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CONTENTS: Vancouver's Anti-Panhandling Bylaw/Success on Southern Crossing/Natural Gas Competition - Can it Work for Residential Customers?/Indictable Warrants to be Challenged/The YAK Column

Vancouver's Anti-Panhandling Bylaw

On April 30, 1998, the Council of the City of Vancouver unanimously passed By-law No. 7885 - A By-law to Regulate and Control Panhandling. The by-law restricts panhandling by time, place and method - specifically, it must occur within a minimum distance of 10 metres from certain institutions (banks, ATM's, liquor stores), is prohibited between sunset and sunrise and from motor vehicle occupants, and must not be conducted from a seated or prone position.

BC PIAC will represent the National Anti-Poverty Organization, End Legislated Poverty, and federated anti-poverty groups of BC in a challenge to the by-law on jurisdictional and Charter grounds.

The five grounds on which the by-law will be challenged are that:

- i) the Vancouver Charter lacks authority to regulate the time, place and method of panhandling;
- ii) the Vancouver Charter lacks authority to discriminate between classes of individuals;
- iii) the by-law violates s. 2 Charter rights to freedom of expression by prohibiting free speech of persons in public places;
- iv) the by-law violates s. 7 Charter rights to life, liberty and security of the person by denying certain classes of individuals the ability to provide for the necessities of life, and subjecting a person in default of a fine to incarceration;
- v) the by-law violates s. 15 Charter equal equality rights by its disproportionate effect on persons who may be characterized by homelessness, mental illness or disability, addiction, or poverty.

Aside from the legal grounds, the by-law is an attack on one of the most disadvantaged groups in society. The problems currently faced by the poor and homeless are certainly complex and in need of an integrated community approach in order to solve them. The by-law is counter productive in that it will add to the problems faced by the poor. Panhandlers will be subjected to humiliation when the police harass them, fine them, threaten to fine them and require them to move from their locations. The aim of the by-law is to surrender to the wishes of businesses and place their interests over the interest of the poor people. Obviously, a poor person begging for money is a terrible sight. We agree but advocate that City Council should be looking at how to solve the problem, rather than mask it and move the problem down the street.

Although a court date has not yet been set, it is expected that this matter will be heard after the

challenge of the Winnipeg panhandling by-law NAPO is participating in.

[back to top](#)

Success on Southern Crossing

On May 21, 1999 the B.C. Utilities Commission issued its decision into BC Gas' application to build a new natural gas pipeline from Yahk to Oliver in southern British Columbia.

Our clients had opposed an earlier application, but this time after discussions with BC Gas and actions taken by BC Gas which made the pipeline more economical, they decided to support it as the best of the available options to meet future natural gas demand.

We expressed concerns about potential cost overruns from the proposed budget which BC Gas could incur and pass on to consumers. The Commission set a 10% limit on any overruns with any over that amount being the responsibility of the shareholders of BC Gas. It also gave BC Gas the option of bringing the pipeline into service in the fall of 2000, as it proposed, or 2001 as we had suggested.

The main advantage to consumers of the new pipeline is that it provides some flexibility to BC Gas in obtaining natural gas supplies. At the present time, BC Gas relies on obtaining gas supplies from northeastern British Columbia through the Westcoast Energy pipeline. The Southern Crossing will provide connections to Alberta and the United States gas fields as well.

While the benefits will flow primarily to BC Gas' Lower Mainland customers, there will also be some benefits for its interior divisions as well.

[back to top](#)

Natural Gas Competition - Can it Work for Residential Customers?

For some time the natural gas retail market has been partially de-regulated in the sense that large industrial and commercial customers have the option of purchasing gas directly from producers and paying Westcoast Energy and BC Gas to transport it rather than buying direct from BC Gas. Residential and small commercial customers, while they have the ability to do this in theory, no practical way has been found to make it work.

The B.C. Utilities Commission has directed BC Gas to look at ways of developing competition through "unbundling" of its residential and small commercial rates. This means breaking down its rates into their main components, primarily the cost of the gas commodity itself, the cost of transporting it, and the administrative costs of customer services.

BC Gas has established a working committee which BC PIAC and its consultant, John Todd, of Toronto's Econalysis Consulting Services, are members, to explore how this might be done.

The Committee has met on a regular basis since the beginning of April and will be providing a report to the Commission in July. It appears the only way that actual effective competition can be introduced is through a more extensive unbundling process than was originally proposed. And while it is theoretically possible, the Committee has identified a series of issues which

need to be addressed and resolved before this can take place.

It looks like this will be an ongoing process and we will provide updates as matters develop.
[back to top](#)

Indictable Warrants to be Challenged

Regulation 12 enacted pursuant to the BC Benefits (Income Assistance) provides that if an individual has an outstanding warrant they are not eligible for income assistance irrespective of financial need. Similar provisions were enacted under the BC Benefits (Youth Works) Act and the Disability Benefits Program Act. These regulations became effective April 1, 1997. In order to be eligible for income assistance, the individual must deal with the warrant. If an outstanding warrant is from another province and the person cannot return to that province, the only way they can be eligible for assistance is to sign a waiver stating that the charges be waived into British Columbia for a guilty plea.

Regulations passed by the provincial government which are to provide a social safety net for the most financially vulnerable in society should not have as a consequent effect the violation of their constitutional rights. Furthermore, any regulation which is passed by the government should emanate from within their enabling statute. A number of individuals in the poverty community believed that these new regulations did not adhere to these principles. As a result of these concerns, Judy Parrack of BC PIAC, Carol Rosset of the Community Law Clinic and David Mossop of CLAS commenced three separate legal challenges. Given the similarity of the legal arguments these cases will be heard together.

The legal challenge is based on five grounds.

First, the regulations are ultra vires meaning that they are beyond the statutory power of the province. This is because they have a criminal law effect. Under the Constitution of Canada, the federal government has certain powers and the provinces have certain powers. The Constitution is clear that matters of criminal law fall within the jurisdiction of the federal government. To that end, the provinces cannot legislate in this area.

Second, the regulations are beyond the power of the Lieutenant Governor in Council to enact under the enabling statutes. The purpose or intent of the enabling statutes, namely the BC Benefits (Income Assistance) Act (and the companion statutes) is to provide for income assistance for those persons in need. Although the BC Benefits (Income Assistance) Act no longer uses the word "need", it clearly indicates that the system is to provide a social safety net for individuals who live in poverty. It is our opinion that these regulations do not fall within the stated purpose or intent of the BC Benefit statutes.

Third, the regulations violate s. 7 of the Charter. Section 7 provides that an individual has the right to life, liberty, and security of the person and an individual shall not be deprived of such rights except in accordance with the principles of fundamental justice. We will argue that these regulations violate both the right to liberty and the right to security of the person. Furthermore, the violation of these rights cannot be justified on the principles of fundamental justice.

Fourth, the regulations violate s. 11(d) of the Charter. Section 11(d) states that any person charged with an offence has the right to be presumed innocent until proven guilty according to law, in a fair and public hearing by an independent and impartial tribunal. We will argue that these regulations result in individuals foregoing this right because it forces individuals who are in need of food and shelter to waive in the charges for a guilty plea. As a result they are not accorded the right to the presumption of innocence.

Finally, we are arguing that the regulations violate s. 15 of the Charter. Section 15 of the Charter provides that an individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination.

It is our opinion that this regulation discriminates on the analogous ground of poverty.

The hearing is scheduled for nine days commencing June 7, 1999 in the BC Supreme Court in Vancouver. For further information on the progress of this matter please contact Pat MacDonald at 687-3017.

[back to top](#)

BCP-Yak...

Once again we have a number of staff changes to announce:

Alayne Keough replaced Terri Kennedy as Office Administrator in early March.

Our articled student Lynda Cassels was called to the bar May 26, 1999 and will stay on with BC PIAC until mid June. We have hired a summer student, Susan Mengerling, who started working with us on May 31, 1999.

Kim Stanton started as our new articled student in late May and will be attending PLTC's until early August, finally, it is with great regret that we announce Judy Parrack's appointment to the BC Human Rights Tribunal. We will greatly miss Judy and the work that she has produced over the years but we wish her well in her new endeavour.

[back to top](#)