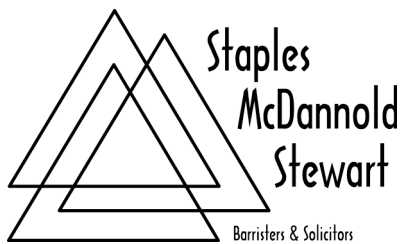


## Regulation of Pawnbrokers by Municipalities

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In *Royal City Jewellers & Loans v. New Westminster (City)*, 2006 BCSC 203 ("*Royal City Jewellers*"), the Court upheld a 1997 bylaw to regulate second hand dealers within the City of New Westminster (the "Second Hand Dealers Bylaw").

## 1.0 Section 59 Community Charter Applies to Pawnbrokers

The *Royal City Jewellers* decision is a significant decision in a number of respects. First, it confirms the application of section 59(1)(b) of the *Community Charter* to pawnbrokers. There has always been a slight question as to whether section 59 of the *Community Charter* or its predecessors were intended to apply to pawnbrokers given the existence of the *Pawnbrokers Act*.

The now repealed *Pawnbrokers Act* defined "pawnbroker" and established a set of regulations applicable to pawnbrokers, as well as identifying events which constituted offences of a pawnbroker. Municipalities were not responsible to enforce the *Pawnbrokers Act*; that duty fell to the Province. The *Pawnbrokers Act* required, among other things, that a pawnbroker keep books and documents which included information about the articles pawned and the name and address of the pawner. These records were to be made available for viewing in the pawnbroker's place of business.

A pawnbroker advances or lends money and retains goods as security for the loan; the goods may be redeemed or repurchased at a later time. Arguably, this is distinct from purchasing, taking in barter or receiving used or second hand goods. Nevertheless, many municipalities adopted bylaws that were applicable to both second hand dealers and pawnbrokers under this authority even before the *Pawnbrokers Act* was repealed.

Given that the Court does not question the authority of the Second Hand Dealers Bylaw to impose requirements on pawnbrokers, its judgment in the *Royal City Jewellers* case implies that the Court has interpreted section 59(1)(b) of the *Community Charter* as containing the authority to impose requirements on pawnbrokers as well as second hand dealers.

## 2.0 Criminal Law Jurisdiction

Second, the case is important in its finding that the Second Hand Dealers Bylaw did not encroach on the exclusive federal jurisdiction over criminal law.

The Petitioner alleged that two requirements in the Second Hand Dealers Bylaw were in pith and substance criminal law. These were the obligation of the pawnbroker to produce the second hand dealer's register for inspection by the police and the requirement that, for every business day, a form that included information about what was pawned, when, by whom and for how much, should be delivered to the police the following business day. The pawnbroker argued that the sole purpose of these sections was to facilitate criminal investigations.

The Court in *Royal City Jewellers* concluded that these sections do not establish criminal offences or establish acts that are defined as criminal, but are rather directed at the investigation and prevention of crime. The Court relied on earlier decisions which found that bylaws that deter criminal activity, or prevent or suppress the conditions which foster the development of crime, do not necessarily bring them within the federal government's jurisdiction over criminal law.

Even though it would be an offence to fail to comply with the sections of the Second Hand Dealers Bylaw, the Court concluded that imposing these requirements does not criminalize the business actions of a pawnbroker; it only regulates aspects of the pawnbroker's operation.

### **3.0 Interpretation of Authority**

Third, another significant aspect is the Court's conclusion as to whether or not the Second Hand Dealers Bylaw is *ultra vires* the authority contained in section 59 of the *Community Charter*. In answering the question in the negative the Court considered the purposes of the *Community Charter* set out in section 3, and the municipal purposes set out in section 7 of the *Community Charter*.

The Petitioner argued that the authority of the municipality was restricted to the specific provisions in section 59(1)(b) which state as follows:

"59(1) Council may by bylaw do one or more of the following ...

- (b) in relation to persons engaged in the business activity of purchasing, taking in barter or receiving used or second hand goods,
  - (i) require such persons, after purchasing, taking in or receiving used or second hand goods, to notify the Chief Constable who has jurisdiction in the municipality within the time period established by the bylaw, and
  - (ii) prohibit such persons from altering the form of, selling, exchanging or otherwise disposing of those goods during the time period established by the bylaw".

The Second Hand Dealers Bylaw required that a record be kept describing the article, the time the article was received, the full name, address and description of the person (confirmed by picture identification), provincial licence number of any motor vehicle used for the delivery of the article and the exact price paid for the article, as well as the identity of the staff person who received the articles. This record was to be made available for inspection by the Chief Constable and given to the Chief Constable to serve as evidence in Court. Further, records containing similar information were to be delivered to the Chief Constable the business day following.

Relying on the Supreme Court of Canada decision in *City of Montréal v. 2952-1366 Québec Inc.*, 2005 SCC 62, the Court concluded that the guiding

principle in interpreting the authority for the bylaw is the lawmaker's intention, "rather than relying on the literal meaning of the language used, the meaning of the language must be determined by considering the purpose of the enactment...".

Section 59 of the *Community Charter* does not define "notify", nor does it otherwise prescribe the content of the notification to the Chief Constable. The Court stated:

"I am satisfied that the purpose of this notification requirement, however it is interpreted, is to protect the public interest. As the City's counsel submits, the scope of the notification is for Council to determine, bearing in mind those portions of the *Community Charter* which address "existing and future public needs" (s. 3(b)), "municipal purposes"(s.4(1)), and "fostering the economic, social and environmental well-being of its community" (s. 7(d)). All of these factors must be considered in light of providing the municipal council with the "flexibility to determine the public interest" (s. 3(c))."

The Court interpreted the authority to notify the police as going beyond merely describing the goods taken in pawn, as it would be too restrictive to interpret it otherwise, particularly when the local government is provided with the jurisdiction to prevent crime.

A cautionary note: an element relied upon by the Court in interpreting the authority in section 59 broadly is the ambiguous nature of the phrase "to notify". This section does not specify the subject matter of the notification to the Chief Constable. The Court used this ambiguity as a basis to expand the additional power to impose a requirement on a business that is granted in section 59.

The requirement to keep records under the general power to regulate business has not always been found to be valid for businesses other than second hand dealers and pawnbrokers.

For example, in *International Escort Services Inc. v. Vancouver (City)* (1988) 33 BCLR (2d) 202, the City of Vancouver, under its authority to regulate business, required a person carrying on the business of a social escort service to maintain a written record of all requests to provide a social escort, including the name of the escort and the fee charged. This record was to be made available for inspection by the Business Licensing Inspector or the police. The Court concluded that the municipality did not have the authority to require the person carrying on the business to keep this record.

The Court considered whether the power to regulate authorized the bylaw's requirement. After reviewing the definition of "regulate", the Court found that only a part of the definition might apply to the escort service bylaw. This was the part of the definition of regulate which includes the power to inspect.

The Court assumed that "inspecting" is a means of investigating compliance with the laws or regulations with which the City sought compliance. The Court stated:

"I do not accept the proposition that "inspecting" or any other terms employed in the undoubtedly broad definition of "regulating" confers upon council unrestricted authority to make bylaws requiring any licensed business to supply any information the City chooses to demand at any time. In this context, inspection must be directed toward ensuring compliance with some lawfully established requirement or standard."

A record may be required to be maintained if it is made for the purpose of inspecting to see if there is compliance with a lawful requirement or standard. In this case the Court concluded that the requirement to keep the record of request for escort services, the names of escorts and the fee to be charged went beyond inspecting to determine conformity with the existing lawful requirements. As a consequence, the Court found that the requirements in the bylaw were *ultra vires*.

The Court did uphold the legitimate interest of the City in ensuring compliance with the provision of the bylaw which prohibits the social escort agency from offering the services of a social escort who has not been licensed. Those portions of the bylaw which could be supported were those which required information be provided that would allow an inspection to confirm compliance with the requirement that every escort be licensed.

The *Royal City Jewellers* case cannot be used as a decision to enlarge the power to regulate, especially in light of the *International Escort Services* case. The *Royal City Jewellers* decision is particular to the facts and the interpretation of the additional powers granted to municipalities to impose requirements on second hand dealers.

#### **4.0 Freedom of Information and Protection of Privacy Act**

The Court also commented on whether or not the requirement for second hand dealers to collect information and forward it to the police violated any freedom of information legislation, either federal or provincial. The Court concluded that whichever legislation may be argued to apply, the requirement did not violate the freedom of information legislation.

Under section 26 of B.C.'s *Freedom of Information and Protection of Privacy Act*, the collection and provision of information to the police is considered information expressly authorized by or under an Act, or information collected for the purposes of law enforcement. Under the Federal freedom of information legislation it is authorized as being appropriate in the circumstances under section 11 of the *Personal Information Protection Act*.

## 5.0 Section 8 of the Charter of Rights and Freedoms

Lastly, the Court concluded that the Second Hand Dealers Bylaw did not authorize an unreasonable search and seizure of personal information contrary to section 8 of the *Charter of Rights and Freedoms*.

This issue was also considered in the *International Escort Services* case, where the Court concluded that the requirement of the escort service agency to create the records and allow them to be inspected did not amount to an illegal search because it did not authorize a forced entry search of the premises or removal of anything from the premises.

In contrast, section 7 of the Second Hand Dealers Bylaw in the *Royal City Jewellers* case did require the second hand dealer to provide the books and documents for inspection. The Court concluded that the information contained in the records is not the kind of information which is subject to the protection of section 8. The manner in which the information is sought is minimally intrusive to the second hand dealer's customers and does not include any biographical core of personal information, or reveal intimate details of lifestyle and personal choices of an individual.