



BC PIAC
IN THE PUBLIC INTEREST

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News from the BC Public Interest Advocacy Centre

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Poverty Law services dramatically changed

....there is no longer any legal representation to deal with many of the legal problems affecting the poor...

The significant legislative changes made by the government and the cutbacks to services have become the focus of work in this last year and will likely continue to be a major priority.

We have been providing background information and analysis to federated anti-poverty groups of BC, End Legislated Poverty, Together Against Poverty Society and PovNet. The new income assist-

ance legislation has been passed and it is expected that the regulations will be made public shortly. We will be examining the regulations in conjunction with the *Employment and Assistance Act* to determine the focus and priority of our work over the next two years.

We have been very involved in the cutbacks to legal aid through our work with the Canadian Bar Association Poverty Law Section. This year, the government sub-

stantially changed the face of legal aid in this province. All representation for poverty law matters delivered through Legal Services Society has been eliminated and the only service provided is information to the public through printed materials, websites and a new telephone call-in centre. Consequently, there is no longer any legal representation to deal with many of the legal problems affecting the poor, among them the following: gen-

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Class action lawsuit certified

Madam Justice Allan of the BC Supreme Court has certified a class proceeding challenging unfair treatment by the Canada Pension Plan of lesbian and gay surviving spouses. In her judgment released on July 31, 2002, Allan J. also approved Gail Meredith and Eric Brogaard as representative plaintiffs for the class.

The lawsuit against the federal government alleges discrimination against same-sex couples by denying surviving spouses a survivor benefit under the Canada Pension Plan if their partners died before January 1, 1998.

Under current law, if a same-sex partner dies on or after January 1, 1998, the surviving partner is entitled to a survivor benefit. However, where the same-sex partner died prior to January 1, 1998, the surviving partner is still denied the benefit. This restriction does not apply to heterosexual couples.

Plaintiffs to the action are being represented by J.J. Camp, Q.C. (a

long-time Board member of BC PIAC) and Sharon Matthews of Camp, Fiurante, Matthews; Ken Smith of Smith & Hughes; and Sarah Khan of BC PIAC. A similar action has been launched in Ontario by Doug Elliott, Dawna Ring, Q.C.; and Bill Selnes of Elliott and Kim on behalf of surviving spouses in other Canadian provinces except Quebec as Quebec has a separate pension scheme. The two legal teams are working closely together.

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Anti-Poverty

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eral civil litigation; income assistance; federal and provincial disability benefits; employment insurance; and residential tenancy.

BC PIAC prepared a legal opinion for the Poverty Law Section on the *Charter* right to legal representation for poverty law services. Using this opinion letter and case studies showing the favourable impact of legal aid services, the Poverty Law Section met with the Legal Service Society Board of Directors and the Attorney General to discuss the importance of continuing to provide poverty law services.

Since then, BC PIAC coordinated the formation of a coalition of individuals and groups to develop a test case which would grant a constitutional right to legal aid for poverty

law matters. BC PIAC is also on a committee that is discussing a constitutional right to legal aid for family law matters no longer covered by Legal Services Society.

Also through our work on the Poverty Law Section, a subcommittee including delegates from BC PIAC LSS, CLAS and Persons with Aids reviewed changes to the income assistance appeal system. We met with the Minister of Human Resources and made various recommendations about procedural fairness in the new appeal system, including that clients be given a full explanation of the issue and all the reasons for the decision, that the client has all the information and documentation that was used to make a decision, that the client is fully aware of the new reconsideration and appeal process and that the introduction of new evidence to support their claim should be allowed at the Tribunal.

Panhandling update

The panhandling issue continues to receive attention in the media. This spring, the Court confirmed that persons have a right to panhandle and has limited the City of Vancouver’s ability to regulate those who panhandle. In the case, we had argued that the freedom of expression of panhandlers must be protected and that their very presence on the street communicated to the public the plight of the poor. The case provided an opportunity to educate the public, the media and government about the rights of those who live in poverty and the discrimination they are subject to. Given the cutbacks to social welfare programs, the importance of this message being heard cannot be overstated.

Telecommunications

Local telephone rate win

The decision reviewing your basic local telephone rates was released by the Canadian Radio-television and Telecommunications Commission (“CRTC”). We are happy to report that this is a significant win for consumer groups.

The decision closely reflects our positions, and only departs in a significant way from our position in respect of ongoing monitoring of telephone company profits. In contrast,

the Commission considered the proposals made by industry players to be “unsuitable” and the position of the monopoly service providers like Telus really were unreasonably biased towards their own self-interest. We believe this reflects not only effective advocacy on our part, but also the interest of Commissioners in our perspective. This latter factor should not be underestimated: we have a consumer-friendly Commission interested in protecting consumers. In this way, the residential customer is protected.

The CRTC ruled that basic residential rates, on average, cannot in-

crease unless inflation exceeds 3.5% and that individual residential rates cannot increase by more than 5% per year. In addition, optional service rates (*i.e.* call forwarding) cannot increase by more than \$1 per year. These caps on rate increases applied to numerous separate baskets of services, so as to limit telco opportunities to raise basic rates while lowering rates for competitive services. In this way, the residential customer is protected. These rules apply in both rural and urban areas.

Pay phone rates will not be in-

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creased at this time, but the Commission will entertain proposals for increases in a subsequent proceeding. In addition, rates for extra listings in the directory are now capped, basic toll (long distance) rates continue to be capped, and credit card surcharges continue to be capped. The CRTC also ordered the implementation of a quality of service incentive mechanism based on the proposal we presented (*i.e.*, financial penalties to companies who don't meet pre-established service standards, and corresponding customer rebates in such cases) and development of a “Consumer Bill of Rights”. Finally, the CRTC approved the Service Improvement plans designed to extend and upgrade service in rural and remote areas.

One of the companies trying to compete with the monopolies has appealed this decision to the federal government. We will be opposing their appeal and will keep you posted on further developments.

All in all, a remarkably consumer-friendly decision! Note the numerous follow-up proceedings that will no doubt occupy us over the next year and which we will be contacting you about.

If you are interested, we highly recommend the decision itself, which is written in very clear language and is well organized so that you can zone in on specific issues. It can be found at <http://www.crtc.gc.ca/ENG/whatsnew/2002/may30.htm>. If you want a hard copy of the decision, please contact our office and we will send you one.

Shaw Cable's application for deregulation opposed by BC PIAC

Public interest advocates say the Canadian Radio-television and Telecommunications Commission (CRTC) should refuse to grant Shaw Cable's application to deregulate basic monthly cable fees in Vancouver, Burnaby, Coquitlam/Maple Ridge, Mission (Fraser), Northwest Vancouver, Surrey/Abbotsford, and White Rock, BC.

BC PIAC, representing a number of anti-poverty, seniors', consumers' and tenants' organizations has written to the CRTC expressing serious concern over Shaw's application, citing a lack of true competition in the cable television industry.

In BC PIAC's submission, the CRTC has a duty to foster effective competition. Effective competition will not work if the CRTC allows subsidiary or affiliated compa-

nies such as Star Choice to be regarded as a competitor of Shaw Cable, as this could open up the system to abuse.

BCPIAC argues that there are no real alternatives to Shaw's cable services in the 6 service areas that Shaw wants to deregulate because:

- Star Choice is owned by Shaw, and so can't be regarded as a true competitor
- Many low-income people can't afford installation costs necessary for satellite television
- A lot of apartment dwellers can't access satellite television because they either don't have proper exposure or have no outside space to install a satellite dish.
- Cable services through Novus are only available in downtown Vancouver.

Update on government panels and task forces

In addition to keeping an eye on policy and legislation initiatives by the Government of British Columbia itself, BCPIAC has also been watching the many task forces the Government has created. Almost a year ago, for example, we met with and made written submissions to the new Energy Task Force. That body had a mandate to come up with a new energy policy for the province. Although we supported the notion of B.C. finally having an energy policy, we disagreed with many of the recommendations in the interim report of the Task Force.

Apparently, we weren't the only ones that felt that way. Rumour has it that disagreement within cabinet and the Liberal caucus about the wisdom of such proposals as breaking up B.C. Hydro has delayed the final report.

More recently, we noticed that the “Recreation Stewardship Panel” had come up with some pretty startling recommendations concerning parks and recreation. Among these was the elimination of discounted camping fees for seniors and the disabled. On behalf of BCOAPO, we've made submissions opposing that change.

Natural Gas

GXS pipeline hearing drags on

On television, lawyers take on new clients, argue their cases and receive final judgments all in the same week. In real life, things take a little longer.

A case in point is the joint National Energy Board/Canadian Environmental Assessment Agency hearing into the proposed Georgia Strait Crossing (“GSX”) pipeline project. B.C. Hydro wants to build a natural gas pipeline from Washington State to Vancouver Island, so that it can generate electricity on the island by burning natural gas. For a number of reasons, we doubt that this proposal is in the best interests of our clients:

- The hydroelectric dams that currently supply Vancouver Island with its electricity rely on a free energy source, namely the rainwater that gathers behind the dams and turns their turbines. Natural gas, on the other hand, has to be purchased on the market, and we saw last year just how volatile natural gas prices could be.

- The combustion of the natural gas that is scheduled to be shipped through the pipeline would approximately double B.C. Hydro’s greenhouse gas emissions. Since this is at a time when humanity is trying to limit greenhouse gas emissions to avoid global catastrophe, B.C. Hydro’s plan is not only irresponsible, it also exposes British

Columbia to the risk of international sanctions.

- An increase in air pollution on Vancouver Island, particularly particulate emissions, increases the risk of illness and death, particularly to the elderly. Since several of our client groups are senior citizens’ organizations, this is a real concern.

- Shipping B.C. gas to a foreign country – the U.S.A. – before shipping it back to B.C. creates a threat to security of supply.

Because of these concerns, we have been representing our clients in the hearing process since the application was first made public. This was in the summer of 2000, more than two years ago, and we still don’t know when the public hearing will take place! Although the hearing was scheduled to take place in June 2002, that date has come and gone.

Why the delay? In part, it’s because we have had to go through preliminary applications and hearings just to get B.C. Hydro to provide information about such things as the environmental effects of the natural gas combustion (B.C. Hydro wanted to deal only with the environmental effects of the pipeline construction process) and to get it to answer some routine questions.

The more significant delay, however, has come from the failure of B.C. Hydro and the federal and provincial governments to consult with the native bands whose territories would be affected by the

The Yak Column

BC PIAC has a baby!!

Our receptionist/legal secretary Ana Ramirez had a baby girl on September 12, 2002. Mom and baby are doing well and we look forward to Ana’s return in May 2003.

We have been fortunate enough to hire Patrice Morgan to look after things while Ana is off on maternity leave.

A big welcome to Natasha Edgar, our new articling student for 2002-2003. Natasha started with us on May 21, 2002.

Martha Lewis our former articling student is off to England to study for a year.

pipeline. The duty to consult has been clearly established by the courts in a series of decisions, the most recent of which is *Haida Nation v. B.C. and Weyerhaeuser*, 2002 BCCA 462.

Inexplicably, B.C. Hydro launched its pipeline application and tried to make it proceed to a hearing without the necessary consultations having been done. Fortunately, the NEB/CEAA Joint Panel delayed the hearing, and the first steps toward the necessary consultation are now being taken. The hearings can be expected to follow at some point in 2003.

Private sector privacy protection slated

Beginning in 1990, BCPIAC was instrumental in getting legislation passed in British Columbia to protect the privacy rights of people whose personal information is held in government files and data banks.

All provinces now have some form of legislation that provides such protection. What has remained missing until now, however, is legislation governing personal information that is held in private hands. Given that electronic commerce creates the risk of more and more of our personal information being “out there”, this has become a serious concern. An Ipsos-Reid survey conducted in 2000, for example, showed that 92% of British Columbians wanted the government to pass private sector privacy legislation.

It now appears that the Government of British Columbia will introduce such legislation. This is not in response to citizens’ wishes, but because a federal initiative has left it with little choice. When the Government of Canada passed the Personal Information Protection and Electronic Documents Act (“*PIPEDA*”), it initially applied only to private enterprises that come under federal jurisdiction. Unusually, however, it also included a provision that in any province that does not enact “substantially similar” legislation, *PIPEDA* will also

apply to organizations under provincial jurisdiction beginning on January 1, 2004.

In order to meet this deadline and avoid having *PIPEDA* apply by default, the Government of British Columbia planned to introduce draft legislation in September 2002. BCPIAC is closely following developments, and expects to be involved in whatever consultation process is established for the new statute. All of our client groups should, however, pay direct attention to the new proposal, since the new legislation will not just affect their individual members, but will also affect the organizations themselves.

On the positive side, British Columbia residents should now be able to find out, for example, what information banks and credit agencies hold about them and to correct any inaccuracies in that information. On the other hand, voluntary organizations – just like businesses and other organizations – may now have to examine how they manage the information they hold about their own members. Do they, for example, collect any un-

necessary information? Do they ever disclose their mailing lists to other organizations and, if so, have they obtained consent from all of the people on the mailing lists? Have they taken steps to ensure the security of the information they hold?

These and other questions are bound to be of concern in the next couple of years. BCPIAC looks forward to working with its clients to meet those concerns and to ensure that they are able to comply with the requirements of the new legislation.

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OUR MANDATE

The British Columbia Public Interest Advocacy Centre (BC PIAC) is a general public interest law centre established in 1981 to help strengthen the voices of those affected by the actions of regulated utilities, large business interests and government. BC PIAC provides representation to groups which do not have the resources to effectively assert their interests.

Our largest area of concentration is utility regulation, in which we represent the interests of residential consumers' organizations before tribunals like the Canadian Radio-television and telecommunications Commission (CRTC) or the British Columbia Utilities Commission (BCUC). A second area of concentration is social justice litigation, which has included litigation on behalf of the rights of women, racial minorities, the poor and other under-represented groups.

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