



FONVCA AGENDA

THURSDAY March 19th 2009

Place: DNV Hall 355 W. Queens Rd V7N 2K6

Time: 7:00-9:00pm

Chair: Del Kristalovich – Seymour C. A.

Tel: 604-985-0748 **Email:** clarity2001@shaw.ca

Regrets:

1. Order/content of Agenda

2. Adoption of Minutes of Feb 19th

<http://www.fonvca.org/agendas/mar2009/minutes-feb2009.pdf>

3. Old Business

3.1 Council Open and Closed Meetings

This issue is summarized at

<http://www.fonvca.org/agendas/mar2009/Unauthorized.pdf>
and can now be satisfactorily closed.

4. Correspondence Issues

4.1 Business arising from 2 regular emails:

4.2 Non-Posted letters – 0 this period

5. New Business

Council and other District issues.

5.1 OCP of other communities

- <http://www.vernon.ca/ocp/> and
- <http://www.vernon.sgas.bc.ca/index.php?page=process>

5.2 Dialogue on Sustainability

Sustainable cities: fact or fiction? By Dale Ann

<http://www.entrepreneur.com/tradejournals/article/print/179269358.html>
Read especially the concluding paragraph!

5.3 Review of DNV Zoning Bylaw

Arlington Group invited Community Associations to participate in the process – email of March 6/2009 – date yet to be determined

<http://www.fonvca.org/agendas/mar2009/Arlington.pdf>

Corrie's notes of ADP meeting of March 12th

<http://www.fonvca.org/agendas/mar2009/notes-adp-12mar2009.pdf>

5.4 2009 Metro Vancouver Sustainability Report

<http://www.metrovancouver.org/about/publications/Publications/SustainabilityReport2009.pdf>

5.5 Last minutes additions to “Consent Agenda”

Letter to Council

http://www.fonvca.org/letters/2008/15dec-to/Corrie_Kost_16dec2008.pdf

and response by James Gordon

http://www.fonvca.org/letters/2008/15dec-to/James_Gordon_23dec2008.pdf

- solution adopted by Corrie

5.6 Proposed Bus lane on Marine Dr.

http://www.translink.bc.ca/Plans/Public_Consultation/Marine_Drive.asp

5.7 Spirit Trail – DNV Diverted from Waterfront?

City of North Vancouver maintains waterfront spirit...

<http://www.cnv.org/?c=3&i=455>

DNV plan is

<http://www.dnv.org/article.asp?p=true&a=4227&v=3>

6. Any Other Business

6.1 Legal Issues

(a) An “Annoying” Bylaw

<http://www.brightoncity.org/ReferenceDesk/PressReleasesAndPublicNotices/2008/ord%20544%20publication.pdf>

(b) Local Government Management Association publication:

http://www.llbc.leg.bc.ca/public/PubDocs/bcdocs/403899/WUF_Presentation_June19.pdf provides

overview of: MFA, NCS, UBCM, LGMA, CIVICINFO

(c) “Price Fixing” and local governments

<http://www.fonvca.org/agendas/mar2009/high-price.pdf>

Also – to balance it – read

http://archive.epinet.org/real_media/010111/materials/warner.pdf

(d) Overview of Dog Liability in BC.

<http://www.cwilson.com/pubs/insurance/kxp2/>

Scienter (full awareness) criteria: ownership, propensity, and knowledge → absolute liability

Negligence: ought to have known, failed to take care

6.2 Any Other Issues (2 min each)

Regional Growth Strategy requirements by Metro Vancouver

<http://www.metrovancouver.org/planning/development/strategy/Pages/default.aspx> Council Workshop March 30th

7. Chair & Date of next meeting.

Thursday April 16th 2009

Attachments

-List of Email to FONVCA - **ONLY NEW ENTRIES**

OUTSTANDING COUNCIL ITEMS-Cat Regulation Bylaw;

District-wide OCP; Review of Zoning Bylaw; Securing of vehicle load bylaw; Snow removal for single family homes bylaw.

Correspondence/Subject Ordered by Date
16 February 2009 → 15 March 2009

LINK	SUBJECT
http://www.fonvca.org/letters/2009/16feb-to/Monica_Craver_10mar2009.pdf	Mixed use trail problems
http://www.fonvca.org/letters/2009/16feb-to/Monica_Craver_9mar2009.pdf	Mixed use trail problems

For details/history see

<http://www.fonvca.org/letters/index-letters-total-mar2009.html>

FONVCA MINUTES

Thursday, February 19th, 2009

Place: DNV Hall 355 W. Queens Rd V7N 2K6

Time: 7:00-9:00pm

Chair: Paul Tubb, Pemberton Heights C.A.

Tel:604-986-8891 Email: petubb@hotmail.com

Members Present:

Dan Ellis	Lynn Valley C.A.
Corrie Kost	Edgemont C.A.
Paul Tubb (Chair)	Pemberton Hts. C.A.
Eric Andersen	Blueridge C.A.
Val Moller	Lions Gate N.A.
Diana Belhouse	Delbrook C.A.
Cathy Adams	Lions Gate N.A.
Lyle Craver	Mt. Fromme R.A.

Guests: Fiona Walsh and Joan Peters - observers from Grand Blvd Ratepayers R.A.

John Gilmour and Grant Botto, Lynn Valley C.A. giving a presentation on Olympic celebration plans and the North Vancouver segment of the Torch Relay

The meeting was called to order at 7:05 p.m.

1. Order/content of Agenda

Item 5.2 was moved to the beginning of the agenda.

5.2 Olympic Celebration Site and the Torch Relay in North Vancouver

John Gilmour gave an extensive presentation regarding celebrations to take place throughout the 17day period of the Olympics, at the Lynn Valley Library plaza. Planning is underway for events that would utilize a covered stage and a giant screen at this outdoor venue. It is envisioned as a gathering place for the community during the Olympics. Specific artists and events are not booked, but a business plan has been prepared by the committee and has just gone to Mayor and Council. There are many steps to go through and there are many opportunities to participate and volunteer, including various committees that will be formed to take on specific aspects and tasks. A significant amount of fundraising needs to be done for this series of events.

Grant Botto is the volunteer chairperson for the Olympic Torch Relay in North Vancouver. The relay goes through our municipality on February 10th, and it's anticipated that it will be a high profile event, since the start of the Olympics will be just a couple of days later. Grant outlined some of the planning for the relay, and distributed detailed packages of information on the relay. There is lots of information about the Torch Relay available on several websites as well. Plans are underway for a big celebratory event at the Lynn Valley Library midday, with the torch's arrival being the highlight. There will be signage along the route, and

opportunities to participate in the relay itself, or as a volunteer along the route (which will be announced in June).

Correction: The torch celebration will be held in the parking lot of Lynn Valley Centre mall. Stage running parallel to Lynn Valley Road. The Celebration Site (for 17 days) will be held at the plaza by the library.

2. Adoption of Minutes of Jan 15th

Change on item 6.2. The proposal by Larco for the former winter club site in Lions Gate is for buildings up to 12 stories, and over 400 units total. Moved by Dan Ellis, Seconded by Diana Belhouse, and carried, to approve the minutes as amended.

3. Old Business

February 11th budget meeting for community associations and District staff. At this meeting, Rick Danyluk gave a presentation, and Dave Stuart and Councillor Mike Little were also in attendance. The meeting was fairly well attended and was thought to be very informative and productive. The presentation was followed by a Q & A session. Rick promised to give us a copy of his presentation - Corrie will follow up, and distribute it once he has it. It was agreed that FONVCA would send a thank you to Rick Danyluk, Dave Stuart and Nicole Deveaux, and copied to Mayor and Council.

-ACTION ITEM

4. Correspondence Issues

4.1 Business arising from 3 regular emails:

a) Concerns were expressed about the use of DNV residential streets and trails for a commercial bike race in June. This would be the first day of a multi day race. There was a question about what the financial benefit would be to the District. This will be posted in correspondence to District staff, and reported back to FONVCA.

b) Questions about closed meetings of council, and whether they are being publicized in accordance with the Community Charter. A letter has been sent by Corrie on this issue to District staff, and we will see whatever response comes back. In the meantime, anyone who becomes aware of in camera meetings not held in accordance with the rules for such meetings, should document that information.

4.2 Non-Posted letters – 0 this period

5. New Business

Council and other District issues.

5.1 Council Open and Closed Meetings

Mostly dealt with under 4.1 (b) above – see http://www.fonvca.org/agendas/feb2009/Corrie_Kost_14feb2009.pdf Corrie reviewed the of Community Charter requirements http://www.bclaws.ca/Recon/document/freeside/--%20C%20--/Community%20Charter%20%20SBC%202003%20%20c.%2026/00_Act/03026_04.xml#part4_division3 and how they were recently changed in Ottawa to allow for closed meetings that did not “materially advance” towards any council decisions. There are

Ombudsman examined any question of propriety (as opposed to court action in BC)
http://www.ottawa.ca/city_hall/mayor_council/accountability/meetings_en.html

5.2 Olympic celebration site and torch relay in North Vancouver:

Dealt with at beginning of meeting.

6. Any Other Business

6.1 Legal Issues –

- a) **Freedom of information.** This website: http://fipa.bc.ca/government_records/ was brought to our attention. The Freedom of Information and Privacy Association's website has lots of information and advice on how to request government records and other issues related to freedom of information, etc.
- b) **Office of the Information and Privacy Commissioner for B.C.** www.oipcbc.org is another valuable site for this area of interest
- c) **Freedom of Information and Protection of Privacy Act** for related legislation: [http://www.oipcbc.ca/legislation/FIPPA/Freedom_of_Information_and_Protection_of_Privacy_Act\(May2008\).htm](http://www.oipcbc.ca/legislation/FIPPA/Freedom_of_Information_and_Protection_of_Privacy_Act(May2008).htm)
- d) **Landmark court rulings for open electronic records** <http://www.fonvca.org/agendas/feb2009/Landmarkcourt-ruling-159814478830.pdf>
- e) http://www.whitehouse.gov/the_press_office/Freedomofinformationact **US President Barack Obama** has made a declaration to his department heads in support of the Freedom of Information Act

6.2 Any Other Issues (2 min each)

- a) **Local solutions for B.C. municipalities** – Eric Andersen gave a brief report on a meeting he attended earlier in February, which was organized by CUPE on the topic of public services in B.C. and how to boost local economies
- b) **Building Character and leadership** – a website on the issues of ethics, integrity and morality <http://wwwFOUNDATIONSmag.com/links.html>
- c) **George Washington's Rules of Civility and Decent Behavior** - <http://wwwFOUNDATIONSmag.com/civility.html> an interesting paper written when he was 16 years old
- d) **Atmospheric CO2 – a paper for Scientists.** Corrie gave a talk to a seniors' computer group in West Vancouver on Community Computing (@home

projects) in which he also discussed how human activities are altering Earth's atmospheric composition. <http://www.fonvca.org/community-computing/feb2009n.pdf> is a link to Corrie's paper and notes written for the presentation.

e) Environmental Victory - a defeat for Science

<http://www.fonvca.org/agendas/feb2009/a-defeat-for-science.pdf>
<http://www.fonvca.org/agendas/feb2009/Perspectives-31oct2008.pdf> is information about the devastating effects the ban on pesticides will have on Africa

f) Comments on 2009 Draft Financial Plan

<http://www.fonvca.org/agendas/feb2009/Comments-by-kost-on-2009-draft-financial-plan.pdf>
A few members of FONVCA have been attending the Budget meetings and have given input to Council. Eric Andersen gave an alarming perspective on how high property taxes will go over the next couple of decades, if the current trend of yearly increases continues!

g) Smithers – this links to Smithers' new 150page OCP

<http://www.town.smithers.bc.ca/pdfs/ds/alison%20changes/OCP%20Draft.pdf>

A 10 page OCP document, described as a worthy goal for North Vancouver District by one or more of our politicians, is probably not achievable, nor desirable. The community engagement stage for our new OCP is coming soon.

h) Lyle Craver let those attending know that the following evening Lynnmour Elementary would hold its annual "trivia night". It's an entertaining fundraiser for the school.

7. Chair & Date of next meeting.

Del Kristalovich - Seymour Community Association

Tel: 604-985-0748

Email: clarity2001@shaw.ca

7pm Thursday, March 19th, 2009

The meeting was adjourned at 9:25 pm.

Feb 26/2009

“Unauthorized” Closed Meetings of Council

This issue surfaced when it became known that DNV council was holding a closed meeting without a proper council resolution that would allow such closed meeting in accordance with section 90 of the Community Charter (See **Attachment B** and see also Pages 142-146 of the book “The Community Charter: BC Local Government in Transition” by William A. Buholzer (particularly “*The actual wording of this new closed meeting category in the Charter, however, does not support that interpretation [to cover shirtsleeve sessions]*”).

At 11:40 am of Feb 10/2009 I contacted Darrell Evans of the BC Freedom of Information & Privacy Association (fipa@vcn.bc.ca) at 604-739-9788 and we spoke about this issue. It seems other municipalities are holding similar “unauthorized” meetings. It was suggested that a prominent lawyer, familiar with the Community Charter and local governance could be approached to examine legal remedies to this problem. It was agreed to follow local channels (e.g. via the DNV Clerk and contact with council) as a preliminary step to resolve this issue.

I spoke to the Municipal Clerk (formally the Manager of Administrative Services) James Gordon (tel: 604-990-2207) about this issue and he concurred with my interpretation of the Community Charter regarding the holding of such closed meetings. He indicated that the legal opinion on this matter is that such closed meetings fell into a “grey” area and thus council decided to hold such meetings. Besides, he indicated, there is no penalty for violating the Open Meeting requirements.

I spoke to Councillor Lisa Muri about this issue as she saw nothing untoward about council holding such meetings and assured me that no council decisions were made at these meetings.

I also spoke to Councillor Mike Little and he informed me that Council had a legal opinion from Lidstone that so long as council did not “**materially advance**” towards a decision on matters under discussion it would be legal to hold such meetings. [I find some irony in all this, considering that a partner of that firm (Buholzer) gave a contrary opinion on page 145 of aforementioned reference.

I searched the web for this concept and could not find such an exception in BC but did find that it had recently (Jan 1 /2008) been adopted by the Municipal Act in Ontario.

An email was sent by me to Mayor and Council on Feb 12/2009 (see **Attachment A**). The issue was discussed as agenda item 5.2 at the FONVCA meeting of Feb 19th 2009. The relevant section of the Community Charter, as well as the Open and Closed Meeting section of the revised Ontario Municipal Act, were attached to the FONVCA package which was tabled on Feb 19th. At that FONVCA meeting it was suggested that I approach the Ombudsman’s Office of BC about this issue. As well, FONVCA members suggested waiting until a response was obtained to the Feb 12th email to Mayor and Council before it would respond as a body.

At 3:10pm on Feb 24th I called the Ombudsman office at 1-800-567-3247 (see www.ombud.gov.bc.ca/about/contact-us.htm) - explained my issue – and they indicated that they would call me back. At 10:30am on Wed Feb 25th I was phoned by “Christine” from the Ombudsman’s Office. We discussed the issue and she suggested I contact CAO

of DNV Dave Stuart and request a written response to the issue. I phoned the CAO office and left a message with his secretary Sue Mitchell at 10:50am. Sue Mitchell called me back at 11:48am and indicated that the issue concerned the matter I had emailed to Mayor and Council on Feb 12th. She said that David Stuart would call be back that day when he was free. An email from Sue Mitchell arrived at 12:15 (Feb 25th) stating “*This was about your email you sent re Annual Report Requirements – I have pulled it out for David.*” This being incorrect I replied “*No, it's about Closed meetings...please see attached.*” and attached a copy of the email I had sent to Council (**Attachment A**).

No call from David Stuart occurred that day...nor the next day. I decided to email David Stuart’s office, about this issue (and attached attachment A), on Friday Feb 27th. On March 2nd I received an email from David Stuart that he would call me this week.

After a week had passed – without any contact from David Stuart, I sent a gentle email reminder on Monday March 9th for him to contact me. Dave Stuart phoned me at 4:20pm March 10th. We discussed the issue – and he agreed the Mayor should not have held the closed meeting that triggered this issue. Dave Stuart assured me that such a closed meeting would not be held in the future. It should have been structured under an area/terms that allowed such a meeting to be closed – and be appropriately advertised. **The issue is thus closed and has been resolved to the satisfaction of all parties.** However, it will be up to citizens in other municipalities that have experienced this problem to take it to their CAO, and if not properly resolve, then to the BC Ombudsman (Tel: 1-800-567-3247) www.ombusdman.ca

Attachment A

February 12/2009

Your Worship & Members of Council,

The public has a healthy suspicion of governments. Recently, this council has been holding a number of **unpublicized closed meetings**⁽¹⁾ – contrary to the spirit and the letter of the law on open meeting requirements of the Community Charter (sections 89-95). It is clear that all closed meetings of council **MUST** be preceded by a council declaration which provides the reason (ie. appropriate section or sections of section 90 of the Community Charter)

If this council wishes to hold such closed meeting then I suggest that they petition the Province by bringing the matter up at the annual UBCM (Union of BC Municipalities) for endorsement. Until such endorsement is obtained and the Province amends the Community Charter council should desist in holding any further such meetings.

At the very least the public should be notified of such closed [even though the public is currently not notified – calling them “secret” would convey the impression that something inappropriate was being discussed] **meetings – with a description of the scope/intent and a list of all parties participating in the meeting.**

Closed meetings tend to undermine the public trust of all decisions that council makes at their open meetings by giving the appearance that decisions have previously been formed in secret for reasons to which the public has been excluded.

In summary – one can't have a **general rule that meetings must be open to the public** – with very clearly defined exceptions – and then claim that there are other meetings not covered by the general rule!

(1) In this context the usual definition of “meeting” is:

Those gatherings of a quorum or more of members of a governing body, or a quorum of a committee, subcommittee, board, etc at which members **DISCUSS, DECIDE, or RECEIVE INFORMATION** as a group on issues relating to the official business of that governing body.

Any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat and instant messaging), or other means of contemporary interactive communication, of a majority of a quorum of the members of a public body held for the purposes of discussing public business.

Yours truly,

Corrie Kost
2851 Colwood Dr. North Vancouver, BC, V7R2R3
Tel: 604-988-6615

ATTACHMENT B

Division 3 — Open Meetings

General rule that meetings must be open to the public

89 (1) A meeting of a council must be open to the public, except as provided in this Division.

(2) A council must not vote on the reading or adoption of a bylaw when its meeting is closed to the public.

Meetings that may or must be closed to the public

90 (1) A part of a council meeting may be closed to the public if the subject matter being considered relates to or is one or more of the following:

(a) personal information about an identifiable individual who holds or is being considered for a position as an officer, employee or agent of the municipality or another position appointed by the municipality;

(b) personal information about an identifiable individual who is being considered for a municipal award or honour, or who has offered to provide a gift to the municipality on condition of anonymity;

(c) labour relations or other employee relations;

(d) the security of the property of the municipality;

(e) the acquisition, disposition or expropriation of land or improvements, if the council considers that disclosure could reasonably be expected to harm the interests of the municipality;

(f) law enforcement, if the council considers that disclosure could reasonably be expected to harm the conduct of an investigation under or enforcement of an enactment;

(g) litigation or potential litigation affecting the municipality;

(h) an administrative tribunal hearing or potential administrative tribunal hearing affecting the municipality, other than a hearing to be conducted by the council or a delegate of council;

(i) the receipt of advice that is subject to solicitor-client privilege, including communications necessary for that purpose;

(j) information that is prohibited, or information that if it were presented in a document would be prohibited, from disclosure under section 21 of the *Freedom of Information and Protection of Privacy Act*;

(k) negotiations and related discussions respecting the proposed provision of a municipal service that are at their preliminary stages and that, in the view of the council, could reasonably be expected to harm the interests of the municipality if they were held in public;

(l) discussions with municipal officers and employees respecting municipal objectives, measures and progress reports for the purposes of preparing an annual report under section 98 [*annual municipal report*];

(m) a matter that, under another enactment, is such that the public may be excluded from the meeting;

(n) the consideration of whether a council meeting should be closed under a provision of this subsection or subsection (2);

(o) the consideration of whether the authority under section 91 [*other persons attending closed meetings*] should be exercised in relation to a council meeting.

(2) A part of a council meeting must be closed to the public if the subject matter being considered relates to one or more of the following:

(a) a request under the *Freedom of Information and Protection of Privacy Act*, if the council is designated as head of the local public body for the purposes of that Act in relation to the matter;

(b) the consideration of information received and held in confidence relating to negotiations between the municipality and a provincial government or the federal government or both, or between a provincial government or the federal government or both and a third party;

(c) a matter that is being investigated under the *Ombudsman Act* of which the municipality has been notified under section 14 [*ombudsman to notify authority*] of that Act;

(d) a matter that, under another enactment, is such that the public must be excluded from the meeting.

(3) If the only subject matter being considered at a council meeting is one or more matters referred to in subsection (1) or (2), the applicable subsection applies to the entire meeting.

Other persons attending closed meetings

91 (1) If all or part of a meeting is closed to the public, the council may allow one or more municipal officers and employees to attend or exclude them from attending, as it considers appropriate.

(2) If all or part of a meeting is closed to the public, the council may allow a person other than municipal officers and employees to attend,

(a) in the case of a meeting that must be closed under section 90 (2), if the council considers this necessary and the person

(i) already has knowledge of the confidential information, or

(ii) is a lawyer attending to provide legal advice in relation to the matter, and

(b) in other cases, if the council considers this necessary.

(3) The minutes of a meeting or part of a meeting that is closed to the public must record the names of all persons in attendance.

Requirements before meeting is closed

92 Before holding a meeting or part of a meeting that is to be closed to the public, a council must state, by resolution passed in a public meeting,

(a) the fact that the meeting or part is to be closed, and

(b) the basis under the applicable subsection of section 90 on which the meeting or part is to be closed.

Application of rules to other bodies

93 In addition to its application to council meetings, this Division and section 133 [*expulsion from meetings*] also applies to meetings of the following:

(a) council committees;

(b) a municipal commission established under section 143;

(c) a parcel tax roll review panel established under section 204;

(d) a board of variance established under section 899 of the *Local Government Act*;

(e) an advisory body established by a council;

(f) a body that under this or another Act may exercise the powers of a municipality or council;

(g) a body prescribed by regulation.

Planning in Vernon necessitates consideration of the population base immediately surrounding the City which is referred to as the Greater Vernon Area. Comprised of the City of Vernon, District of Coldstream, Okanagan Indian Band Reserves No. 1 and No. 6 and the newly adjusted boundaries of Electoral Areas “B” and “C” of the Regional District of North Okanagan, the Area’s total population in 2006 was 55,418. The breakdown by location is shown in Figure 3.

Jurisdiction	2001 Census	2006 Census
City of Vernon	33,542	35,944
District of Coldstream	9,106	9,471
Electoral Areas “B” & “C”	6,694	7,158
Okanagan Indian Band Reserve No. 1 & No. 6	2,236	2,845
Total Greater Vernon	51,578	55,418

According to the 2006 Census, the median age of Vernon’s population is 44.5 years old, up from the 2001 figure of 41.6. Vernon’s median age is 3.7 years higher than the B.C. average of 40.8. Among twelve benchmark B.C. communities only Penticton and White Rock have higher median ages (Figure 4).

Between 1976 and 2006, the proportion of the population aged 65 and older had increased from 14% to 22%. The 2006 BC proportion was 14.6%. This trend will continue to increase significantly as the Baby Boom generation ages into the 65 and older category. In 2007, the first Baby Boomers will turn 60.

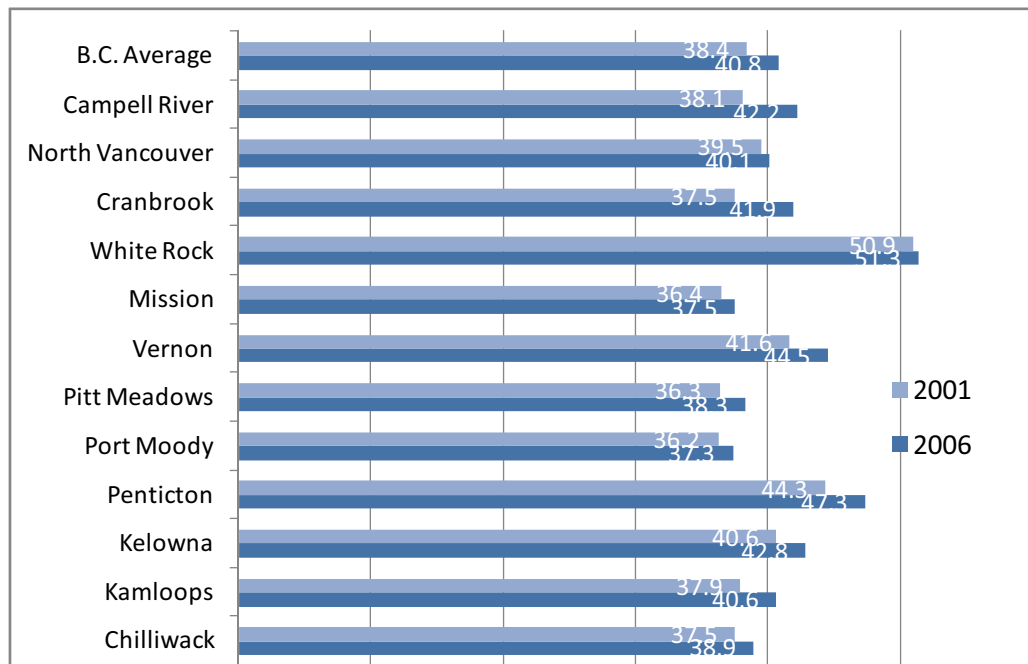


Figure 4 – Median Population Age, 2001 and 2006

Employment

According to the 2006 Census the largest employers in the City of Vernon are *Business Services, Retail Trade, Health Care & Social Services* and *Construction*. These four sectors account for approximately 53% of the jobs in Vernon. According to the 1996 Census, these four sectors accounted for approximately 39% of



Entrepreneur.com

Sustainable cities: fact or fiction?

by Dale, Ann

[Environments](#) • August, 2007 •

What makes a city sustainable? Is it a question of limits or scale--can a city be too big, can a community be too small to be sustainable? Or is it the most energy-efficient state-of-the-art green buildings and recycling programs that make a city sustainable? Or is it about good transit, walkable neighbourhoods and locally-produced foods, goods and services, or diversity? Of course, collectively, sustainability incorporates all of these--and in isolation, none of these! Indeed, the deeper and more subtle conditions for sustainable cities remain largely unaddressed. It is really quite simple, as we have learned more and more about the meaning of sustainable development. Sustainable development is development that integrates ecological, social and economic decision-making. Communities can be defined not only by place, but also as communities of practice, professional affiliation, shared interests and networks, and space, including, virtual communities. In addition, community usually implies some sort of regularly interacting system of networks, what we pointy-headed academics refer to as social capital. Thus, sustainable development is essentially the reconciliation of ecological, social and natural capitals; specifically the dynamic reconciliation of these capitals that a community defines as critical to its development.

A city is really a set of nested communities at a larger scale than smaller communities, that develop over time, expanding and shrinking as families evolve and people age. And what are communities but neighbourhoods of people who share the same place, and space in a moment of time, sometimes culturally defined. But what is a neighbourhood? We might say, simply, that a neighbourhood is an interconnected web of relationships, within and outside one's family. Most often we think of neighbourhoods as located within a physically delimited spatial area, but our relationships and communities also exist and are maintained across time and space. So then, sustainable communities must indeed depend upon a diverse interconnected web of relationships and networks. But how densely connected should they be? Certainly they must be diverse and interconnected enough to ensure both the emergence of and access to an optimal level of diversity and innovative social capital. Yet, if we accept these conditions for sustainability, we are certainly not designing our cities for enhancing social capital--especially in the design of our transportation corridors, as critical connectivity between the downtown and the suburbs, between large urban centres, mid-sized and smaller communities is missing. Connectivity is important for two reasons. First, it is essential for increasing bridging social capital ties within and between communities. Connectivity within a community opens up access to different relationships, expanding the social capital base. Walkability is an important way of getting to know one's neighbourhood. But walkability is dependent upon a person's sense of safety and security, which is affected by many variables--the number of others walking, geography, the number of open cafes and business. And safe neighbourhoods may depend more upon people knowing their next door neighbour's name, than more police on the street (Putnam 2000). The old saying "It takes a community to raise a child" may be more true today than it was in the past. But walkability will not just happen without deliberate design and redesign of our cities for greater connectivity, first of the physical space and second, social spaces.

We can chose to design for walkability and enhanced connectivity, or we can continue to build islands of isolation, encouraging individual car use, increasing disconnections rather than reconciliation and reconnection. Cultural diversity and the arts may be an important connector between communities, through festivals, street parties, music and food. When a street needs to be repaired, think about narrowing the street by building more flower boxes, traffic calming, mazes, with access to diverse transportation modes, including looking at increasing the connectivity between different modes of transport. For example, in Vancouver, all buses have a bicycle rack on the front of the bus to allow cyclists to integrate bike transport with the bus system, which is now being piloted along a few bus lines in Toronto. And in Sweden, ethanol-fueled buses feature curb-height entry ramps accessible for strollers, wheelchairs and range of assisted-mobility devices, meaning everyone can access public transit, regardless of age or mobility.

Second, preliminary research is showing that many communities have already gone through reviews, produced consultant reports on what is needed for change, and yet, have never implemented them. One of the major reasons for this implementation gap is the gridlock in the planning and implementation processes for decision-making all Canadian communities face. This gridlock is not due to lack of research, knowledge and information residing in communities, but rather has arisen as a result of the solitudes, silos and stovepipes (Dale 2001) that characterize the research, business and governance sectors. It is multi-faceted and involves, among other things, a lack of coherent dialogue; congruence between political levels; political will, and a lack of 'sustainable development' ethos among various government levels and

community stakeholders. Many experts have identified time and time again that one of the major barriers to the implementation of sustainable community development is governance (Dale 2001; Sabel 2001; Young and Maltke 1993), and the shrinking of public space for meaningful dialogue around critical public policy (Dale and Naylor 1995). Others have referred to fundamental disconnections--between federal, regional and local governments, between rural and urban communities and, critically, between the business and research communities (Bradford 2002; Dale 2001). Thus, increased connectivity can serve as a bridge across these gaps.

These challenges are common to all Canadian communities and cities, no matter what their scale. The social challenges facing cities and communities are complex not only because they are intricately entwined with economic, environmental and cultural issues, but also because they manifest themselves differently in communities. For example, in Canada's largest cities, the social challenges (homelessness/housing, distressed neighbourhoods, gangs, loss of diversity) are quite different from those in smaller communities (access to diverse capital, youth emigration, and medical services). Similarly, there are issues of particular importance to regional and local areas--such as Aboriginal issues in the West; the marginalization of many non-status immigrants in Toronto, Vancouver and Montreal (the lack of access by their children to education); and the attraction of immigrants to smaller communities, as well as critical services, especially medical.

The key challenges in the area of cultural sustainability reflect the very siloed approach to culture and the lack of integrated planning, even among traditional cultural disciplines of the arts, heritage and cultural industries. Even where arts and culture plans exist, there is limited integration with community development goals related to economic development, the environment, urban built strategies and social services. The city of Vancouver, however, now has a by-law that all new buildings must incorporate art into their landscape design. Thus, one new building has a constructed waterfall that runs along its side, which causes people to slow down as they walk by it, to pause for a moment, and hopefully, engage in a conversation. I believe that if you don't know a place, you won't love it, and you won't try and sustain it.

I would argue that all communities, regardless of size require essential system conditions for sustainable community development, that is, access to relationships, to diversity of place and space, to connectivity, to arts and culture. In fact, contrary to what David Suzuki maintains, internet communications may be critical to increasing space to diverse people normally outside the smaller community, and equally, connectivity between neighbourhoods, both spatial and virtual. Indeed virtual communities of every interest and description abound: some have created a vital sense of neighbourhood and belonging by fostering relationships among marginalized, disempowered or otherwise socially-excluded groups, allowing them to organize and mobilize their communities of interest--and environmental communities are certainly among these. In a spatial sense, suburbs are disconnected islands removed from the downtown core, and in some cases, no longer connected to the dynamics of how people's lives change over time, whether in terms of their mobility, food production, or job location. Perhaps then we need design for deconstruction and reconstruction as families change and evolve through their life-span?

Integrated community sustainability plans (ICSPs) could be a very important tool for increasing aggregate social capital. Interestingly, the federal gas tax rebate is now tied to every community developing such a plan, and part of that planning process requires multi-stakeholder consultations within the community. The gas tax template agreement includes a general definition of ICSPs:

a long-term plan, developed in consultation with community members,

that provides direction for the community to realize sustainability

objectives it has for the environmental, cultural, social and

economic dimensions of its identity.

I would argue, instead of consultation, that these plans should be built through transparent and open community dialogues designed to share and develop consensus about the meaning of community for that particular place and space. For without shared meaning about future development, we no longer 'see' the aggregate impacts of our land use patterns, resulting in many communities, large, mid and small, suffering from uneven, under- or over-development. I also recommend that the planning integrate some tools of the academy--design charettes, community mapping and scenario building, in partnership with the arts, to create visually appealing pictures of our future options imbedded within the context of sustainable community development.

What should be included in an integrated community plan? First and foremost, it should commit to integrated decision-making, that is, every decision, no matter at what scale, reconciles four imperatives--ecological, social, cultural and economic. Integrated decision-making involves enlarged decision-making contexts, an expanded science, what some have referred to as post-normal science or civic science, since enlarged decision-making contexts are very dependent upon civic literacy about complex public policy issues. There is an expanded sense of expertise, the tyranny of the expert ends; and is replaced by interdisciplinary theory and thinking, moving in many cases to transdisciplinary forums--deliberatively designed to bring together the best minds and community leaders from diverse sectors.

Integration involves developing intra-organizational processes that allow for the broad range of ecological, social, cultural and economic impacts to be carefully analyzed and reconciled across government departments before decision-making occurs. Integration also suggests working more closely and cooperatively with other organizations, including neighboring municipalities, other levels of government and, most significantly, key partners within the local community, in strategic partnerships. It is essential that respective stakeholders from different sectors of society actively participate in reaching common meanings and consensus on the implementation of sustainable development for their community, or we will be

doomed to plans that sit on shelves gathering dust.

In using an integrated approach, it is key to define problems and issues in ways that recognize the inter-sectoral relationships between the factors contributing to the problem. This way, solutions emerge in ways that simultaneously address different and sometimes conflicting human imperatives, such as the underlying social and economic challenges related to housing and homelessness issues, economic disparities and lack of access to education and economic opportunities that often lead to youth alienation, gangs and violence.

For me, integrated sustainability community plans should be developed by engaging the community in meaningful and sustained dialogue around the following elements.

Place. Each community is located in a specific geographic, historical and ecological landscape, and as such, each possesses particular and unique socioeconomic and cultural characteristics. Taken together, in synergy, these unique characteristics define the spirit or sense of place (or "genus loci"). The notion of place is critical in that it determines access to particular types of resources, not the least of which are natural resources. Yet, communities everywhere are facing loss of ecological integrity, in large part due to the degradation and depletion of natural capital. In addition, globalization has dramatically changed the ability of place-based communities to be "maitres chez nous", and this is especially the case in Canada which has an overwhelmingly urban population. Large urban centres in particular are facing growth and development issues such as sprawl, and a corresponding sense of loss of place legibility (Lynch 1960) and identity in the landscape--a 'placelessness' due to homogenization of landmarks, land use and landform. Indeed, all urbanizing communities are facing spatial homogeneity through fragmentation of the natural landscape, homogenization of the cultural landscape, and an unwillingness or inability to plan growth and development at an appropriate scale.

Scale. The country's major population growth has occurred in four major urban areas: Montreal, Toronto and its surrounding area, the Edmonton-Calgary corridor, and British Columbia's Lower Mainland. One in three Canadians now lives in one of the country's three largest cities, and half of all Canadians live in one of the four major urban areas just mentioned (CRIC n.d.). Cities are becoming larger and larger, while relying less and less on the rural countryside that has historically supported their growth. Yet evidence shows that the urban ecological footprint far exceeds their local carrying capacity (Wackernagel and Rees 1996). Further, an increase in development, and therefore management scale has dramatic impacts upon critical access to resources, not the least of which is knowledge and diverse expertise.

Limits. Expanding dialogue around the meaning of limits--ecologically, economically (consumption) and socially--is also a part of an integrated community plan. Many communities, especially those that are geographically bounded, face decisions about how much growth is viable to maintain the very characteristics of place that attracted people in the first place. It is clear from some of the patchwork development that has happened, due to lack of integrated community planning, that we can't have our cake and eat it too. Community decisions on limits are highly pluralistic and normative, and therefore can only be decided by the community. These inevitably rely on sustained dialogue and enhanced civic literacy around critical social and political as well as ecological questions. Are there critical biophysical limits for sustainable community development? Are these limits plastic or absolute? How can these limits be determined? Are there important cultural differences concerning limits to development?

Diversity. Loss of ecological integrity everywhere is related to a concomitant loss of global biodiversity, which some have argued includes human cultural and linguistic diversity (V. Shiva, 1990). New estimates indicate a reduction by 10% of the world's forest cover over the past 10 years; nearly 50% of all fish stocks are fully exploited (Pauley 2003); and by 2025, 15% of all forest species will be extinct (World Resources Institute 2003). Human and cultural diversity is also declining; all but 200 of the modern world's 6,000 languages are likely to be extinct or moribund by the end of the next century (Diamond 1993). Coming to understand the diversity of place (physical and non-physical), diversity of space (mental, emotional and spiritual), and diversity of life (human and non-human) may be one of the most important social imperatives facing communities in this century. And diversity is related to place, which is dependent upon scale and limits, another powerful argument for the critical need for integrated decisionmaking at all levels of government.

In conclusion, such plans include community processes that sustain dialogue within the community about the meaning of place and what ecological characteristics must be sustained; scale, what is the appropriate scale of human activities which sustain those characteristics of place the community has identified as priorities; and implementation of integrated decision-making processes throughout municipal decision-making, policies and programs, that hopefully will lead to more of us knowing our next door neighbour's name, and walking to a neighbourhood cafe for a bon cafe, to debate whether or not Vancouver has a better plan in place than Toronto.

Acknowledgements

I am indebted to Professor Nina-Marie Lister from the Planning Department, Ryerson University for her insightful comments, as well as those of my post-doctoral scholar, Levi Waldron.

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Ann Dale is from Royal Roads University, where she is Canada Research Chair in Sustainable Community Development and a Trudeau Fellow. Her latest work includes *A Dynamic Balance: Social Capital and Sustainable Community Development* (co-edited with Jenny Onyx, UBC Press 2005).

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March 6, 2009

Letter to District of North Vancouver Community Organizations

Re: Review and Update-Industrial & Commercial Sections of Zoning Bylaw

In April 2008 the District of North Vancouver adopted a series of goals and objectives for the long term economic health of the District. One of these goals is to revise and update those sections of the Zoning Bylaw that concern commercial and industrial land uses. The Arlington Group Planning + Architecture Inc. has been retained by the District of North Vancouver to undertake this work.

The Zoning Bylaw is an important means of regulating land use in the District of North Vancouver. Some of the important issues that zoning addresses include:

- What uses are allowed on a particular site
- The mix or range of allowable land uses in a particular zone
- The location of buildings on a site through setback and building coverage regulations
- The size of buildings on a site (density)

The District of North Vancouver Zoning Bylaw was originally adopted in 1965 and has been amended many times since. The purpose of the current review is to take a more comprehensive look at commercial and industrial zones in order to achieve the following objectives:

- Simplify and streamline the business sections of the Zoning Bylaw
- Encourage investment that fosters growth in local employment and the non-residential tax base
- Development regulations that protect neighbourhood character
- Retain sufficient amounts of commercial and industrial land to meet the needs of the labour force
- Reflect current market conditions including updated land use definitions and land use categories that reflect current best practices

If your organization is interested in participating in this review, please contact Graham Farstad or Sally Elford at the Arlington Group (604-683-1903). For those groups that are interested in being more involved, we will be hosting an information and discussion meeting in the coming weeks.

Sincerely,



Graham Farstad, Registered Planner

Corrie's Notes of ADP meeting held ~ 7:15pm Thursday March 12/2009

On process 13.6550.01/000.000 – Commercial, Industrial Zoning Bylaw Review

Graham Farstad, M.A. and Richard Wozny, both of Arlington Group provided input. Some of the key points made/observed were:

- There were no proposed changes put forward by Arlington Group
- Industries are evolving – with more desk-work being done and thus requiring more office space than before.
- Looking at performance based models for zoning
- An example to examine is the zoning put in place in New Westminster (http://www.newwestcity.ca/cityhall/dev_services/development/zoning_bylaw/Zoning_Bylaw.html)
- Current zones are felt to be overly restrictive – it being argued that businesses run out of single-family homes allow more flexibility [not in my view – Corrie]
- Encourage opportunities for mixed use
- Concern about erosion/loss of true industrial zones/uses
- Allow living/working in same place but limit dwelling area size
- Looking at sustainability aspects
- More holistic approach
- Allow fewer washrooms by incorporating “universal” – ie all-users – washroom
- Current industrial lands are mostly under control of Ports authority
- Need to do an economics analysis – determining the relative value of various uses
- Allow for bonus zoning in transition areas

The time frame to get project results is summer 2009.

Follow-up....

I have tentatively examined zoning in New Westminster. It indeed is “more flexible”

The documentation is well laid out – but they are not short. The Commercial zoning is comprised of 99 pages.

Many industrial zones allow for zero setbacks of front, rear, and side yards.

M-3 Industrial zone allows for full retail (except drugs) and restaurant uses as well as dwelling uses.

Just to add a little to Corrie's notes:

Additional notes by Alan Magelund:

The review, I think, is a very positive move as the current zoning was originally done in the 60's and has had many changes and exceptions since.

It is definitely outdated and has very little in regards to an overall future plan. It seemed to be well received by the District staff.

- There seems to be an overall feeling of zoning restriction which, combined with high price, is forcing the industrial land users out to the valley.
- The District wants to maintain the current industrial space and ensure that it remains industrial. (not cheap commercial)
- One suggestion was to create a zoned "box" and allow the user to do whatever they wish within that "box". (ie. mezzanines, offices, etc.) building codes will be maintained.
- Sustainability and preservation with an effort to create a "vibrancy" in all areas, possibly by combining industrial/commercial areas with residential.
- Creating building sound buffers between industrial/commercial and residential areas.

Subject: Last minute additions to Consent Agenda - cases of Monday Dec 15/2008

From: Corrie Kost <kost@triumf.ca>

Date: Tue, 16 Dec 2008 16:19:43 -0800

To: DNV Mayor and Councilors <dnvcouncil@dnv.org>

CC: fonvca@fonvca.org

BCC: Elizabeth James <rimco@shaw.ca>

Your Worship & Members of Council,

I believe that adding last minute additions to the consent agenda (ie. added after the agenda is distributed to the public) robs the public of their opportunity to hear a debate on those issues. For example, Item #10 the removal of a restrictive covenant for 4628 Ramsey Rd, was a case of some legal interest to me and I wanted to hear what council members had to say about it. Had it been placed on the consent agenda beforehand I would likely have spoken to the issue so as to have it discussed by council.

More disturbing was putting agenda item # 11 - Arts and Cultural Grants - on the consent agenda. This item was about the expenditure of some \$41,475 of public monies. This item was at least as debatable as agenda item #12 - DNV Community Heritage Grant Fund - over which council had a rather extensive discussion. Agenda item #11 - like any money bill - should have been publicly debated.

In the future, might I suggest that any item that proposes to spend public monies be debated by council and furthermore that the public be allowed to comment on any agenda item that is placed on the consent agenda at the last minute. Note that last minute placements on the consent agenda currently takes place AFTER the completion of the public input period. This seems unfair to the democratic process.

Yours truly,

Corrie Kost
2851 Colwood Dr.
N. Vancouver, BC
V7R 2R3
Tel: 604-988-6615

Subject: Last Minute Additions to Consent Agenda

From: James Gordon <gordonja@dnv.org>

Date: Tue, 23 Dec 2008 12:21:14 -0800

To: "kost@triumf.ca" <kost@triumf.ca>

CC: "fonvca@fonvca.org" <fonvca@fonvca.org>, Gavin Joyce <JoyceG@dnv.org>, Mayor and Council - DNV <Council@dnv.org>

Good afternoon Dr. Kost. Your email has been forwarded to me for a response.

Your email of December 16 to Mayor and Council noted your concern about items in the published agenda being added to the consent agenda after the start of the meeting. You are correct in stating that two items, #10 Removal of Restrictive Covenant and #11 Arts and Cultural Grants, were added to the consent agenda by unanimous consent of Council. In addition, Mayor Walton removed item #5, Operation Red Nose, in order to allow for a brief elaboration on the program.

As you are no doubt aware, the purpose of the consent agenda portion of a regular council agenda is to allow for the efficient approval of either routine, procedural, or noncontroversial items. Staff initially propose what is to be included on the consent agenda which is subject to being altered either by the Mayor prior to the meeting, or by the Mayor or a Councillor at the meeting subject to the consent of council.

When items are removed from the consent agenda it is usually due to the need to address additional information that has come forward or that a member of council may have questions they wish to raise. Conversely, when items are added to the consent agenda it reflects the consensus of council that no member has any points to raise in respect of the item; the addition of the item to the consent agenda is done with due consideration of the balance of necessary public debate and legislative efficiency. Such decisions to add or remove items are made in best interest of good governance of the municipality as collectively determined by council and are consistent with the Council Procedure Bylaw.

Your specific request that council debate any item on an agenda that proposes the expenditure of public funds is at the discretion of council. Whether large or small amounts, council will determine how much information will be required of staff so that the decision making needs of each Councillor are satisfied. In some cases the information provided is challenged with staff hopefully providing satisfactory answers. If not, the matter is returned to staff for further investigation. If the initial information is self-explanatory and council is satisfied that a fully informed decision can be made to approve the expenditure, they may do so via the consent agenda with the intention of making the meeting more efficient so that time is available for debate when and where needed.

Your point about having an opportunity to question council on an agenda item is not denied through the use of a consent agenda. In accordance with the policy on public input at council meetings, members of the public may sign up to speak on any issue in the thirty minute public input section at the beginning of each regular council meeting. Likewise, members of the public may sign up to speak either for or against items listed on the regular agenda that are not part of the consent agenda. These lists serve as a prompt to the Mayor that there are people in the gallery wishing to speak on other than scheduled agenda items (such as items listed in the consent agenda as published) or people wishing to speak on a specific agenda item. Given this knowledge, items can be removed from the consent agenda for debate, items can be prevented from being added to the consent agenda, or, as noted above, items deemed by consensus to be routine or noncontroversial can still be added to the consent agenda. In this manner it would appear that a fair opportunity is provided for the public to raise concerns, speak for or against an item, or ask questions of council.

I trust that the foregoing addresses the points you have raised. Please let me know if you have any further questions on this or other procedural matters.

James A. Gordon

Manager, Administrative Services Department

ORDINANCE NO. 544

Adopted December 18, 2008

AN ORDINANCE TO PROVIDE FOR A PROHIBITION ON INTERFERENCE WITH A PEACE OFFICER, PUBLIC HARRASSMENT, OBSTRUCTING OF GOVERNMENT OPERATIONS, AND DISTURBANCE OF LAWFUL MEETINGS BY AMENDING THE CODE OF ORDINANCES, CITY OF BRIGHTON, MICHIGAN, CHAPTER 54, ARTICLES II, IV AND V BY AMENDING SECTIONS 54-26; 54-98; 54-100 AND ADDING NEW SECTION 54-108.

THE CITY OF BRIGHTON, LIVINGSTON COUNTY, HEREBY ORDAINS:

I. Chapter 54, Article II, Section 54-26 is hereby amended to read as follows:

Sec. 54-26. Obstructing, resisting, etc., offices.

- (a) It shall be unlawful for any person in the city to obstruct, resist, hinder, or oppose any member of the police department, or any peace officer in the discharge of his duties.
- (b) It shall be unlawful for any person in the city to interfere with a member of the police department in the discharge of his duties if they fail to obey a lawful order of a police officer and/or provides false information concerning his or her identity which hinders the officer in the discharge of his or her duty.
- (c) Any person found to violate this section shall be subject to a fine of not more than \$500, or to imprisonment for not more than 90 days, or both such fine and imprisonment, in the discretion of the court.

II. Chapter 54, Article IV, Section 54-98 is hereby amended to read as follows.

Sec. 54-98. Insulting, harassing, etc., others.

- (a) It shall be unlawful for any person in the city to insult, accost, molest or otherwise annoy, either by word of mouth, sign, or motion any person in any public place.
- (b) It shall be unlawful for any person to harass any person in any public place by striking, shoving, kicking or otherwise touching a person or subjecting them to unwanted physical contact or following a person in or about a public place or places.
- (c) It shall be unlawful for a person to engage in a course of conduct or repeatedly commit acts that alarm or seriously annoy another person and that serve no legitimate purpose.
- (d) It shall be unlawful for any person, with the intent to harass or alarm another person, to communicate with a person, anonymously or otherwise, by telephone, mail, or any other form of written or electronic communications, in a manner likely to harass or cause alarm.
- (e) Any person found to violate this section shall be guilty of a civil infraction and shall be punished by a fine(s) as set forth in section 1-16(b).

III. Chapter 54, Article IV, Section 54-100 is hereby amended to read as follows:

Sec. 54-100. Public disturbances and obstruction of government operations, generally.

- (a) It shall be unlawful for any person in the city to engage in any disturbance, fight, or quarrel in a public place.

(b) It shall be unlawful for a person to obstruct government operations if he or she intentionally obstructs, impairs or hinders the performance of a governmental function or the use of government property by using or threatening to use violence, force, physical interference or obstacle.

(c) Any person found to violate this section shall be subject to a fine of not more than \$500, or to imprisonment for not more than 90 days, or both such fine and imprisonment, in the discretion of the court.

IV. Chapter 54, Article IV Section 54-108 is hereby added and shall read as follows:

Section 54-108. Disturbance at Lawful Meetings.

Any person who shall make or excite any disturbance or contention in any tavern, store or grocery, manufacturing establishment or any other business place or in any street, lane, alley, highway, public building, grounds or park, or at any election or other public meeting where citizens are peaceably and lawfully assembled, shall be subject to a fine of not more than \$500, or to imprisonment for not more than 90 days, or both such fine and imprisonment, in the discretion of the court.

V. All Ordinances inconsistent herewith are hereby repealed.

VI. This Ordinance shall take effect pursuant to the Brighton City Charter.

VII. This Ordinance shall be in full force and effect fifteen (15) days from the adoption as provided by the Brighton City Charter.

TAMMY ALLEN, City Clerk

PENTICTON HAROLD P A 8 25 JUL 2008

The high price of poor local governance

Municipal politicians talk a lot about their low salaries. The mayor of Penticton, for instance, earns only \$57,120 a year and councillors make only \$20,036. That's probably inadequate for someone serving the community, but are taxpayers in the community being served?

Ten City of Penticton employees earn more than \$100,000 a year; 46 earn more than \$75,000. Evidently their "service" comes at a hefty price. Where's the commitment?

Too many underpaid politicians in B.C. defend such high staff salaries, explaining municipalities have to offer high administrative salaries to attract good people from the private sector. But I don't know very many people in the private sector making that kind of money for a four-day work week.

Sure, there are business people and contractors making six digits a year, but in bad years they can make zilch. And in terms of salaries paid to the professionals I hang out with, the norm is more like \$40,000 to \$65,000 a year. They're quite content, and any

of them are qualified to do the work city employees do.

Doctors and lawyers can easily make more than \$100,000 once they're established in their careers. But most doctors and lawyers compete in private practice as business people, and earn whatever they make after investing in school for five to 10 years, and after paying high staff salaries and office overhead.

But how on earth does a city administrator "earn" \$148,000 a year? What Herculean feats of administrative strength does he perform every day to warrant such a whopping salary? And don't forget to add another 25 per cent (at least) for benefits — and all that for 20 per cent fewer hours at the office. Ever try to reach a senior administrator on a Friday? Can't be done.

One way top earners at City Hall could prove their worth is by ensuring taxpayers get value for their money. But are you ready for the really bad news? If the staff salaries quoted above made your eyes bulge, try reading this figure without spilling your coffee: \$18.3 million. That was the city's payroll for last year.



MISCHA
POPOFF

Guest Columnist

And, unless staff members die soon after they retire, they continue to "earn" a large portion of their salary for decades to come in the form of indexed pensions, funded by the salaries of new staff hired to replace them. Talk about a top-heavy bureaucracy. The worst part is when civil servants take early retirement with most of their pension benefits and start businesses or go into consulting. That adds insult to injury for taxpayers.

Almost 40 cents of every dollar you pay in property and business tax goes

to salaries and benefits, and office overhead. And this doesn't necessarily pay the wages of a labourer who paves the road, digs a hole, prunes a tree or changes a street light. The majority of that work in the real-world is done by employees of private sector companies who win contracts from city hall through open bidding. That's right . . . through competition. And those costs are paid after the salaries of city administration staff are paid.

It hardly matters if politicians are underpaid. Who really cares if the mayor or councillors find themselves in late-night meetings or have to handle complaints from irate homeowners at all hours? Boo hoo. It's up to these politicians to bring spending under control, and they're clearly not so much as bothered by the figures quoted above to make any effort to do so.

A few weeks ago in this column I described a discussion mayor Jake Kimberley had with other mayors at Union of British Columbia Municipalities meetings. I found it quite disturbing, and so did many readers. Mayors all across B.C. agreed

unofficially not to compete with each other by lowering taxes. It cannot be stressed enough that colluding in this manner is illegal in the private sector. It's called price fixing. But when mayors do it it's fobbed off as good governance. And Kimberley brags about it. Yeesh.

You only have to look at what we spend to operate City Hall to see that good governance has become a thing of the past, unwilling as our municipal politicians are to rein in the waste and profligacy of staff salaries and golden benefits packages.

If politicians won't do anything to trim the fat, and are unwilling to allow competition between municipalities to inject incentive into the workplace; if they don't have the spines to make administrative staff provide actual value for what they're paid; the only conclusion to be made is that bureaucrats and administrators are running the show and the politicians are at their beck and call.

Why bother having civic politicians at all?

Mischa Popoff is a resident of Osoyoos.

**Taking the High Road:
Local Government Restructuring
and the Quest for Quality**

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Michael J. Ballard

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April 2000

Distributed by the American Federation of State, Municipal and County Employees (AFSCME) to all union locals nationwide, Fall 2000

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This research builds off Mildred Warner's larger Restructuring Local Government Service Delivery project supported by the New York State Agricultural Experiment Station with U.S. Department of Agriculture Hatch funding grant # NYC 121406. Thanks are given to Amir Hefetz for providing the database of municipalities contracting back in. We would also like to thank Kerry Korpi, Research Director, and Dennis Houlihan, Labor Economist, of the American Federation of State, County, and Municipal Employees for supporting development of the case studies during Mike Ballard's stay there during the summer of 1999. Finally, Evelina Moulder of the International City/County Management Association is thanked for providing the local government contacts for the case studies.

A full copy of this report and a searchable database of the case studies can be found at Professor Warner's Local Government Restructuring web site:

<http://www.crp.cornell.edu/projects/restructuring/>

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Executive Summary

All local governments face challenges to improve service delivery. This report outlines two alternative strategies—the "high road" which uses new management innovations to increase internal productivity, and the "low road" which focuses on downsizing and contracting out. While other studies have focused on contracting out, this study provides a longitudinal look at contracting and presents detailed case studies of municipalities, which have brought back in house previously privatized services. These case studies provide empirical evidence on the problems associated with contracting and the potential for internal restructuring as an alternative.

Contracting is costly. Research on problems with contracting out in the for-profit sector is shown to have parallels in governmental contracting. Difficulty of contract specification (especially for complex services), the cost and difficulty of monitoring contract performance, and limited cost savings are some of the problems that cause governments to bring previously privatized work back in house. Broader public values—responsiveness to changing citizen demands, maintaining high standards of public service delivery among the workforce—also can be compromised with privatization.

While competitive bidding is associated with some cases of contracting back in, for many governments' dissatisfaction with privatization was so strong that no effort was made to rebid the contract. In many of these cases new patterns of labor management cooperation within the public sector resulted in improved efficiency and service quality at lower costs than private contracts. Taking the "high road" of restructuring through improved labor-management cooperation can provide better quality service with fewer risks and greater social rewards. For those public officials who truly wish to "reinvent government" internal management reforms deserve a closer look.

Rapid changes in the economy on the one hand and the unrelenting demand for public services on the other have placed new pressures on all levels of government to "banish bureaucracy" and "reinvent" the public sector. Reinventing government is a noble and desirable goal, but many reform efforts have failed by focusing too heavily on downsizing the public workforce through the privatization of government services. While privatization can take many forms, the most common practice is for governments to "contract out" services to private organizations. In these situations the government continues to use public funds to pay for services, but the responsibility for production of the service is shifted to a private firm.

In some instances, privatization through contracting out is part of a larger ideological crusade to reduce the absolute size of government.[\[i\]](#) In other cases, contracting out is driven by management fads imported from the private sector, where the practice is commonly used but remains poorly understood.[\[ii\]](#) A third influence is the general shift in American society towards greater mistrust of government coupled with a renewed faith in the textbook model of free markets.[\[iii\]](#) When combined with advice from popular management books and magazines to become more "businesslike" in their

operations, many public managers find the lure of contracting out to be irresistible.

Are the proponents of contracting out right? To what extent have the economic and organizational benefits actually followed? This study attempts to answer these questions by looking at local governments' experiences with contracting in the United States. The report begins with a review of several academic studies that assess the impact of contracting out on individuals, organizations, and communities. Unfortunately, many of these studies show disappointing results with contracting out in both the public and private sectors. To better understand why contracting out often has not lived up to its promise, this report looks at several case studies from across the country where public officials have chosen to bring work back in house following a period of privately produced service. Finally, the report looks at one important but underutilized alternative to privatization, namely, the refashioning of labor-management relations through innovative "partnership" programs. These programs demonstrate that the efficiency of public services can be improved significantly through the use of internal management reforms. Given the risks involved in privatization, labor-management partnerships should be given priority over contracting out when public managers see the need to restructure local government services.

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Contracting out imposes high costs on individuals

Proponents of contracting out argue that both public and private organizations need to "cut the fat" and get "lean and mean" in order to survive.[\[iv\]](#) Given that most government services are labor-intensive, contracting out services provides government with an indirect method of reducing the number of individuals it employs directly. When hiring decisions are no longer in public hands, privatization allows contractors to use lower priced labor without having to adhere to civil service wage scales. Government-by-contract also permits greater flexibility in determining employment levels, work rules, and health and safety standards since private firms are often subject to less restrictive regulations than public entities.[\[v\]](#)

Increased flexibility, however, comes at a price. To begin with, contracting out imposes high costs on individual workers. The overwhelming majority of government employees are individuals who have performed well and played by the rules, but often pay dearly in the form of increased job insecurity and lower wages and benefits when work is contracted out to the lowest bidder.[\[vi\]](#) Furthermore, because of the specialized nature of many private contractors, workers' opportunities for advancement and training may decline as well. The janitor who works for local government may, over time, work her way up in the system via a series of vertical and horizontal moves through different departments. In organizations that specialize in just one service, however, those ladders of opportunity disappear for all but the most skilled employees.

Contracting out has society-wide consequences

Contracting out also imposes high costs on society. It is no secret that America's urban areas suffer from a host of serious social and economic problems, ranging from crime and unemployment to racial segregation and increasing class inequality. In a provocative and insightful essay published in the *Boston Review*, Daniel Luria, Vice President of the Michigan Manufacturing Technology Center, and Professor Joel Rogers of the University of Wisconsin contend that these unfortunate outcomes are the direct result of public policy choices that favor "low road" development strategies in response to new competitive pressures.^[vii] Low road employers compete by keeping costs, and therefore wages, as low as possible. When low road strategies dominate the local economy, economic insecurity, rising inequality, and poisonous labor relations often follow.

In contrast, "high road" organizations rely on better quality products and superior service to stay ahead of the competition. Management experts contend that emphasizing quality and service requires a well-trained and highly committed workforce in order to be successful. These organizational demands, in turn, translate into higher wages, cooperative labor relations, and more innovative and productive workplaces. In addition, high road employers attract superior quality workers and typically serve as better corporate citizens in the communities in which they operate.

While Luria and Rogers' research primarily looks at the business strategies of private companies, the same lessons apply to public sector employers as well. Governments, like private firms, also consciously choose to follow the high road or the low road when making employment and contracting decisions. Local governments can walk down either path, but the potential benefits to both the city and the community are vastly greater on the high road. Public officials who choose to follow the high road not only benefit directly from the efficiency gains that flow from high-performance workplaces, but they also benefit indirectly from the important social benefits that such a strategy produces. In general, high-road strategies are strongly associated with healthy and stable local communities. Strong communities, in turn, help to attract and keep the brightest people and the most dynamic businesses in the region.

Examples of how high road and low road strategies play out at the local level are presented in Boxes 1 and 2. In these cases, both New Orleans and Portland saved money by restructuring traditional service delivery methods. Portland's high road strategy, however, accomplished much more than simple cost savings. Building upon Portland's success in constructing a new baseball stadium, the city and its unionized workforce have been able to create a new level of trust and cooperation across a wide range of public services. In addition to reducing expenses, the introduction of innovative management reforms has produced major service improvements, has strengthened both management and the union, and has resulted in a far less adversarial bargaining relationship than had existed previously. In contrast, the New Orleans case vividly illustrates the dark side of low road management strategies. While New Orleans' strategy may have saved the city money, the negative impact of such a strategy on residents' quality of life far outweighs any cost savings that resulted from privatization.

The benefits of contracting out have not materialized

As the preceding discussion makes clear, the individual and social costs of contracting out can only be justified if such efforts lead to better quality and lower priced government services. Yet evidence from a broad range of studies suggests that public services do not substantively improve after contracting out.[\[viii\]](#) In an extensive review of empirical studies of privatization in the United States, for example, Professor George Boyne of Cardiff University finds that "only around half" of all studies are associated with lower spending and greater efficiency.[\[ix\]](#) Furthermore, Dr. Boyne finds that "many of the studies contain specific methodological flaws that cast doubt on the validity of the evidence on the impact of service contracts, and in some studies, the authors draw conclusions that are not substantiated by their own evidence."[\[x\]](#)

Professor Boyne's claims are substantiated by Professor Janet Rothenberg Pack of the Wharton School of Business at the University of Pennsylvania.[\[xi\]](#) In her research on fifteen cities and counties that had experimented with contracting out, about half of the places she studied had encountered "disruptive experiences" which included quality problems, attempts by firms to renegotiate or renege on contracts, and costly monitoring activities. Equally important, only half of the public officials she interviewed could continue to claim any cost savings from contracting out after just four years of privately provided service.

Researchers at Washington State University draw similar conclusions in their 1998 study of privatization by Oregon county governments.[\[xii\]](#) Looking at county governments' experiences with road maintenance and construction contractors, Professors Brent Steel and Carolyn Long find that 42 percent of counties experienced contracting problems. The most commonly cited problem in their study was the failure of contractors to perform work in a timely manner (100 percent of cases), followed by work not performed to specifications (50 percent), contractors' failure to communicate effectively with affected citizens (36 percent), change order problems (36 percent), and work area security and safety problems (29 percent). In addition to the problems associated with contracting out, the authors estimate that the cost of contract administration was in the 10 to 15 percent range, and that "savings, if any, from contracting out may be partially or fully offset by substantial agency costs associated with the contracting process, including the expense of preparing plans and specifications to a greater level of detail, the cost of advertising and processing bids, and the cost of monitoring, inspecting, and conflict resolution."[\[xiii\]](#)

Private firms also disappointed with contracting results

A common defense of privatization is that errors in implementation, not the concept itself, are to blame for failed privatization programs.[\[xiv\]](#) These kinds of arguments make it easy to claim that the blame for failed contracts still rests with government, and that the solution lies with increasing, not decreasing, the role of the private sector in government service provision. Has the private sector's experience with contracting out been any better? Because private firms also rely on outside contractors for a wide range of goods and services, their experience with contracting out deserves a closer look by public officials than it has received.

Large-scale studies of the private sector's experience with contracting out are rare, in part because private firms are not subject to the same disclosure requirements as public entities. A recent survey of over one thousand senior business executives conducted by the global consulting group PA Consulting, however, is telling: In that survey, only five percent of firms reported "high" levels of benefit from contracting out while suffering "low" drawbacks. The most common response, representing thirty-nine percent of the cases, had been 'mediocre'.[\[xv\]](#)

Academic studies of organizational performance provide some clues as to why contracting out in the business world has failed to live up to its promises. Because contracting out is a form of restructuring that often leads to reductions in personnel, its impact on organizations is similar to downsizing. Few would disagree with the proposition that both contracting out and downsizing result in shattered careers, broken friendships, and significant losses in investments in employee training and development. For these reasons and others, academic studies of downsizing hold valuable lessons for public sector managers considering contracting out.

The strong negative effect that downsizing through contracting out has on the morale of employees should not be underestimated. In a recent study published by *The Academy of Management Review*, Professor Wayne Cascio of the University of Colorado reviewed over five hundred articles on downsizing and interviewed twenty-five senior executives from business about their experiences.[\[xvi\]](#) A principal finding from this research, says Professor Cascio, is that "study after study shows that following a downsizing surviving employees become narrow-minded, self-absorbed, and risk averse. Morale sinks, productivity drops, and survivors distrust management. In fact, this constellation of symptoms is so common that it has taken on a name of its own: *survivors' syndrome*."[\[xvii\]](#) Given the impact of downsizing on employee morale, it should be expected that performance rarely meets the company's expectations. According to 1998 survey results from the American Management Association, only 41 percent of downsizing companies reported productivity increases, and only 37 percent have realized any long-term gains in shareholder value.[\[xviii\]](#)

According to Professors Susan Reynolds Fisher and Margaret White, such disappointing results can be explained by the damage caused to an organization's "learning capacity" when an individual leaves the firm.[\[xix\]](#) Fisher and White believe that an organization's capacity for innovation and development is derived from the day-to-day interaction between employees working on common problems. The contribution of these informal networks to the health and vitality of the organization is significantly

greater than that implied by a simple head count, the authors warn, and hence managers should be wary of any restructuring effort, including contracting out, that threatens these crucial networks.

This issue is well illustrated by recent research by Dr. Chris Lonsdale and Professor Andrew Cox of the Center for Strategy and Procurement Management at the University of Birmingham, England.^[xx] Lonsdale and Cox believe that contracting out invariably leads to a loss of cross-functional contact between departments. "When a contract company is operating away from the firm's site there can be a loss of profitable contact between that function and others which relate to it," they argue. "While this can be addressed, many firms report that contract employees are rarely as prepared as in-house colleagues to go beyond their immediate remit and take the time to work out ideas which may be of benefit to the firm as a whole."

A further issue that Lonsdale and Cox raise is the effect that the limitations of a manager's own knowledge and competence can have on an outsourcing deal. For example, when a service is provided in-house certain aspects frequently are provided by employees in other parts of the organization, and consequently often are not recognized explicitly in the contract agreement. This oversight commonly leads to a host of additional charges not built into the original cost estimates. In one example, the authors tell the tale of a petroleum firm that was charged nearly \$500,000 in excess fees in the first month of its information technology contract because the company had wrongly assumed that these services were included in the original contract price.^[xxi] Stories such as these should not be surprising, the authors caution, because contracting is the core competency of many of the vendors that organizations must deal with. Since contracting is a primary focus of their business, these companies have learned to write contracts that shift most of the risk onto the purchaser of the service.

In summary, contracting out government services imposes high costs on individuals, local governments, and communities. In spite of these high social costs, the efficiency gains from contracting materialize only about half of the time. Furthermore, the private sector's poor record with contracting suggests that such lackluster results are unlikely to improve as public managers gain experience with administering private contracts.

In contrast, using high road strategies to reform public bureaucracies often results in improved governmental efficiency, but does so without the negative consequences that result from contracting out. Across the country, high road strategies are becoming more common as public bureaucracies borrow from new management models such as Total Quality Management (TQM) and labor-management cooperation programs in order to improve organizational performance. According to *Working Together for Public Service*, a major report published by the U.S. Department of Labor, labor-management cooperation programs typically result in higher quality service, greater cost effectiveness, better quality of work life for employees, and improved relations between workers and management.^[xxii] Similar positive results have been reported by the International City/County Management Association (ICMA) in its study of TQM programs in local government. In that study, the overwhelming majority of governments surveyed reported strong positive results from quality improvement programs, as Table 1 shows.^[xxiii]

"Contracting back in" an important trend in public service provision

New survey evidence shows that public officials are starting to learn that privatization has its

limits. While contracting out continues to be widely used by many local governments, the practice of "contracting back in"—where governments choose to resume in-house production following a period of privately produced service—is becoming increasingly common.

The most complete source of data on contracting arrangements of local governments is provided by the International City/County Management Association (ICMA). Every five years, the ICMA surveys all counties with more than 25,000 residents and all cities with populations greater than 10,000. In addition a sample is drawn from one in eight cities and counties with fewer than 10,000 residents. On average, 1,500 municipalities respond to the survey. This survey provides a very comprehensive view of the complex mix of services offered by local governments, with questions asked for sixty-four different public services.

By matching responses from different survey years, our research team has been able to determine the degree to which local governments both contract out services to private providers as well as the frequency of contracting back in.^[xxiv] Using ICMA data we found that on average across all responding municipalities, eight services were newly contracted out between 1992 and 1997. The more interesting finding, however, was that on average five services were brought back in house during this same period. Hence while these data show that contracting out is still a common practice across the country, dissatisfaction with contracting out is widespread and causes local governments to bring services back in house.

Why do local governments choose to bring work back in house?

That so many local governments bring work back in house implies that contracting out as a model of public service provision has its own set of problems that its proponents have either underestimated or ignored. Yet the survey data alone do not tell us why governments choose to resume public production of services. To better understand the nature of contracting back in and the factors associated with it, a series of telephone interviews was conducted with public officials from across the country between June and August 1999. The case studies from those interviews are reprinted here as Appendix A.

Methodology

Using the ICMA data as a guide, local governments were selected for interviews based on a population of greater than 30,000 residents, six or more cases of contracting back in, and at least one case of contracting back in for service areas where union membership is strong. A small number of additional cases were chosen based on leads from union members or newspaper clippings.

Most of the interviews were with the city or county manager for that municipality. On several occasions follow-up interviews were conducted with department heads or directors of specific programs in order to develop a more detailed understanding of a particular program or service. Local union officials also were interviewed in a handful of cases. Interview times varied from ten minutes to about one hour.

In total, public officials from fifty-eight places were interviewed. Those interviews produced twenty-six cases of contracting back in from twenty-two different places (see Table 2). While these cases do not provide a large enough data set to generalize the findings to the larger population, the cases can help us

to understand the rationale behind contracting back in, as well as provide clues on the efficacy of privatization as an alternative form of public service delivery.

The bulk of the cases of reverse privatization represent the typical kinds of blue-collar work most often cited as good candidates for contracting out. With the exception of public works, wastewater treatment, and fire services, the remaining cases consist of the types of services for which private sources of production are relatively common. In most areas these services can easily pass the "yellow pages" test in which a number of local private firms can be found that offer similar services.^[xxv] It should not be surprising that the cases here represent services that are typically thought of as prime targets for privatization. Since these are the kinds of services that are most often contracted out, it follows that they have a higher probability of being brought back in as well.

A useful way of classifying the cases is to divide them according to the process by which local government resumed public service production. In nine cases contracting back in was the result of public employees submitting the winning proposal in a competitive bidding process. On twenty occasions work was brought back in house due to problems with the private contractor. Often the two categories overlap. For example, it is not uncommon for public agencies to win competitive service contracts following a failed privatization attempt. The more typical scenario, however, is for government officials to take over the service without initiating a new round of competitive bidding. In fourteen cases, it was clear to local government managers that the service could be produced more efficiently in house, thereby making competitive bidding unnecessary.

Contracting Back in Due to Failed Privatization

In the cases presented here, failed privatization was the most important reason for contracting back in. In these instances the work is brought back in house due to problems associated with the service provider or with the contracting process. Rather than return to the market and initiate a new round of competitive bidding, public managers caught in these situations feel that problems with service delivery are rooted in the contracting process itself. Because these kinds of problems can not be solved by private means, public officials choose to rule out privatization as a viable alternative and resume public production of the service.

Every case that chose to bring the service back in house without resorting to competitive bidding reported significant contracting problems. Yet even for those places where competitive bidding was used (and the contract awarded to public employees) problems with private contracts still played a role in five of nine cases. While it is difficult to generalize from such a small sample, there appear to be serious problems with contracting out. The analysis below looks at a number of the case studies to better understand how and why contract problems arise and, more importantly, why public production is chosen over competitive bidding for specific services.

Contracting Issues

Private sector models of contracting out provide a useful framework for understanding governments' decisions to produce services in house. For businesses, the choice of whether to produce in house or to contract out is often referred to as the “make or buy” decision. While cost minimization is important, this approach also recognizes that cost estimates include more than just the monetary value placed on a good or service. In particular, this model employs the notion of “asset specificity” to incorporate the many non-tangibles that go into the decision to contract in or out.^[xxvi] Asset specificity refers to the degree to which the investments associated with production are unique to the parties involved in the transaction. Investments with a high degree of asset specificity are highly specialized and normally have few alternative uses. Examples include “hard” goods such as complex machine parts or custom-made computer programs, but “soft” goods like industry-specific knowledge and relationships with customers and clients fall into this category as well.

A high level of asset specificity decreases the probability that an external supplier will be able to produce a particular good or service in a cost-effective manner. Because of the inability of both the buyer and the seller to accurately specify what, when, and how certain functions are to be carried out, costs associated with monitoring quality often outweigh any savings that accrue from external production.

These problems are magnified in the public sector because of the multiple purposes and goals associated with public services. While it is relatively easy for a buyer to recognize a high quality pencil or machine part, judging quality becomes much more subjective when complex services are involved. Even for the cases presented in this study, where most of the services are simple, ubiquitous, and relatively easy to specify, numerous examples exist where conflicts arose because of the difficulties associated with specifying the service.

While evidence from some of the cases suggests outright abuse by the private contractor—such as the Iowa laundry service that charged its public sector customer based on the weight of the laundry when it was wet, not dry—other cases highlight the importance of clearly defined contracts. In Lubbock, Texas, for example, a private trash hauler attempted to renegotiate its contract because the weight of the trash it collected was greater than the company anticipated. Heavier loads meant that the company had to pay higher than expected landfill fees, and the firm attempted (unsuccessfully) to shift those costs to local government.

The care management program for the Senior Services Department of Irvine, California serves as a more complex example of the difficulties involved in specifying contracts. In Irvine, public officials attempted to privatize its care management program in 1995. With about one hundred active cases at any given time, the city offers assistance to seniors in need of help with health care, transportation, housing, and other social services. In spite of a competitive bidding process, the request for proposals attracted only one bidder that the city felt was sufficiently qualified to run the complex program. After reviewing the technical responsibilities contained in the contract, however, the lone qualified bidder chose to withdraw from the competition. The perception was that many of the contract services were hard to measure, difficult to administer, and that performance would be judged largely on community perceptions rather than tangible results. This created a sense that the cost to administer the program would grow far beyond

the ability of the contractor to manage the program within the available budget. Unable to attract qualified contractors, department administrators instead chose to keep the service in house.

A related problem is that the contract language may be over-specified. Under these circumstances, contract language may be too specific to allow government to satisfy the changing needs of citizens. When Moore, Oklahoma contracted out its public works department in 1993, it made sure that minimum service levels were included in the contract. When citizens began demanding more than the minimum from their government in the mid 1990s, however, the city was unable to accommodate citizens' preferences because it was still bound by the strict terms of the contract it had signed three years earlier.

Another issue that is well illustrated by the Moore, Oklahoma case is the problems that occur when a single contractor is responsible for a complex basket of services. In Moore, one company was responsible for streets, drains, parks, cemeteries, building maintenance, sanitation, fleet maintenance, animal control, wastewater treatment, water and sewer line maintenance, and water meter reading. The sheer size of this contract made it exceedingly difficult for public officials to monitor service levels and quality.

Given the complexity involved in specifying contract arrangements it should not be surprising that the costs associated with monitoring contracts has been shown to be quite high.[\[xxvii\]](#) The more typical scenario, however, is for governments not to do any monitoring at all. In our research team's analysis of ICMA survey data on the subject, we found that more than half of the governments that contract out do not have any formal procedures for monitoring contract arrangements.[\[xxviii\]](#) Not monitoring contracts significantly increases the chances that either costs increase or quality suffers—or in some cases, both problems may surface. On the other hand, places that do take monitoring seriously may find that the cost of monitoring contracts equals or surpasses any anticipated savings from private service delivery.

More than one respondent from the case studies indicated that in house production was resumed because of the high costs of monitoring private contracts. In Pinellas County, Florida, for example, the county terminated its contract for grass mowing at 360 water pumping stations because of its inability to control service quality. "Servicing so many remote locations made it very difficult to monitor service quality, says the County Administrator, "so for this service it made more sense for the county to do the job."

City officials in Campbell, California report similar problems. In Campbell, the city contracted out its park maintenance functions in the early 1990s as a way to cut costs. After two years with the private contractor, however, the city chose to bring the work back in house following numerous complaints from city residents about service quality. Having residents complain to the city rather than the contractor resulted in significant time and resources being wasted by city employees. Not only were city employees required to handle residents' complaints, they then had to visit the park in question to check up on the contractor's work, contact the contractor to inform him of the problem, and finally revisit the park to ensure that the work had been re-done properly. Given that the number of complaints was significantly higher than when public employees did the job, city supervisors quickly grew tired of the extra burden created by the contracting process and brought the work back in house.

Park maintenance has remained a publicly provided service in Campbell since 1996. According to City Manager Bernie Strojny, city workers provide better service because they possess a sense of ownership that is unique to public employees. "City employees invest more," he says, "because they genuinely care

about the place they work at." In contrast, city properties are just one of many locations that the private contractor serves, which Strojny believes contributes to the contractor having less of an interest in service quality.

In both Pinellas County and the City of Campbell monitoring costs were high because public officials found themselves constantly "putting out fires" that had been "lit" by the contractor. Both places were lucky, however, in that the service in question was relatively easy to monitor by area residents. In these cases, citizens are able to serve as reasonable substitutes for direct monitoring by government. The public sector is not so fortunate, however, when service quality cannot be observed directly and citizens are unable to play the watchdog role. This was the case in Savannah, Georgia, where fire services had traditionally been provided by both the City of Savannah and South Side Fire Protection, Inc., a non-profit fire department that provided firefighting services to about one third of the city.

South Side Fire consisted of a mix of volunteer and professional staff and had served Savannah's southern neighborhoods for decades. When the city annexed South Side Fire's service area in the 1970s, the company continued to provide fire services to this part of the city. As Savannah continued to grow, concerns were raised about the differences in service quality between the City of Savannah Fire Department and South Side Fire. Whereas previously the South Side consisted mainly of single family housing, over the years the South Side grew to include a number of large retail and office complexes. Responding effectively to these types of calls required a different method of firefighting than what South Side could offer. The number of city firefighters responding to calls was always the same, for example, whereas the number of South Side volunteers that responded to calls varied at each event. Over time the city increasingly became concerned with service quality and response times on the South Side. Tellingly, one of the most vocal proponents for change was the city council representative from the South Side, who argued that the quality of service was inferior to that offered by the city.

Conflicts over what should be considered quality service were only half of the problem. Just as important, the cost of the service had risen significantly over time. The city found itself paying for equipment and stations "over and over again," and the company would increase its charges to the city on a yearly basis. The extent to which South Side fire was overpriced relative to the city was made clear when City Council decided to bring the service in house in early 1998. In a last-ditch effort to save its business, the company offered to provide the service at a significantly lower price than what it was currently charging. This sudden drop in price only angered city officials, who wondered how much, and for how long, this "non-profit" organization was overcharging them.

In sum, the Savannah case makes clear the difficulties associated with contract arrangements where service quality is hard to monitor and the true costs of the service are difficult to quantify. But even in other service areas where quality and price considerations are easier to measure, the time and resources spent on monitoring can still be significant. The degree to which these additional costs outweigh the potential efficiency gains of private production is an empirical question that can only be answered on a case-by-case basis. The evidence presented here, however, suggests that these costs are often considerably higher than most governments anticipate.

Economic and Market Issues

Much of the preceding analysis presumes that, contracting costs aside, privately produced services are cheaper. Indeed, lower costs were the primary reason most governments in this study choose to contract out in the first place. Lower costs, however, usually resulted in lower quality services as well. Research by Harvard University Professor John Donahue suggests that much of the cost savings from privatization come from local governments choosing to follow low road economic strategies that rely on the lower priced labor of private firms.^[xxix] If we make the reasonable assumption that lower priced inputs result in lower quality outputs, then it should not be surprising that service quality was a major problem in a majority of the case studies.

In both Charlotte, North Carolina and Fort Collins, Colorado local governments ended private contracts for paratransit service for the elderly and disabled because of service quality problems. In Charlotte, the taxi company responsible for the service was not accustomed to working with disabled clients, and drivers viewed city charges as less desirable passengers compared to other customers. The program was plagued by similar problems in Fort Collins, where users of the service often complained about the lack of courtesy on the part of drivers. Additionally, the private contractor had numerous problems attracting and retaining quality employees, resulting in unreliable service.

The City of Whittier, California, attempted to privatize its public bus service in the early 1990s. At the end of the five-year contract, however, the city chose in house production over a new round of competitive bidding, citing poor service quality as the primary reason for the switch. The city received numerous complaints about dirty buses and unqualified drivers. Equally important, the expected cost savings from privatization quickly disappeared because of significantly higher accident rates and greater than expected costs for vehicle repairs.

The above examples of privatized transit service all relied on lower priced labor to minimize costs. Yet, in every case the low cost option proved to be unsustainable over the long run. Either quality levels slipped to such unacceptable levels that the service was no longer a benefit to citizens, or else the problems resulting from low cost provision (e.g., higher accident rates and increased liability claims) effectively erased any financial benefits from private service delivery.

An important related issue is the degree to which local governments can accurately judge when private service delivery is cheaper. Anecdotal evidence from the case studies suggests that pricing contracts is more art than science. This should not be surprising given the uncertainty that surrounds contracting, but what is surprising is the degree to which contract bids vary. In Charlotte, North Carolina, for example, bids on paratransit service ranged from \$12.60 to \$20.49 per trip. In Lubbock, Texas, bids for a portion of the city's residential trash routes varied from \$3.6 million to \$7.3 million—a difference of nearly 103 percent.

Figures like these suggest three things. First, sufficient competition is critical to cost savings when competitive bidding is used. Second, it is imperative that local governments who use competitive bidding allow public departments to participate in the bidding process so that costs can be properly benchmarked. Finally, if a public service is privately provided, it is crucial that public officials pay close attention to monitoring the price, quality, and quantity of the contractor's work throughout the term of the contract. The following section examines more closely the cases that involved competitive bidding.

Contracting Back in Due to Successful Competitive Bidding

A key variable for explaining the likelihood of contracting back in is whether or not public employees are allowed to bid against private providers. Quantitative analysis of US Census data from 1987-1992 shows that the presence of unionized employees increases the probability of contracting back in. [\[xxx\]](#) This finding suggests that unionized workplaces are more likely to have the right to submit contract proposals, but bidding rights for public employees are increasingly common in non-unionized settings as well. [\[xxxii\]](#)

The rules governing the public sector's ability to bid on contracts vary considerably from place to place. In Pinellas County, Florida, for example, public employees are allowed to compete with private providers when a service is first put out to bid. Once that contract is "lost" to the private sector, however, only private firms have the opportunity to bid on future contracts. The county sees the start up costs associated with bringing a service back in as too expensive to be worth the effort. Not only would the county have to hire new employees to provide the service, but new equipment and buildings may be required as well.

Other places view the bidding process differently. In Charlotte, North Carolina, it is the norm for public employees to bid on contracts, and the city expects its departments to be competitive in the bidding process. Making city departments competitive means providing them with the resources necessary to assemble quality bids. In many cases, this includes allowing managers to hire outside consultants to help develop the department's proposal. Cases where services are kept in house are viewed as "victories" for the city, and are a source of pride for public employees.

A third example of how the bidding process works can be found in Lubbock, Texas. In Lubbock residential trash collection is subject to competitive bidding, and public employees are encouraged to bid for the service. What makes Lubbock different than most places, however, is that only one third of the service is put out to bid at any given time, and the City would never choose to privatize the whole service. "We would always keep at least one third of the service in house," says Mildred Cox, the Director of Public Works. "This way we never lose the ability to keep the private firms on their toes. Just as important, having competitive bids provides the city with important information about what constitutes efficient service."

Taking the High Road Through Public Sector Innovation

The fact that government departments often win competitive contracts highlights the ability of the public sector to improve efficiency through the use of high road management practices. There is ample room for increased efficiency in public provision so long as employees are empowered to make decisions on how the service should be delivered. By drawing on the expertise of front line workers, innovation in the design of work leads to significant cost savings. Theories of organization development concur that line

employees often know how to do their jobs best, and will excel at what they do if given the chance by management.^[xxxii] For public employees dealing with complex services and the need to keep a wide array of constituents satisfied, this is even truer.

Many of the cases of contracting back in were tied to process improvements in public management. As such, they demonstrate public innovation is a viable alternative to private provision. Often small changes can lead to significant savings. In Warwick, Rhode Island, for example, management and the union worked together to redesign the way residential trash is collected, resulting in savings of over \$1.1 million over five years. In Akron, Ohio, city workers developed a plan to combine water and sewer line repairs with road repairs. "Why do the same work twice?" asks union president Leo Armstrong. "If we're already there repairing the hole, we might as well finish the job. Not only can we get the job done faster, but it saves the city money, too."

In other cases, efficiency gains were the result of specific management practices being brought in from the private sector. In Charlotte, North Carolina, managers of the city's paratransit service instituted a gainsharing program for its employees that resulted in savings of over \$160,000 in 1998. Half of this money will be divided equally among the department's employees, which amounts to an annual bonus of \$1,600 per employee, or about seven percent of an employee's total pay.

Labor-management cooperation programs can have a significant impact on improving efficiency in unionized settings. In Fort Lauderdale, Florida, "partnership" programs between labor and management have resulted in a number of competitive bids being awarded to public employees. Fort Lauderdale's partnership programs are a product of the Cooperative Association of Labor and Management (CALM), an innovative program that employs the concepts of total quality management to increase productivity and promote cooperation and understanding between the union and city administrators.

One example of CALM's impact comes from the city's attempt to privatize infrastructure pipe construction in early 1997. When the Request for Proposals was issued, a labor-management committee quickly formed to prepare its bid for the competition. The committee was co-chaired by the union president and the director of labor relations for the city, who together co-chair all partnership committees. Having these two established veterans on the committee "helps to create a safe environment for our people," says union president Cathy Dunn. This way we can establish trust among all parties early on, and get to the real work of developing our proposal." In addition to the co-chairs, the committee consisted of a supervisor, division manager, and four crew members. Each committee member is encouraged to participate fully in the development of the proposal, and any member has the right to veto elements of the plan that they don't like. "All it takes is one 'no' vote and the project stops," says Dunn.

The CALM committee won the contract by submitting the lowest cost bid. Public employees were able to beat the competition by restructuring how the service was delivered. Work schedules were changed to reduce travel and set up time, and the size of the pipe crews doubled, following the example of successful private firms that do the same work. The results of these changes have been dramatic: In the first year alone, city crews laid over three and a half miles of pipe, compared to an average of just one mile of pipe for privately-run crews.

The above examples clearly demonstrate that the public sector can be as effective if not more effective than firms in the private sector doing similar work. In every case, the key to public sector success is empowerment. When workers are provided the tools and the resources necessary to bring about change,

innovative policies and programs often follow. Privatization and empowerment, however, are rarely compatible. When employees are mistrustful of management, when job security is uncertain, and when departments see their colleagues' jobs sold to the lowest bidder, convincing workers to "buy in" to *any* new program is a daunting task.

Conclusion

The evidence presented here indicates that the contracting process is rarely as smooth as its proponents claim. Often poor results were due to the inability of either governments or private contractors to clearly communicate their expectations to each other. On other occasions, disappointing results were the outcome of one party or the other underestimating costs or overestimating savings from privatization. For a third group of cases, contracting back in was not the result of failure on the part of private firms, but rather successful innovation by public employees.

The latter findings suggest that taking the high road, in the form of TQM or labor-management cooperation, can provide equal or better quality service as the best private firms, but do so with fewer risks and greater social rewards. For those public officials that truly wish to "reinvent government," internal management reforms deserve a closer look than they have been getting.

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"THAT'S NOT MY DOG"
An overview of dog liability in
British Columbia

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"THAT'S NOT MY DOG"

An overview of dog liability in British Columbia

A man walks into a pub and sits down next to a man with a dog at his feet.

"Does your dog bite," he asks.

"No."

A few minutes later, the dog takes a huge chunk out of the first man's leg.

"I thought you said your dog didn't bite!" he says indignantly.

"That's not my dog."

1. INTRODUCTION

While dogs may be man's best friend they are rapidly becoming a very real enemy for the insurance industry. According to the Insurance Information Institute in 2002 the property/casualty insurance industry in the United States paid out \$ 345.5 million dollars in dog bite liability claims accounting for almost 25% of claims made under homeowners/renters policies. It has been estimated that, in the United States, dogs bite more than 4.7 million people annually.

In the United States, this situation has been described as reaching "epidemic" proportions and the same could also be said in this country. Canada has about 10% of the population of the United States, and the Canada Safety Counsel estimates that about 460,000 Canadians (10% of the U.S. figure), are bitten by dogs each year. In addition, several recent high profile dog bite incidents have brought the issue to the forefront of insurers' minds with some insurers going so far as to refuse to underwrite insurance for homeowners with certain dog breeds.

This paper will explore the liability exposure of an owner who's dog, unlike in the titular joke, does indeed bite.

2. BASES FOR LIABILITY

When a dog causes an injury to a person, liability may be imposed on the basis the scienter doctrine - a special kind of liability related to animals, general negligence or pursuant to the *Occupier's Liability Act*.

(a) **Scienter:**

The scienter doctrine was developed as, and remains, a form of strict liability. If the conditions for scienter are found, the liability is absolute and does not depend upon proof of negligence.

The British Columbia Court of Appeal in *Janota-Bzowska v. Lewis* [1997] B.C.J. No. 2053 stated that in order for scienter to apply the Plaintiff (not Defendant) must show three things:

1. That the Defendant was the owner of the dog;
2. That the dog had manifested a propensity to cause the type of harm occasioned, and,
3. That the owner knew of that propensity.

Scienter has the effect of placing upon an owner who is aware of a propensity to do harm an absolute duty to prevent the dog from acting upon its propensity. However, that duty would appear to be met where the dog is properly restrained, the Plaintiff is properly warned of the hazard or interferes with the dog. [*Hall v. Sorley* [1980] B.C.J. No. 1884 (BCSC)].

(i) Owner Of Dog

As the joke goes; “that’s not my dog”. Proof of ownership of the dog is the first criteria which must be established before scienter can apply.

While it will be self evident in most cases, ownership of the dog in question was the key issue in the recent case of *Prasad v. Wepruk* 2004 BCSC 578. There the Defendant claimed that his dog had died two months prior to the incident and that he did not own the dog which bit the Plaintiff. The Court, after hearing evidence from neighbours who had seen the dog on the property and the police to whom the Defendant admitted owning the dog in the immediate aftermath of the incident, found that the Defendant did own the dog.

(ii) Manifested A Propensity

It is not necessary that a dog have previously caused the specific type of harm on a previous occasion. It is enough if the owner knew that the dog had a propensity or manifested a trait to do that particular type of harm, even if it had not actually caused that particular harm.

It is obvious that a prior incident of biting will constitute a propensity, however, in some cases the conduct is not so clear. The Courts have held that conduct of dog which demonstrates a propensity to do harm include:

- Barking, growling and chasing mail carriers is enough to prove a propensity to bite, at least mail carriers. [*Weeks v. Baloniak* 2003 BCSC 1684]
- A dog coming to the limits of its leash at passers by barking and snarling was enough to establish that the dog was of a vicious nature. [*Woods v. Standish* [1991] B.C.J. No. 1004 (BCSC)]

Conversely, conduct which the Courts have held does not demonstrate a propensity to do harm include:

- Chasing deer is not evidence of a propensity to jump up on people. [*Janota-Bzowska, supra*]

- Barking and appearing on occasion to tug at the leash is not manifestation of a vicious temperament [*Lewis v. Robinson* 2002 BCCA 280]

(iii) The Owner Knew Of This Propensity

It is not enough to merely establish ownership and a propensity on the part of the dog to do harm. It is further necessary that the owner of the dog actually knew of this propensity. Seeing the dog actually bite someone on a prior occasion would clearly constitute knowledge. Even previously biting the owner when the owner attempted to take away a bone has constituted knowledge. [*Abdolabbas v. Lonergan* [1998] B.C.J.No. 2549 (BC Prov. Court)] However, a simple “Beware of Dog” sign however does not infer any knowledge of a vicious temperament on the part of the dog. [*Weeks v. Baloniak, supra*]

(b) Negligence:

Even if the requirements of the doctrine of scienter have not been established, a Plaintiff may still recover damages by establishing negligence on the part of either the owner of the dog or the owner of the property where the injury took place.

To succeed in an action based on negligence, the Plaintiff must prove, on a balance of probabilities that:

- (i) The owner knew, or ought to have known, that the dog was likely to create a risk of injury to third persons, including the Plaintiff; and
- (ii) The owner failed to take reasonable care to prevent such injury.

Actions in negligence may be brought for injuries caused by a dog other than by their bite. For instance, in *Shelvey v. Bicknell* [1996] B.C. J. No. 1179 (BCCA) the Plaintiff was injured by being knocked over by Defendants Rottweiler. In *Ruckheim v. Robinson* [1995] B.C.J. No. 163 (BCCA) the Defendant's dog escaped from its pen and ran out to the adjoining highway into a collision with a motorcycle being driven by the Plaintiff, causing him to be thrown off. The Courts found negligence on the part of the dog owner for allowing the dog to get loose in *Ruckheim* but not in *Shelvey*.

(c) Difference between scienter and negligence:

A key difference between scienter and negligence is that once the requirements of scienter are established, liability is absolute, and the Plaintiff is not required to show breach of a standard of care. In addition as we have seen above, to establish scienter the Plaintiff must show that the owner actually knew of the dog's propensity. The test is therefore subjective to that dog and that owner. Whereas, in negligence, an objective test applies. That is, whether the owner knew or ought to have known that the dog was likely to injure the Plaintiff. [*Prasad v. Wepruk, supra*].

(d) Occupiers Liability:

In addition to being held liable under scienter or negligence, a Defendant may also face exposure under the *Occupiers Liability Act* R.S.B.C. 1996 c. 337 which provides that:

3 (1) An occupier of premises owes a duty to take that care that in all the circumstances of the case is reasonable to see that a person, and the person's property, on the premises, and property on the premises of a person, whether or not that person personally enters on the premises, will be reasonably safe in using the premises.

(2) The duty of care referred to in subsection (1) applies in relation to the

- (a) condition of the premises,
- (b) activities on the premises, or
- (c) conduct of third parties on the premises.

As in negligence in order for liability to be imposed, it must be established that the defendants knew or ought to have known that the dog was likely to create a risk of harm to third parties including the plaintiff, and that the defendants failed to take reasonable care to prevent such harm. It is not enough to merely have a dog on one's own property [*Lewis v. Robinson* 2001 BCSC 643] In *Janota-Bzowska v. Lewis*, *supra* the court held that:

“An occupier cannot be liable for a sudden act of a fierce and violent nature which is altogether contrary to the usual habits of the dog in question either under the common law or the Occupiers Liability Act.”

It is possible for a Defendant, who did not actually own the dog, to be found liable under the *Occupiers Liability Act* for a Plaintiff's injuries. In *Konkin v. Bartel* [1988] B.C.J. No. 1716 (BCSC) the Plaintiff had interceded between two fighting dogs and was bitten on her hand. The Plaintiff had been invited (among others) to the Defendant's property to spend the Labour Day weekend and had been advised by the Defendant that it would be alright to bring her dog. The other dog involved in the fight was owned by the Defendants parents and had a history of fighting with other male dogs and had indeed been involved in a fight the day before the Plaintiff's incident. The Court held that the Defendant, as an occupier, owed a duty to see that the Plaintiff would be reasonably safe in using the premises and had failed to do so by not ensuring that the dogs were restrained.

3. DOES THE TYPE OF DOG MAKE A DIFFERENCE?

The type of dogs involved in the reported decisions are generally all large breeds; Bouviers (*Prasad, Abdolabbas*) Labrador Retrievers (*Janota-Bzowska*), Rottweilers (*Shelvey*) and assorted cross breeds. However, the Court in *Shelvey v. Bicknell* commented in obiter that “to attribute to the animal propensities on account of its breed alone would require a more compelling evidentiary base than is present here.” This comment was referred to in *Levesque v. Miko* 2001 BCPC 96 where the Court noted that the mere fact that the dog in question was a German

Shepherd could not, standing alone, establish that it had a propensity for aggression and that the owners were therefore presumably aware of it's disposition.

4. SUMMARY

The old adage that “every dog is entitled to one bite” generally applies under scieinter, negligence or occupier's liability. Until a dog has had its first bite, it has not demonstrated a propensity, so scieinter would not apply. Further, before the first bite, such lesser damages would not be foreseeable. Therefore, neither negligence nor a breach of an occupier's duty of care would be established.

However proving such defence, and dealing with all of the other legal issues related to dog bite cases, could still be enough to put owners and their beloved pets in the dog house.

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“That's Not My Dog”

An overview of dog liability in British Columbia

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Sydney is a Nova Scotia Duck Tolling Retriever and provided insider perspective for this article. He has not manifested any propensity to harm the public or other canines. He can be reached (particularly by those bearing treats) at his neighbourhood dog park.