



LOCAL GOVERNMENTS at the **GAS PUMP**

Authority to require climate change labels

Climate change is a serious local government issue.¹ As part of the effort to reduce greenhouse gas emissions, many local governments have passed anti-idling by-laws to address air pollution. In addition, many local governments are considering adopting a by-law requiring gas stations to attach climate change warnings onto gas pump nozzles.²

This article will review the authority of local governments in British Columbia to adopt gas pump label by-laws. After a consideration of the relevant case law and the *Community Charter*,³ the least controversial path to enacting a gas pump label by-law appears to be a local government's power to license business.

Challenge to Municipal By-laws

When a local government proposes to pass a by-law in a previously unregu-

lated area, one consideration is always the risk that the by-law may be challenged. Prior to considering the possible authority for enacting a gas pump label by-law, it is useful to consider how the courts will undertake a review of a by-law in the event of a challenge.

When reviewing municipal by-laws to determine if they fall within the scope of legislative empowerment, the standard of review by a court is reasonableness.⁴ Reasonableness in enacting a by-law involves “an array of social, economic, political, and other non-legal considerations” and “means courts must respect the responsibility of elected representatives to serve the people who elected them and to whom they are ultimately accountable.”⁵ The reasonableness requirement limits municipal councils, in the sense that it demands the substance of their by-laws conform to the rationale of the empowering provincial statutory regime.

Valid Municipal Purpose

Another factor courts consider when determining if a by-law conforms to the rationale of its governing statutory regime is whether the local government acted to achieve a valid municipal purpose. In the case of *Shell v. Vancouver (City)* [*Shell*], a resolution aimed at encouraging Shell's divestment from apartheid South Africa was quashed on the basis that its purpose was to “affect matters beyond the boundaries of the city without any identifiable benefit to its inhabitants.”⁶

In a persuasive dissent, Justice McLachlin held that municipal purposes should be extended to include the “psychological welfare of citizens as members of a community who have

an interest in expressing their identity as a community.”⁷ This conception of “psychological welfare” was not followed by the majority, but Justice McLachlin's notion that courts should give deference to elected municipal councils as community representatives in the enactment of by-laws has been widely followed.

The most applicable municipal purposes for a gas pump label by-law outlined in the *Community Charter* are “providing for services, laws, and other matters for the community benefit”⁸ and “fostering the economic, social, and environmental well-being of its community.”⁹

Nuisance, Public Health, and the Environment

B.C. municipal councils could pass gas pump by-laws pursuant to their authority to regulate, prohibit, and impose requirements with respect to nuisance, public health, and the environment.¹⁰

Municipalities may regulate local nuisances, including “the emission of smoke, dust, gas, sparks, ash, soot, cinders, fumes, or other effluvia that is liable to foul or contaminate the atmo-

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1 Canadian Climate Forum (2015), “The Impact of Climate Change on Canadian Municipalities and Infrastructure” <www.climateforum.ca/wp-content/uploads/2015/05/CCF-CCMunicipalities-PSD-April2015-FINAL.pdf>.

2 In November 2015, the City of North Vancouver passed such a by-law. See City of North Vancouver, Business Licence By-law, 2004, No. 7584, Amendment By-law, 2015, No. 8437 (Greenhouse Gas Emission Labels for Gas Pumps).

3 S.B.C., c. 2003.

4 *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, 1 S.C.R. 5.

5 *Ibid.*, at para. 19.

6 *Shell v. Vancouver (City)*, [1994] 1 S.C.R. 231, 110 D.L.R. (4th) 1.

7 *Ibid.*, at para. 252.

8 Clause 7(b) of the *Community Charter*.

9 Clause 7(d) of the *Community Charter*.

10 Subsection 8(3) of the *Community Charter*.

sphere.”¹¹ Indeed, many municipalities have relied on this head of power to enact anti-idling by-laws. However, the connection between preventing air pollution and anti-idling is arguably much more tangible than the connection between preventing air pollution and a sticker on a gas pump.

Despite local governments’ right to regulate nuisances, any by-law to prevent air pollution from motor vehicles might be challenged as infringing on provincial authority and being *ultra vires* municipal authority, because the province has not only the authority to regulate air pollution emissions from motor vehicles,¹² but may impose different regulations in different areas of British Columbia. Arguably, the retention of this power indicates that the province intended to preserve its authority to pass environmental regulations, including in relation to motor vehicle emissions, at the municipal level.

There are other municipal purposes to which gas pump labelling by-laws potentially connect. Municipalities may regulate with respect to public health,¹³ specifically in regards to the protection, promotion, or preservation of the health of individuals.¹⁴ Additionally, municipalities may regulate with respect to the protection of the natural environment, including watercourses, wildflowers, alien invasive species, and pesticides.¹⁵ However, none of these enumerated matters

give a municipality the authority to enact a by-law to address climate change.

If a gas pump label by-law is enacted under the health power, it may be challenged for not being rationally connected to a municipal purpose, as it is difficult to see how such a by-law fosters the economic and social wellbeing of a community. It might be that such a by-law fosters the environmental wellbeing of the community through addressing climate change. However, while a municipality may genuinely intend to reduce the public health risks associated with air pollution and climate change by passing a gas pump label by-law, such a by-law takes no *direct* action to address those issues. Council intentions notwithstanding, the connection between the by-law and valid municipal purpose may not be strong enough to pass judicial scrutiny.

Business Regulation and Licensing

The municipal authority to regulate with respect to business may provide the strongest basis for passing a gas pump label by-law. This power was considered in *International Bio Research v. Richmond (City)*, in which a Richmond by-law prohibiting the sale of dogs in pet stores was challenged.¹⁶ The court found that a by-law regulating a business will not be quashed for being *ultra vires* if it regulates but does not prohibit a business, it is reasonable and rationally connected to the objective, and it has a valid municipal purpose, determined by reference to the *Community Charter*.

The court determined that a by-law regulating the sale of dogs served a valid municipal purpose because Richmond was responsible for funding the local animal shelters that care for abandoned pets.¹⁷ It was unclear in which municipal purpose this funding of animal shelters was grounded. However, the court upheld the by-law, as it found an obvious nexus between community benefit and the impugned regulation.

It is unclear exactly how requiring a climate change warning label on gasoline pumps would be “reasonably and rationally connected” to the objective of fostering the environmental wellbeing of a municipality. This concept of wellbeing

appears to be along the lines of “psychological welfare” that was outlined in the dissent in *Shell*. However, as mentioned earlier, this conception of municipal purpose was rejected by the majority of the Supreme Court of Canada.

The case of *Eng v. Toronto (City)* [Eng] demonstrated that a symbolic by-law intended to demonstrate community support for environmental protection is insufficient to demonstrate that a by-law is for the benefit of a community or that it supports the environmental wellbeing of a community.¹⁸ In *Eng*, Toronto argued that a by-law was enacted for the benefit of the “environmental wellbeing” of the city and because citizens support “the symbolic contribution of a shark ban.” The Ontario Superior Court of Justice disagreed, and quashed Toronto’s by-law banning the sale of shark fins on the basis that “there is nothing to suggest the offensive practice of shark-finning in distant oceans affects the ability of Torontonians to live together in the city.”¹⁹

As part of the power to regulate business, a local government may provide for a system of licenses that include terms and conditions that must be met before obtaining a licence.²⁰

This authority could possibly allow a municipality to require as a condition of a business license that a climate change label be affixed to gas pumps. There is no British Columbia case law interpreting this power.

However, there is an Alberta case that indicates amending an existing business license by-law to incorporate such a condition would make it more difficult to challenge. In *Associated Cab Limousine Ltd. v. Calgary (City)* [Associated Cab], the Alberta Court of Appeal upheld a by-law that mandated limousines in Calgary charge a minimum rate of \$60 per hour on the grounds that the impugned provision was part of a larger by-law that regulated various elements of the cab and limousine industry in Calgary. While the Alberta Court of Appeal recognized that the impugned provision had the effect of limiting competition, the regulation of taxi and limousine service was found to be a *bona fide* municipal purpose. The impugned provision was “part of a comprehensive by-law that,

11 Section 64 of the *Community Charter*.

12 Section 49 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318.

13 Health and the environment are areas where the province has concurrent jurisdiction, and such by-laws must be in accordance with regulations, and be approved by the ministries of health and environment. See section 9 of the *Community Charter*.

14 *Public Health Bylaws Regulation*, B.C. Reg. 42/2004.

15 *Spheres of Concurrent Jurisdiction – Environment and Wildlife Regulation*, B.C. Reg. 144/2004.

16 *International Bio Research v. Richmond (City)*, 2011 BCSC 471 (CanLII).

17 *Ibid.*, at para. 48.

18 *Eng v. Toronto (City)*, 2012 ONSC 6818 (CanLII).

19 *Ibid.*, at para. 74.

20 Subsection 15(1) of the *Community Charter*.

inter alia, governs the taxi and limousine business.”²¹

As such, if a gas pump label by-law was challenged, and a requirement for a label was made by way of an amendment to an existing business license by-law, a local government could argue that it was

part of a comprehensive by-law that governs the provision of business licenses.

Conclusion

While the power to license businesses provides the best authority for enacting a gas pump label by-law, the more difficult challenge is ensuring such a by-law addresses a valid municipal purpose. This is particularly difficult given the global causes and

effects of climate change, as well as uncertainty as to whether gas pump labels meaningfully address these issues. Ultimately, any psychological benefits resulting from taking action on climate change may not, by themselves, provide sufficient “community benefit” for a gas pump label by-law to satisfy the legal requirement that it serve a valid municipal purpose. **MW**

²¹ *Associated Cab Limousine Ltd. v. Calgary (City)*, 2009 ABCA 181 (CanLII) at para. 18.

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