

OPINION

Is music noise?

B.C. Supreme Court ruling: Singing, even amplified, is not 'noise,' as judge says bylaw tickets should be torn up



Ian Mulgrew

Babe Coal is singing the why-won't-they-hear-my-constitutional-argument blues.

The Vancouver singer songwriter, a.k.a. Megan Regehr, has beaten a sheaf of noise control bylaw tickets from the City of North Vancouver because the B.C. Supreme Court says her soft crooning, even amplified, doesn't fit the definition of "noise."

Forget the review, the win only left Regehr "saddened."

After being given six tickets in the summer of 2012 for performing in the civic plaza between Chesterfield and Lonsdale avenues, Regehr launched a constitutional challenge.

Representing herself, she claimed the city was violating her right to freedom of expression and the enforcement procedures violated her right to a fair hearing. Though B.C. Judge Heather Holmes said the constitutional challenges were not without weight, unfortunately, she ignored them.

"There can be no question that Ms. Regehr's singing created 'sound,'" Justice Holmes said in her ruling released Thursday.

"The issue is whether the 'sound' Ms. Regehr made was also 'noise.'"

She concluded it wasn't.

"I did not win anything I asked for, nothing of significance, and I got no justice," Regehr said in a statement posted on her website.

"With only the tickets being decided on, I feel no justice for myself and fellow Canadians in this matter and I fear the direction of our legal system and the betterment of our country."

In a decision that reads like a paper on hermeneutics — the science of interpretation — the justice dissected the possible meanings of "noise."

Under the bylaw, Judge Holmes said, the non-exhaustive definition had three parts — sounds that disturb or tend to disturb the peace and enjoyment of the neighbourhood, sounds made at a level exceeding a permitted limit and sounds listed in a schedule B. The list specifically prohibits squealing tires, loud exhaust pipes, annoying animals as well as: "Shouting, the use of megaphones or voice amplification equipment, the making of any other noise, noisy conduct by

any person in or at any street, wharf, dock, pier, or public place ..."

The municipality said, of course, Regehr fell under that definition — it was unambiguous and she was making noise with her amplifier.

Regehr in her submissions did not contend that she fell outside the bylaw's net either.

"I made it clear that I both sing and speak through my amplifier, and I stand for the rights of all expression and intend to fight for my people, people who have been persecuted and prosecuted for public expression through illegal



Megan Regehr

bylaws like these, as a whole," she said in her response to the ruling.

Still, the judge parsed the bylaw differently and saw complications where the civic burghers and Regehr saw clarity.

"In my view," Holmes said, "read in the context of the bylaw as a whole, paragraph 9 refers to the use of equipment to amplify the spoken voice, and not to the use of equipment to amplify the singing voice."

How could she possibly think that?

"First," she explained, "the immediate context for the reference to 'voice amplification

equipment' appears to limit the phrase to the spoken voice. The phrase appears immediately after references to 'shouting' and 'the use of megaphones,' both of which generally involve the use of the spoken voice, and not the singing voice."

Second, Justice Holmes added, "singing is a subset of music," and the bylaw as a whole, indicates "no intent to deem amplified music to be 'noise' regardless of its decibel level or its effect on the peace of the neighbourhood."

The failure to include a specific reference to music, she said, "suggests that the

drafters did not deem music to be inherently or necessarily objectionable or disturbing. It appears, rather, that they intended questions concerning whether amplified or other music amounts to 'noise' to be determined by reference to the other arms of the definition, which examine its sound level and whether it disturbs the community."

So, she didn't have to consider the constitutional arguments, the tickets should simply be torn up.

And, as the song says, all Babe Coal can do is cry.

imulgrew@vancouver.sun.com

CITY OF NORTH VANCOUVER

NOISE BYLAW



SCHEDULE B: Includes a list of "Objectionable or Disturbing Sounds."

A singing voice is not on the list. Among the sounds that are banned (edited, and in part):

- ▶ **The vocal sound** of an animal, bird or fowl, under the control of, or owned by a person, which is creating any kind of sound continually or sporadically for more than 15 minutes
- ▶ **A combustion engine** operated without an effective exhaust muffling system
- ▶ **Squealing tires** on a vehicle
- ▶ **Vehicle horns** or other warning devices (except under certain circumstances)
- ▶ **Banging**, clanking, squealing or other similar sounds from a vehicle, caused by an improperly secured load, improperly secured equipment or inadequate maintenance
- ▶ **The amplified sound** of a radio, television, player or other sound playback device or amplification equipment — or the sound of a musical instrument — made continuously for more than two minutes and which can be heard from a distance of five metres from a vehicle
- ▶ **Shouting**, the use of megaphones or voice amplification equipment, the making of any other noise or noisy conduct by any person — on any street, wharf, dock, pier, or in a public place
- ▶ **A burglar alarm that continues** for more than 15 minutes
- ▶ **A motor vehicle security system** that continues for more than one minute
- ▶ **Construction activity** or garden and building maintenance equipment (outside of specific hours)