



October 19, 2009

Ms. Catherine Kinahan
City of Vancouver Law Department
453 West 12th Avenue
Vancouver, BC
V5Y 1V4

VIA FAX: 604-863-7445

Dear Madam:

RE: Shaw et al v. City of Vancouver, Your File #09-1038

Thank you for your letter dated October 16, 2009. Please note that the fax number for the B.C. Civil Liberties Association is (604)687-3045 and that your letter was sent to the Pivot Legal Society in error. Please correct your records.

The B.C. Civil Liberties Association disagrees strongly with your suggestion that the City has extended “offers” to meet on the Olympic bylaw issue that “have not been answered to date.” I include the following chronology of our interactions with the City on this matter for your reference.

Chronology of BCCLA contacts with the City and City responses

On July 15, 2009, Councillor Geoff Meggs announced to the Vancouver Sun the Olympic Bylaw amendments and his opinion of any civil liberties concerns related to the amendments before the BCCLA was able to review and assess the amendment package. In that article, he said: “This may irritate some people who are worried about free speech, but I don't think it's a relevant free speech question. In my view, the concern on that front is over-rated.”

On July 16, 2009, the City issued a press release outlining some of the proposed amendments and noting the amendments would be released on the City website shortly. On that same day, I sent an e-mail outlining a number of “red flags” in the press release to Clr. Geoff Meggs, Mr. Mike Magee who is a senior city administrator, and Clr. Andrea Reimer. In that e-mail, I asked when the matters would be coming before Council. I received in response a two line e-mail from Clr. Meggs, carbon copying Andrea Reimer and Kevin Quinlan of the Mayor's office in which he advised that the bylaw changes would be introduced “next week” and that he'd send me details on those amendments “next week” as he didn't have them at home. He never sent those details. There was no invitation to meet

at this stage to discuss those issues. The BCCLA reviewed the materials once they were posted publicly on the City's website.

On July 23, 2009, the BCCLA orally presented to Council an exhaustive list of our concerns related to the Bylaw. On July 24, 2009, these concerns were not met with an offer to meet, but rather with an editorial by City Councillor Geoff Meggs in the Vancouver Sun in which he alleged that the BCCLA's concerns were "going too far" and needed a "reality check." We note the byline of the article reads: "Geoff Meggs is a Vancouver city councillor" and no suggestion was made anywhere in that article that Clr. Meggs was writing in his personal capacity. On July 28, I sent an advance copy of my response opinion article to Kevin Quinlan of the Mayor's office and Clr. Geoff Meggs before it was published in the Sun. There was no response to that e-mail that we can find any record of. In any event, there was certainly no invitation to meet.

On August 4, 2009, the BCCLA faxed a letter dated July 24, 2009 to Mayor and Council outlining our concerns in writing. This letter was not met with an invitation to meet, or any direct response that we have record of, but rather with a CBC early edition interview on August 12, 2009 in which Clr. Meggs again specifically named the BCCLA and publicly derided our organization's concerns, making comments that included:

- *With respect to the City Manager's untrammelled discretion to change the size of perimeters and rules within perimeters established by the Bylaws:* "The City Manager has quite broad powers anyway, so this strengthens, but I can tell you the entire council will be in town and if anybody's concerned that a dictatorship has been established next February, there'll be lots of tools to come to grips with it."
- *With respect to the protest pen issue:* "I'm sorry if they don't like it. There's been a place and a policy that's created to establish a high profile guaranteed location in addition to the rest of the city. If people would prefer to demonstrate in Marpole next to the Cambie Bridge, a long way from everything, that's fine too."
- *With respect to the legality of the City's actions:* "I don't know how many times we have to repeat it, the Charter of Rights and Freedoms has to be respected, has been respected, has obviously been referred to by city staff in the development of this."

On September 2, 2009, I began efforts to set up a meeting with senior city administrator Mike Magee and Mayor Gregor Robertson to discuss a number of issues of interest to the BCCLA, including and in particular the Olympic bylaw issue. I sent e-mails to Mr. Magee on the 2nd, 10th and 16th of September reminding Mr. Magee of my interest in meeting before we could set a date and time. I point this chronology out not to criticize Mr. Magee's response time, but only to underline that the suggestion in your letter that the BCCLA has somehow been refusing multiple offers to meet is completely incorrect. There is a clear e-mail trail to the contrary where the BCCLA has been pursuing this issue with City representatives aggressively both privately and publicly, including face to face meetings.

On September 23, 2009, at 10:00 a.m., I was able to meet with Mike Magee in his office. The Mayor could not attend but I was advised the Mayor had been invited to the meeting by Mr. Magee and that the Mayor had sanctioned the meeting. Mr. Magee and I decided, given the difficulty in setting a time to meet to date, to proceed in the Mayor's absence and that Mr. Magee would communicate the BCCLA's concerns directly to the Mayor.

During my meeting with the Mayor's representative, I once again raised the concerns of the BCCLA related to the Bylaw, and advised Mr. Magee that time was running out to reach a solution without litigation. I advised him that it was my opinion that the BCCLA's concerns had been ignored by the City and were actively being undermined by Clr. Meggs' dismissive comments in the media. No action that I am aware of came from that meeting on the part of the City of Vancouver. No invitations to meet were received by our office after that initial meeting to discuss potential amendments or modifications to the Bylaw.

In fact, this meeting was followed by an article in the Georgia Straight on October 15, 2009 in which city councillor Andrea Reimer, again speaking as a city councillor, was dismissive of the concerns of the BCCLA, saying, "I continue to be the head of an organization [Wilderness Committee] that organizes a lot of rallies and events out on the streets, and I do not see this bylaw in any way impacting on our ability to do that during the Olympics. . . You know, I work in advocacy. I know there are certain tactics you use to draw attention to issues, and court is certainly one of them."

The BCCLA's lack of confidence in the City on this matter

So now, at this very late stage and given the history of public comments by Council's representatives to date, to be told that unspecified modifications to the Bylaw are "scheduled" at some time in the future which the Law Department defines as "shortly," we have little confidence that our concerns will be taken into account without seeing the amendments themselves and those amendments on the Council agenda for approval.

This lack of confidence is compounded by the City's position that the BCCLA has been refusing to meet to discuss our concerns with the City, and that the City needs to meet to clarify our objections. Such a position, in our opinion, is untenable and bizarre given the breadth and scope of public and private discussion on this bylaw involving the BCCLA and representatives from the City. For example, a Google News search I completed for the words "*Vancouver Olympic Bylaw BCCLA*" revealed 687 news articles containing those keywords. While hardly scientific, this surely reveals the breadth of the public nature of our concerns and that they can hardly come as a surprise to the City.

Amendments scheduled to pass Bill 13 powers

We are well aware that amendments to the Bylaw are likely scheduled given the almost certain passage of Bill 13 in the provincial legislature which amends the *Vancouver Charter* to give the City even more draconian powers to enforce this already very problematic Bylaw, including increasing fines dramatically and permitting entrance to private property with only 24 hours notice, and in some cases with no notice at all. These are the very amendments to the *Vancouver Charter* requested by Council by motion dated January 20, 2009. These "scheduled" amendments are hardly in keeping with addressing our concerns; in fact, they amplify our concerns considerably.

The BCCLA's disinterest in meeting at this time

The City is aware of our existing issues with the Bylaw. If it wishes to respond to those concerns, we confirm our demands that the offending sections we have identified in our very thorough correspondence with the City and the public be stricken from the Bylaw entirely. Further, the City is aware of our concerns related to other regulations in the Bylaw not challenged in the litigation by Mr. Shaw and Ms. Westergaard-Thorpe, and we demand that these too be removed. Finally, we demand that the City not amend its bylaws to take advantage of the draconian new powers introduced by Bill 13 should that bill pass in the Provincial Legislature.

Given the clarity of our demands, and the City's track record to date in its representatives ignoring and deriding our concerns in public and private, there seems little point to a meeting.

Please feel free to send our office a copy of the proposed amendments and the schedule for introducing those amendments at Council and we will provide you our feedback in written form and consider a meeting at that time.

Yours truly,

A handwritten signature in blue ink, appearing to be 'David Eby', with a long horizontal line extending to the right.

David Eby
Executive Director