[121] The actions of the Respondent Owners and their communications with AHS contradict these assertions. I have found that they have actively refused, hindered or interfered with AHS in the exercise of its legislative authority. I am sympathetic to the submission by AHS that the Respondent Owners often provide confusing or incomplete information regarding the ownership, management and control of their rental accommodations, and that they interact and communicate with AHS in a way that makes it difficult for AHS to carry out its responsibilities.

[122] Conversely, I have also expressed a number of concerns with the manner in which AHS has apparently exercised its discretion to inspect in other situations. Coupled with that are my observations about the inaccuracy of some AHS records and the lack of reliability of some of the evidence put before the court in these proceedings. Determining the identity of the registered owner of property is a quick and simple process. Legal descriptions can be obtained from municipal addresses, and title searches, which can be performed instantly online, provide the name and address of the registered owner. This information is all a matter of public record and easily accessible to government departments.

[123] The Respondent Owners argue that the wording of s. 59 requires that any order should be limited to specific property that AHS wishes to inspect, and only after difficulties arise in gaining access. They submit that the wide-ranging net AHS wishes to cast over the Respondent Owners in these applications, the broad discretion it asks the court to sanction in advance, and the significant remedies it seeks for future non-compliance is an approach constituting unreasonable overreach in the circumstances. I do not agree.

[124] It is clear that the approach advocated by the Respondent Owners would render the exercise of powers under the Act for legitimate public health purposes costly, cumbersome and ineffective. This is especially so in cases such as this where it is apparent that parties are directly or indirectly subverting the ability of health officials to ensure that they are in compliance with their legislated requirement to meet minimum standards for accommodations offered for rent to the public. Just as individuals are entitled to an expectation of privacy in their homes, they are also entitled to housing that meets basic health and safety standards. Health inspectors must be allowed to verify such compliance.

[125] Section 61 of the Act allows AHS to apply for an order directing "owners" to do or refrain from doing anything the Court considers necessary in order to enable the Executive Officer to exercise his or her powers. In addition, s. 66.2(1) of the Act provides that the Court may make any order it considers necessary to enforce the Act. The Act provides the court with jurisdiction to grant broader relief than on a case by case basis.

[126] Taking all of the factual circumstances into consideration in both of these actions, I am of the view that it is appropriate to set aside the interim orders in both actions and replace them with one order covering all of the Respondents and all potential "public places" connected to them as defined by the Act. I am satisfied on the evidence I accept that the relief being granted is necessary in these actions. The parties should take out one form of order with both styles of cause and file it in both actions.

[127] I wish to make it abundantly clear that the relief set out in this Order pertains only to the Respondents named in these actions, based on the facts and the evidence before me. The terms of this order should not be interpreted as constituting appropriate relief in every application under s. 61 of the Act. The Order shall include the following definitions:

1. "Respondent Owners" means:
    a. Jennifer Vuong
    b. Abdullah Shah, also known as Carmen Pervez
    c. Sarah Fassman
    d. Shairose Esmail
    e. 3028 Corp
    f. 9877 Corp
    g. Any entity or individual operating as "Home Placement Systems"
2. "Rental Accommodation" means any commercial or residential rental accommodation registered to any Respondent Owner, and shall include both the common areas and the residential or commercial unit(s)
3. "Authorized Representative" means any individual authorized in writing by a Respondent Owner to deal with AHS with respect to any Rental Accommodation registered to the Respondent Owner
4. "Tenant" means any person appearing to reside at or be in possession of any Rental Accommodation

[128] The Respondent Owners may, but are not required, to provide to AHS a list of all Rental Accommodations, and copies of any written authorizations for those properties designating an Authorized Representative.

[129] In carrying out the powers conferred to AHS under the Act with respect to any Rental Accommodation, AHS shall only deal with the Respondent Owner who is registered on title as the owner of the property, or any Authorized Representative designated by that Registered Owner if a copy of the written authorization is provided to AHS by the Registered Owner.

[130] 3028 Corp shall provide to AHS, within 30 days of the date of this decision, notification in writing of the Authorized Representative(s) for Property B and Properties H-R and a copy of the authorization(s).

[131] In the event 3028 Corp, 9877 Corp or any entity or individual operating as "Home Placement Systems" is contacted by AHS for the purpose of exercising its powers under the Act with respect to any Rental Accommodation not listed in the table of properties identified in this decision, they shall immediately, and in any event within 24 hours, provide to AHS notification in writing of its Authorized Representative for that property and a copy of the authorization.

[132] The Respondent Owners and their Authorized Representatives shall grant any Executive Officer, as defined in the Act, access to any Rental Accommodation during the hours of 8:00 am to 8:00 pm to allow the Executive Officer to exercise his or her powers under the Act.

[133] Except in the case of an emergency where an immediate threat to the health or safety of any individual or the public health appears to exist, and without limiting the discretion of AHS to conduct routine inspections without notice under the Act, the access shall ordinarily be pre-arranged by the Executive Officer and the Respondent Owner or Authorized Representative of the Rental Accommodation, to provide sufficient time for at least 24 hours' notice of the inspection to be given by the Respondent Owner or Authorized Representative to any affected Tenants.

[134] The Respondent Owner or Authorized Representative shall ensure that 24 hours' notice is given to the Tenants and shall confirm in writing by email to AHS when that has occurred. The notice shall specify the date and time for the entry, and set out that entry will be provided to an Executive Officer of AHS for purposes of a public health inspection. A copy of the filed order arising from these Reasons shall be included with the notice.

[135] Provided that such notice is given, or without notice in the case of exigent circumstances, the Respondent Owner or Authorized Representative shall attend at the Rental Accommodation with AHS with the necessary keys and provide entry to AHS. Failure to attend with the keys shall constitute non-compliance with this order.

[136] No notice period is required for vacant Rental Accommodations. Failure to provide entry to AHS to a vacant Rental Accommodation shall constitute non-compliance with this order.

[137] In the event the Respondent Owner or Authorized Representative fails or refuses to give the Tenant the required notice or fails to confirm that such notice has been given, AHS is authorized to give such notice by posting it and a copy of the filed order arising from these Reasons to the door of the Rental Accommodation at least 24 hours prior to the intended inspection.

[138] The Respondent Owners and their Authorized Representatives are restrained from obstructing, hindering or interfering with any Executive Officer or anyone assisting the Executive Officer in the execution of any duty imposed or in the exercise of any power conferred on the Executive Officer by the Act.

[139] In the event it is necessary for the safety and security of an Executive Officer exercising his or her powers under the Act to be accompanied by a member of a police service, as defined in the *Police*

Act, RSA 2000, c P-17 ("Law Enforcement"), Law Enforcement may accompany any Executive Officer to allow the Executive Officer or anyone assisting the Executive Officer to exercise his or her power pursuant to the Act in a safe, secure and reasonable manner.

[140] Prior to requesting the attendance of Law Enforcement, AHS must first consider if other actions, such as checking in with a co-worker before and after an inspection or conducting an inspection with a co-worker, would be sufficient to ensure the safety and security of the Executive Officer carrying out an inspection.

[141] Law Enforcement is not directed or mandated by the court to accompany AHS, but it is permitted to do so if it is necessary for the safety and security of an Executive Officer. The court makes no pre-determination or pre-authorization as to what constitutes such necessity, nor the reasonableness of any particular method by which Law Enforcement may assist AHS.

[142] In the event that any Respondent Owner or Authorized Representative refuses to grant any Executive Officer access to the premises in accordance with this order, or hinders or interferes with the Executive Officer in the exercise of his or her powers, then any member of Law Enforcement is directed to accompany and assist the Executive Officer and use such reasonable force as they consider appropriate to gain access to the premises and allow the Executive Officer or anyone assisting the Executive Officer to exercise his or her authority pursuant to the Act.

[143] The Order following from these Reasons shall also include the following standard enforcement clauses:

a. On the Respondent Owners or any Authorized Representatives being in breach of any of the terms of this Order, any Law Enforcement shall provide assistance to ensure that the Respondent Owners or any Authorized Representatives complies with the Order and is authorized to forthwith arrest that person, detain and bring him or her, at the earliest possible time, before a Justice of the Court of Queen's Bench of Alberta to show cause why there should not be a committal for civil contempt. However, the Respondent Owners or any Authorized Representatives shall not be arrested unless that person has been previously served with a copy of this Order, or if not served, is shown a copy of this Order by Law Enforcement and, on being given an opportunity to do so, does not thereafter obey it.

b. This Order is sufficient authority for the keeper of a correctional institution to receive the said Respondent Owners or any Authorized Representatives into custody and to safely keep the Respondent Owners or any Authorized Representatives pending appearance before a Justice of the Court of Queen's Bench of Alberta. Nothing in this clause shall limit the right of Law Enforcement to proceed with the laying of a charge under Section 127 of the Criminal Code of Canada.

c. In making an arrest as aforesaid, Law Enforcement is authorized to do anything necessary to carry out the arrest and, for such purposes, Law Enforcement is hereby given full power and authority to use as much force as may be necessary to effect the arrest.

[144] In the event AHS intends to exercise its powers under the Act with respect to any Rental Accommodation registered to any of the following:

a. 3024 Corp and 2715 Corp following any reinstatement of these corporations with corporate registry; or

b. Gohar Tasneem

the terms of this order shall apply, and such entities and individuals shall be deemed to be included in the definition of "Respondent Owner." In making this direction I have considered a number of factors. There is no evidence before me that 3024 Corp or 2715 Corp have been dissolved. The registered and records office for 2715 Corp is the same as 3028 Corp and 9877 Corp. The registered and records office for 3024 is the same address as the address used by 3028 Corp on one or more Certificates of Title for property it owns. 3024 Corp and 2715 Corp both list "Home Placement Systems" as a trade name. Reinstatement with corporate registry may occur by Shah filing the required annual returns. There is evidence before me of transfers of Rental Accommodations between some of the various Respondents. There is substantial evidence before me of interrelationship between the various corporations and individuals. I am satisfied that the inclusion of these other entities and individuals in the definition of "Respondent Owner" is necessary and appropriate to prevent mischief in the enforcement of this order.

8. Should any orders be made against non-party tenants?

[145] I am advised that, as a matter of practice AHS does not notify tenants of inspections or court applications and does not make them parties to the actions. AHS takes the position that tenants are "irrelevant" to the proceedings, and that AHS "does not care" about them, because AHS seeks only to enforce the obligations of the non-tenant owners and agents under the *Minimum Housing and Health Standards*. This attitude is concerning when one considers that the inspection process involves the intrusion by the state into the privacy of the home of a tenant.

[146] If AHS does not include tenants in proceedings or give them notice of the action, they limit themselves in the relief they can legitimately request from the Court which may affect the substantial rights of persons who have not had notice of the applications and are not parties.

[147] On the other hand, tenants are "owners" within the meaning of the Act, and are required to provide access to their premises.

[148] In the circumstances of these specific applications, the direction I am prepared to make with respect to Tenants is as follows:

1. Any Tenant of the Rental Accommodations and anyone present appearing to have care and control of the premises must comply with a notice provided to them by the Respondent Owners, Authorized Representatives or AHS, so long as that notice is in accordance with directions made by the court in these Reasons to allow entry by AHS in order to exercise its powers under the Act. Entry must be allowed without notice in exigent circumstances. The standard enforcement clauses set out in these Reasons shall also apply to the Tenants and others present.
2. The Tenant(s) and anyone present appearing to have care and control of the premises are restrained from obstructing, hindering or interfering with any Executive Officer or anyone assisting the Executive Officer in the execution of any duty imposed or in the exercise of any power conferred on the Executive Officer by the Act.
3. Any Tenant or others present who have been affected by the enforcement of this order shall have leave to apply in Action #1703-20117 for such relief as may be appropriate. Such request for relief may include a declaration under s. 8 of the *Charter* and relief under s 24(1) should the applicant have standing to apply.

CONCLUSION

[149] I find that the *Public Health Act* allows routine inspection of residential rental accommodations under s. 59. While I conclude that the Respondent Owners have private interest standing to challenge the validity of s. 59 of the Act, I find s. 59 of the Act is constitutionally valid. The application of the Respondents to have s. 59 of the Act declared unconstitutional and of no force and effect is dismissed.

[150] The applications by AHS for relief under s. 61 of the Act are substantially granted as more particularly set out above in these Reasons. The interim applications granted in each action are set aside and replaced with the specific directions set out in paragraphs 127 to 148 above.

[151] The parties have leave to speak to costs within 60 days should they be unable to agree.

Heard on the 6th day of June, 2018.
Additional written submissions November 2, 8, 16, February 22, and March 11, 2019.

Dated at the City of Red Deer, Alberta this 15th day of May, 2019.

M.D. Slawinsky
J.C.Q.B.A.

Appearances:

Miller Thompson LLP
Per: Ivan Bernardo, Q.C.
for the Applicant

Erika Norheim Professional Corporation
Per: Erika Norheim
for the Respondents

Alberta Justice and Solicitor General – Constitutional Law Branch
Per: Roderick Wiltshire &
Margaret Unsworth, Q.C.
for the Intervenor