Federation of North Vancouver Community Associations

FONVCA AGENDA

THURSDAY October 21st 2010

Place: DNV Hall 355 W. Queens Rd V7N 2K6
Time: 7:00-9:00pm
Chair: Eric Andersen – Blueridge C.A.
Email:EricgAndersen@shaw.ca Tel: 604–929-6849
Regrets:

1. Order/content of Agenda

2. Adoption of Minutes of Sep 16th

http://www.fonvca.org/agendas/oct2010/minutes-sep2010.pdf

3. Old Business

3.1 Council Agenda Distribution - continued

Basic Agenda listing still missing from District Dialogue

3.2 Renewal of FONVCA.ORG in Oct/2010

Renewal has been done for 3yrs (to Nov 2014) at cost of $334.60. Members who have paid $20 are:

Lynn Valley C.A.	Lions Gate N.A.
Save our Shores	Blueridge C.A.
Edgemont C.A.	Norgate Park C.A.
Seymour C.A.	

3.3 Update on OCP Process

OCP Required Content still questionable

4. Correspondence Issues

4.1 Business arising from 9 regular emails:

4.2 Non-Posted letters – 0 this period

5. New Business
Council and other District issues.

5.1 Review Shirtsleeve Meeting held Oct 12

- OCP
- Budget Review for program cuts

5.2 Regional Growth Strategy

http://www.metrovancouver.org/planning/development/strategy/Pages/designations.aspx
Goes to Metro Board on Nov 12th for 1/2nd reading with Public Hearings towards end of Nov in 4 regional locations and adoption around Jan/Feb 2011. Thence have 2yrs to get OCP's "generally consistent" with plan.

5.3 Trees

Oct 5th Tree Protection Workshop by Council
http://www.dnv.org/upload/documents/Council_Workshops/cwm101005.htm
Staff Presentation: See particularly options on pages 19/20
Support is strongest for option 2, less for option 1, least for option 3
http://www.dnv.org/upload/documents/Council_Presentation/1479151.pdf
Annual "Tree Benefit Calculator"
http://treebenefits.com/calculator/
A nice Technical Guide to Urban and Community Forestry
http://www.na.fs.fed.us/spfo/pubs/uf/techguide/toc.htm
Identified Benefits of Community Trees and Forests
http://www.ottawaforests.ca/city_trees/values_e.htm
Tree Ordinance Guidelines
http://www.isa-arbor.com/publications/tree-ord/ordprt1c.aspx
Sewer lines and Trees
http://www.sewersmart.org/prevention-4.html
Market Value of Mature Trees in Single-Family Housing Markets
http://www.entrepreneur.com/tradejournals/article/print/59635055.html
Trees and the Law
http://www.fonvca.org/agendas/oct2010/Trees%20and%20the%20Law.pdf
Trees in the Housing Landscape
http://www.ianrpubs.unl.edu/epublic/pages/publicationD.jsp?publicationId=830

6. Any Other Business

6.1 Legal Issues

a) Repair of "breakwater lands"
Weak WV zoning bylaw fails to protect municipal interests.
http://www.courts.gov.bc.ca/jdb-txt/SC/10/12/2010BCSC1297.htm
http://www.vancouversun.com/health/Lawyer+wins+battle+with+West+repair+breakwater/3614579/story.html
http://www.nsnews.com/news/story.html?id=3608644
http://www.obwb.ca/fileadmin/docs/riparian_regulations_BC_Gov.pdf
Recommendation for discussion: That DNV should ensure its zoning bylaw protects our interests for such "lands".

b) Provincial Elections Chill Effect
http://www.policyalternatives.ca/sites/default/files/uploads/publications/BC%20Office/2010/10/ccpa_bc_election_chill_effect_full.pdf
"BC's third party advertising rules caused extensive problems for "small spenders" such as non-profits and charities during the 2009 provincial election."

6.2 Any Other Issues (2 min each)

a) (un)Sustainability of BC Transit
http://www.vancouversun.com/story_print.html?id=3595400

b) Map Offers A Global View Of Health-Sapping Air Pollution
http://www.fonvca.org/agendas/oct2010/Global%20View%20Of%20Health.pdf

c)Invitation to "Table Matters" – http://tablematters.eventbrite.com/
d)Join planning web site www.cyburbia.org for free
e) Balance on Cul-de-sacs http://www.uctc.net/access/24/Access%2024%20-%2006%20-%20Reconsidering%20the%20Cul-de-sac.pdf
f) Three basic Population Pyramids Explained
http://www.metagora.org/training/encyclopedia/agesex.html

7. Chair & Date of next meeting.

Thursday November 18th 2010
Due: Cathy Adams Lions Gate N.A. (list next page)

Attachments
-List of Email to FONVCA - ONLY NEW ENTRIES
OUTSTANDING COUNCIL ITEMS-Cat Regulation Bylaw; Review of Zoning Bylaw; Securing of vehicle load bylaw; Snow removal for single family homes bylaw.

FONVCA Received Correspondence/Subject

13 September 2010 → 18 October 2010

LINK	SUBJECT
http://www.fonvca.org/letters/2010/13sep-to/Corrie_Kost_1oct2010.pdf	Some remarks/alternatives to **Performance Zoning**
http://www.fonvca.org/letters/2010/13sep-to/Corrie_Kost_9oct2010.pdf	Personal position on Translink funding by prop. taxes
http://www.fonvca.org/letters/2010/13sep-to/Monica_Craver_1oct2010.pdf	Mountain biking
http://www.fonvca.org/letters/2010/13sep-to/Monica_Craver_22sep2010.pdf	Mountain biking
http://www.fonvca.org/letters/2010/13sep-to/Monica_Craver_24sep2010.pdf	Mountain biking
http://www.fonvca.org/letters/2010/13sep-to/Monica_Craver_25sep2010.pdf	Mountain biking
http://www.fonvca.org/letters/2010/13sep-to/Monica_Craver_27sep2010.pdf	Bobsled Trail
http://www.fonvca.org/letters/2010/13sep-to/Wendy_Qureshi_5oct2010.pdf	Council "Whistling the same tune"
http://www.fonvca.org/letters/2010/13sep-to/Wendy_Qureshi_6oct2010.pdf	Council "Whistling the same tune"

Past Chair of FONVCA (Jan 2007-present)

Oct 2010	Eric Andersen	Blueridge C.A.
Sep 2010	K'nud Hille	Norgate Park C.A.
Jun 2010	Dan Ellis	Lynn Valley C.A.
Apr 2010	Paul Tubb	Pemberton Heights
Mar 2010	Brian Platts	Edgemont C.A.
Feb 2010	Special	
Jan 2010	Dianna Belhouse	S.O.S
Nov 2009	K'nud Hill	Norgate Park C.A.
Oct 2009	Dan Ellis	Lynn Valley C.A.
Sep 2009	Brian Platts	Edgemont C.A.
Jul 2009	Val Moller	Lions Gate N.A.
Jun 2009	Eric Andersen	Blueridge C.A.
May 2009	Diana Belhouse	S.O.S
Apr 2009	Lyle Craver	Mt. Fromme R.A.
Mar 2009	Del Kristalovich	Seymour C.A.
Feb 2009	Paul Tubb	Pemberton Heights C.A.
Dec 2008	Dan Ellis	Lynn Valley C.A.
Nov 2008	Cathy Adams	Lions Gate N.A.
Sep 2008	Brian Platts	Edgemont C.A.
Jul 2008	Diana Belhouse	Delbrook C.A.
Jun 2008	Eric Andersen	Blueridge C.A.
May 2008	Herman Mah	Pemberton Heights C.A.
Apr 2008	Del Kristalovich	Seymour C.A.
Mar 2008	K'nud Hille	Norgate Park C.A.
Feb 2008	Lyle Craver	Mount Fromme R.A.
Jan 2008	Dan Ellis	Lynn Valley C.A.
Nov 2007	John Miller	LCCRA
Oct 2007	Cathy Adams	Lions Gate N.A.
Sep 2007	Diana Belhouse	Delbrook C.A.
Jul 2007	Eric Andersen	Blueridge C.A.
Jun 2007	Brian Platts	Edgemont C.A.
May 2007	Dan Ellis	Lynn Valley C.A.
Apr 2007	John Miller	Lower Capilano R.A.
Mar 2007	Cathy Adams	Lions Gate N.A.
Feb 2007	Diana Belhouse	Delbrook C.A.
Jan 2007	Brian Platts	Edgemont C.A.

FONVCA
Minutes September 16th 2010

Place: DNV Hall, 355 West Queens
Time: 7:00pm

Attendees

K'nud Hille(**Chair-pro tem**)	Norgate Park C.A.
Dan Ellis	Lynn Valley C.A.
Diana Belhouse	Delbroook C.A. and NV Save our Shores Soc.
Cathy Adams	Lions Gate N.A. (late)
Val Moller	Lions Gate N.A. (late)
Corrie Kost	Edgemont C.A.
Eric Andersen(**Notetaker**)	Blueridge C.A.

Regrets: Cathy Adams & Val Moller – late due to OCP mtg at hall. John Hunter.

The meeting was called to order at 7:07 PM

1. ORDER / CONTENT OF AGENDA
Item 5.7 Review Guidelines for Discussion Topics was moved up to become 5.0

2. ADOPTION OF MINUTES – June 17th 2010
Concerns were expressed about negativity in the minutes covering item 3.3 (update on OCP process). Diana moved adoption of the minutes, which was seconded by Dan and consequently adopted.

3. OLD BUSINESS

3.1 Council Agenda Distribution
There was still concerns about the Council Agenda not being properly advertized. Every library in the DNV is doing it differently.
Corrie moved the below motion which was seconded by Eric and adopted unanimously:
"That the Council and/or workshop agendas be available on the website and published in summary form in the North Shore News and full paper copies be made available at all DNV libraries".

3.2 Renewal of FONVCA.ORG by Oct/2010
The cost for the website is $100. per year. We would like to collect a total of $300. so that the renewal can be for 3 years. While some community associations have contributed the suggested $20. , many have not. – item deferred to October meeting

3.3 Update on OCP Process
OCP Required Content
http://www.fonvca.org/agendas/sep2010/OCP-Required-Content.pdf
It will be a while before the next public OCP meeting. Aspects of the Lower Capilano plan are being revisited (regarding a town center) based on requests by some local residents.

4. CORRESPONDENCE ISSUES
4.1 Business arising from 20 regular e-mail
No discussion.

4.2 Non-posted letters – 0 this period.

5. NEW BUSINESS
Council and other District Issues

5.0 Review Guidelines for Discussion Topics
"Our mandate is to improve the quality of life in our neighbourhoods. Furthermore, the Federation is a forum for the common concerns of member associations and its purpose is to strengthen these organizations through the sharing of information and experience."

limit to Council impact/influence only
→
all topics of general interest

A healthy discussion was held about which topics to cover and include at the FONVCA meetings. It was agreed that a more clear separation is needed between DNV and other matters**. We should focus on items that we can have influence on.**
Other items may be included as interest info only.

5.1 Next Shirtsleeve meeting
To be held October 12th at 7 PM
Items suggested for discussion:

OCP What is the process to adoption?
'Where's the 'meat'?
What are the cost implications?
Taxes and economic implications?
Alternatively:
'Let's discuss property taxes'
Related to this alternative, note that Dave Stuart wished to discuss Financial Planning for the District.

Taxes: What can be done if they are out of control.

Ref: Sun Article of 21Jun2010:A tool to help citizens fight City Hall
http://www.vancouversun.com/homes/tool+help+citizens+fight+City+Hall/3180222/story.html?id=3180222
http://www.taxpayer.com/sites/default/files/RatepayerTPJune2010.pdf

5.2 Public consultation should be mandatory?

Should public consultation be mandatory when public bodies make decisions which could negatively impact a community? Eg. Sculpture in Deep Cove
http://www.nsnews.com/entertainment/Cove+sculpture+meeting/3494570/story.html
http://www.theprovince.com/news/Petition+launched+against+proposed+Deep+Cove+Park+sculpture/3437476/story.html

It was generally agreed that local meetings should be held in connection with local public art.

5.3 Importance of Topsoil - Law & Policy Primers

http://www.waterbucket.ca/gi/sites/wbcgi/documents/media/288.pdf
http://www.waterbucket.ca/gi/sites/wbcgi/documents/media/289.pdf
This item was FYI only.

5.4 Charlottetown Primer on Roundabouts

http://www.city.charlottetown.pe.ca/roundabout.php
Roundabouts were praised.
Would it work in the DNV?
Should it be tried at Capilano Road and Marine Drive?

5.5 Budget Review for Program Cuts

The budget review will go to the public in November. Many Municipal services are not subject to HST.

5.6 New Development near Raven Pub

– no discussion was held about this item.

5.7 See 5.0

5.8 Request to coordinate meetings at the DNV Hall

http://www.fonvca.org/letters/2010/14jun-to/Cathy_Adams_10sep2010.pdf
DNV Staff sometimes schedule Community Meetings which conflict with other Community Meetings held at Hall. No action was suggested by FONVCA at this time.

6. ANY OTHER BUSINESS

6.1 Legal Issues- FYI ONLY

a) How CNV dealt with “illegal fourplex”
Jul 31/2009 NSNEWS article
http://www.vancourier.com/news/keep+illegal+fourplex+turfed/2859718/story.html
May 26/2010 Supreme Court decision
http://www.courts.gov.bc.ca/jdb-txt/SC/10/07/2010BCSC0743.htm
Jun 20/2010 NSNEWS article
http://www.nsnews.com/story.html?id=6aaf667a-8179-486c-90f4-e4e9c0a21227

b) Crisis in Lillooet Governance

“Council will decide whether to approve a bylaw making it illegal to post any signs or posters without a permit and illegal to meet in public without a permit whether it's for a political meeting or a picnic.”
Read more:
http://www.lillooetratepayers.org/content/crisis-lillooet-governance-aug-2010
http://www.vancouversun.com/news/Lillooet+attempts+turn+water+complaints/3430567/story.html

c) Update on Sign-Bylaws in Canada

http://www.millerthomson.com/docs/Freedom_of_Expression_and_Sign_By-Laws_in_Canada-_Where_are_we_now.PDF
and
http://spacingmontreal.ca/2010/07/19/court-throws-out-montreals-anti-postering-bylaw/

d) Signage and Tax Revenue (TPST)

Toronto is changing their commercial signs bylaw which is estimate to yield $10.4 million annually!
http://wx.toronto.ca/inter/it/newsrel.nsf/0/10dedcb75d7018b4852576fd00557488?OpenDocument and worth a read is
http://www.toronto.ca/legdocs/municode/1184_693.pdf

The DNV is currently reviewing parts of their Sign Bylaw – especially as it pertains to Seasonal and Tourism Signs (these aspects of Council agenda item 8.9 of Sep 13th were apparently withdrawn)

6.2 Any Other Issues

a) Metro advised to boost taxes(HST 12→13%)
http://www.vancouversun.com/business/Boost+Metro+power+report+advises/3285892/story.html

b) Blame for Grouse Grind Incident (multiple attachments)
-Grouse-Grind-outrage
http://www.vancouversun.com/opinion/Hiker+outraged+resort+didn+help+ailing+woman+Grouse+Grind/3397209/story.html
-grouse-grind-blame
http://www.vancouversun.com/opinion/op-ed/Grouse+Mountain+takes+blame+Metro+neglect/3411339/story.html
-grouse-grind-metro
http://www.vancouversun.com/opinion/Grouse+Grind+issue+about+assigning+blame/3435397/story.html

c) Fourth review of climate science of IPCC - EPA vindicates science.
http://www.epa.gov/climate/climatechange/endangerment/downloads/response-volume2.pdf

http://www.realclimate.org/index.php/archives/2010/02/ipcc-errors-facts-and-spin/
The above "clarifies" some misconceptions that result from 2Sep201 SUN article:
http://www.vancouversun.com/technology/road+rebuilding+trust+climate+science/3472844/story.html

d) Harmonization of New Community Amenity Contributions
- applies to newly rezoned/developed properties to supply community amenities with predictable costs to developer
- 50% of "uplift" seen as viable
-not to be confused with Development Cost Charges - DCC
http://www.dnv.org/upload/documents/Council_Presentation/1421990.pdf - Coriolis Consulting Corp – june/2010
More: http://www.dnv.org/article.asp?a=4904

e)Tax Rates Explained (NSN Jul 21)
http://www.nsnews.com/story_print.html?id=3301739
"Slicing the municipal tax pie is a complicated process" – Mayor Walton – NSN Jul 21
- good historical content

http://www.nsnews.com/story_print.html?id=3304123
"Reviewing tax rates only part of picture" – Elizabeth James – NSN Jul 21

http://www.nsnews.com/story_print.html?id=3276011
"Sharing municipal tax pain"
Elizabeth James – NSN Jul 14

f) Increasing cost of local government (NSN Jul 18)
http://www.nsnews.com/story_print.html?id=3292590
-by Bill Bell

g) How Facts Backfire
http://www.boston.com/bostonglobe/ideas/articles/2010/07/11/how_facts_backfire/
Facts don't necessarily have the power to change our minds!

h) New Liquor Licence Rules:
http://www.leg.bc.ca/39th2nd/1st_read/gov20-1.htm
Some of the changes (see sections114+ of Bill 20) remove local government involvement in applications
http://www.vancouversun.com/story_print.html?id=3366031
No consultation with province, contrary to Community Charter. See also
http://www.vancouversun.com/story_print.html?id=3366033

i) North Shore Crime Stats
http://www.nsnews.com/story_print.html?id=3331978
Crime severity index in DNV (one of lowest in Canada) is about half that in CNV.

j) Demographics of DNV vs. Toronto
http://www.fonvca.org/agendas/sep2010/pop-toronto-vancouver-and-map.pdf
Shows that the two demographics are quite similar.

k) DNV collects $413,063 from traffic fine revenues
NSN – Jul 28/2010
http://www.nsnews.com/story_print.html?id=3333666

l) Tool to help fight City Hall – SUN Jun 21/2010
http://www.vancouversun.com/story_print.html?id=3180222
http://www.taxpayer.com/sites/default/files/RatepayerTPJune2010.pdf

m) Public Bicycle Sharing Systems gaining popularity in many large cities.
Paris:
http://www.vancouversun.com/travel/Gear+shift+continues+Paris/3393732/story.html
Hamilton:
http://www.raisethehammer.org/blog/1907/hamilton_ready_for_bike-sharing
Best Review:
http://en.wikipedia.org/wiki/Bicycle_sharing_system

n) The North Shore Waterfront Liaison Committee (NSWLC)
NSWLC is taking the noise issue very seriously. The Port will be hosting a public 'café' in the fall to gather public opinion about the port and port issues, including noise.

o) Performance Zoning
This type of zoning has been suggested by a member of Council. It offers lots of flexibility, but is it too much? It has been abandoned by most US cities due to administrative costs and legal challenges. It is being used in Surrey (see attachment in package).
Also attached was page 6 of .
http://www.uwsp.edu/cnr/landcenter/pdffiles/implementation/Zoning.pdf

7. CHAIR AND DATE OF NEXT MEETING

Chair: Eric Andersen. Blueridge C.A.
Date: Thursday October 21st , 2010

Question 1

1. Is there support for a revised Tree Bylaw that protects trees on slopes, riparian areas, District land and big trees and includes clear criteria for when a permit will be issued as well as discretion to the Director for exemption.
2. Is there support for a bylaw that protects trees on slopes, riparian areas, District land and includes compensation criteria for removal of big trees.
3. Is there support for a bylaw that protects trees on slopes, riparian areas and District land only

NORTH VANCOUVER DISTRICT

Tree Protection Workshop

October 5th, 2010

Question 2

Is there support for changes to Council Policy 13-5280-1 that

- Require less than unanimous consent for non hazardous tree work.
- Provide level of discretion to endorse non hazardous tree work (light, view, nuisance) when paid for by the applicant and beneficial
- Re-enforce current operational policy of only using DNV financial resources to mitigate legitimately hazardous trees

Tree Issues for Discussion

- Protection (regulation) of large trees (>0.75m dbh) on private, residential property*1
- DNV owned trees that are not hazardous and subject to requests for work and/or removal*1

*1 Council Workshop (Sept. 17, 2007), Council Workshop (March 8, 2010), Council Agenda (June 21, 2010)

Large Private Property Tree(s)

North Vancouver Tree Canopy Research Project*2

- Deciduous trees intercepted an average of 67.1% and 45.8% of the gross precipitation for summer and winter respectively
- Coniferous trees intercepted an average of 81.7% and 71.4% of the gross precipitation for summer and winter respectively
- Results suggest that interception losses for both coniferous and deciduous trees are higher within urban environments compared to trees within forested areas.

*2 Asadian, Y. 2010. Rainfall Interception In An Urban Environment . Master of Science Thesis, University of British Columbia, Vancouver. 67-68p.

Large Private Property Tree(s)

What are the contribution of these trees to desired community values?

Key values for DNV residents*1

- ✓ Increase property value
- ✓ Mitigate rainwater impacts (pollution & erosion)
- ✓ Scrub out air pollution
- ✓ Provide energy saving cover
- ✓ Provide habitat for many species
- ✓ Social, community values

NORTH VANCOUVER DISTRICT

Watershed Tree Canopy

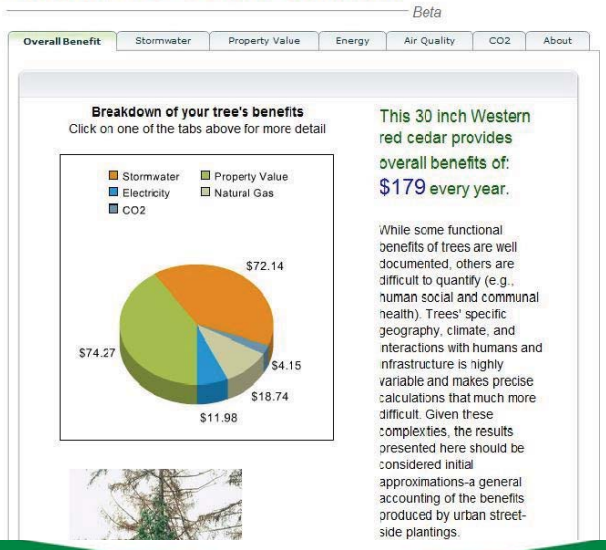
Residential Lot Case Study

Implications for LWRMP and ISMP requirements for On-site source controls for rainwater

Large Private Property Tree(s)

National Tree Benefit Calculator

Beta



Benefits associated with a 30” dbh Western Red Cedar.

National Tree Benefit Calculator at http://www.treebenefits.com/calculator/

NORTH VANCOUVER DISTRICT

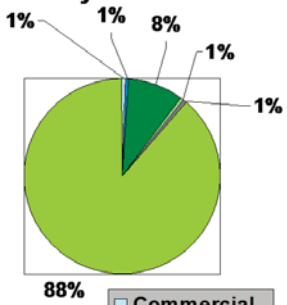
Watershed Scale

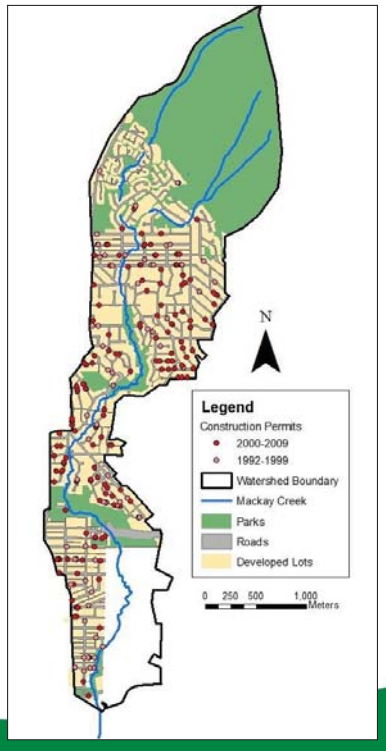
Residential Redevelopment Trends

2007

2009

Mackay Creek Land Use

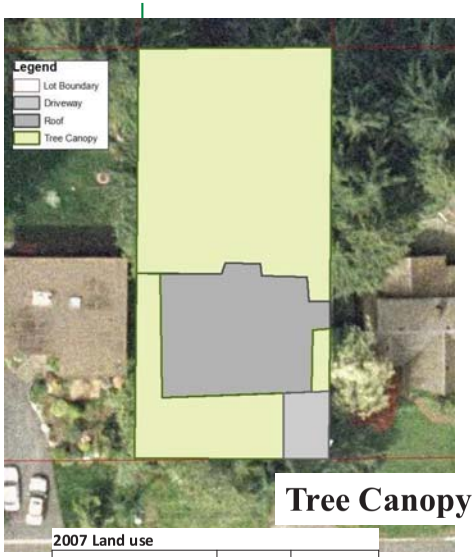


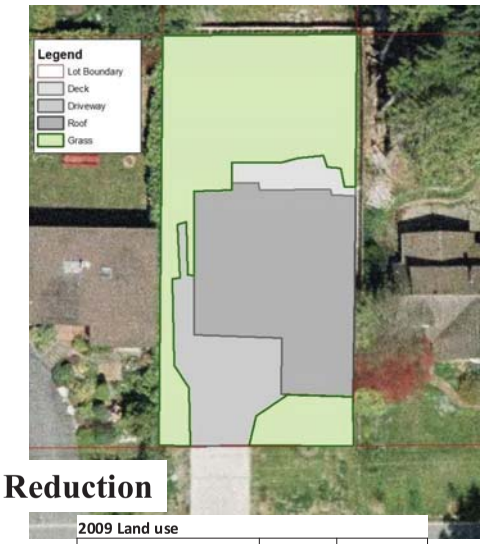


Mackay Creek Watershed

Mackay Creek	New Construction Permits
77	1992-1999
150	2000-2009
2884	Single Family Lots

5% of SF lots were redeveloped in 10 years





Tree Canopy Reduction

2007 Land use		
Landuse	Area (m²)	Proportion
Driveway	33	4%
Roof	204	24%
Tree Canopy	622	72%
Impervious	236	**28%**
Pervious	622	**72%**

2009 Land use		
Land use	Area (m²)	Proportion
Driveway	121	14%
Roof	298	35%
Deck	33	4%
Grass	402	47%
Impervious	452	**53%**
Pervious	402	**47%**

Large Private Property Tree(s)

Compensation Model Discussion (removal only)

Replacement fee ($) discussion

1. Formulate a model to determine the fee/compensation
2. Numerous models currently available for use as baseline
3. Decision on how to rationalize the compensation fee charged

In 20 years...

10% of the existing lots could be redeveloped

Resulting in:

- 25% increase of impervious area on each of these lots resulting in about 52,000 m^2 new impervious area in the watershed
- Increase in pollutant loads
- Increase in erosion=⇧ $ for DNV and private landowners)
- Decrease in fish productivity

Large Private Property Tree(s)

Compensation Model Discussion (removal only)

Positive	Negative
Certainty for owner (permit)	Large healthy trees lost
Nuisance abatement (leaves)	Neighbourhood aesthetics
No Arborist report req'd	Loss of eco-services
Options (replacement OR $)	Service replacement deficit
Comfort & safety	Additional cost to DNV if offsite trees planted (maint.)
Neighbourhood aesthetics (light, view)	Administrative costs associated with funds rec'd
	Expensive to owner
	More complaints to staff, less outreach

Large Private Property Tree(s)

Compensation Model Discussion (removal only)

1. Replacement on site at ratio relative to lot size
   - For example 1 x 5m cedar (approx. $2500 not incl. transp. & planting for 33' lot
   - For example 3 x 4m cedar (approx. $300 ea. not incl. transp. & planting) for larger lot/parcel
2. Local project to replace lost service at a fee relative to assessed value of the removed tree
3. DNV managed fund for urban aforestation

Question 1

1. Support for a revised Tree Bylaw that protects trees on slopes, riparian areas, District land and big trees and includes clear criteria for when a permit will be issued as well as discretion to the Director for exemption.
2. Support for a bylaw that protects trees on slopes, riparian areas, District land and includes compensation criteria for removal of big trees.
3. Support for a bylaw that protects trees on slopes, riparian areas and District land only

Public Tree(s)

Discussion on Policy 13-5280-1

Suggested changes;

1. Less than unanimous neighbourhood consent for non-hazardous tree work
2. Discretion to the DNV for approval of work that is beneficial to the DNV (costs, liability, silviculture)
3. Categorically state that DNV resources will only be used to mitigate identified hazard trees

Question 2

Support changes to Council Policy 13-5280-1 that

- Require less than unanimous consent for non hazardous tree work.
- Provide level of discretion to endorse non hazardous tree work (light, view, nuisance) when paid for by the applicant and beneficial
- Re-enforce current operational policy of only using DNV financial resources to mitigate legitimately hazardous trees

Public Tree(s)

Discussion on Prime Contractor(s)

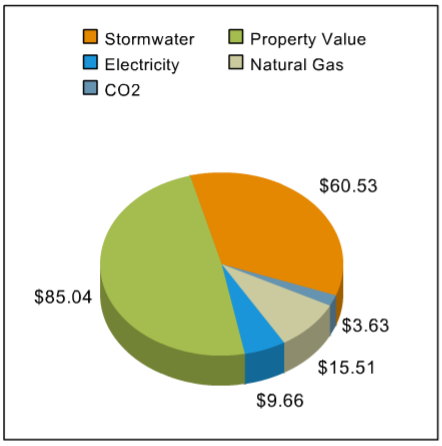
- Required to protect the DNV (liability)
- Very specific regulations and protocols
- Originate from MIA and Worksafe BC requirements
- Does add administrative complexity to both the DNV and the Public


NORTH VANCOUVER
DISTRICT

National Tree Benefit Calculator

Beta

Overall Benefits | Stormwater | Property Value | Energy | Air Quality | CO2 | About the model



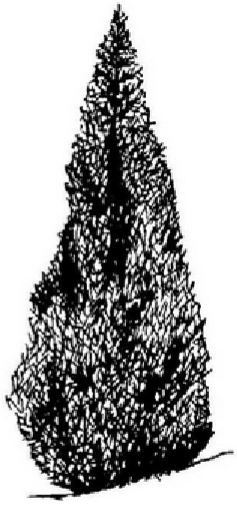
Breakdown of your tree's benefits
Click on one of the tabs above for more detail

This 25 inch Conifer Evergreen Large Other provides overall benefits of: $173 every year.

While some functional benefits of trees are well documented, others are difficult to quantify (e.g., human social and communal health). Trees' specific geography, climate, and interactions with humans and infrastructure is highly variable and makes precise calculations that much more difficult. Given these complexities, the results presented here should be considered initial approximations—a general accounting of the benefits produced by urban street-side plantings.

Benefits of trees do not account for the costs associated with trees' long-term care and maintenance.

If this tree is cared for and grows to 30 inches, it will provide **$179** in annual benefits.

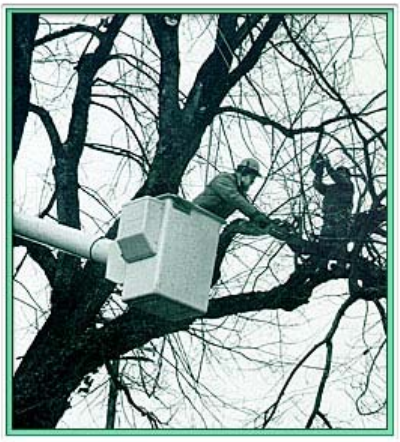


Conifer Evergreen Large Other
Conifer Evergreen Large Other

The National Tree Benefit Calculator was conceived and developed by Casey Trees and Davey Tree Expert Co.

A Technical Guide to Urban and Community Forestry

Urban And Community Forestry: Improving Our Quality Of Life



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Ottawa Forests and Greenspace Advisory Committee

Identified Benefits of Community Trees and Forests

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The University of Georgia
October, 1996

COMMUNITY TREES AND FORESTS ARE VALUABLE. To the 75% of the United States population that now live in urban and suburban areas, trees provide many goods and services. Values are realized by the people that own the trees, by people nearby, and by society in general. People plant, maintain, conserve, and covet trees because of the values and benefits generated.

Tree benefits can be listed in many forms. The bottom-line is humans derive not a single-user value from community trees and forests, but a multi-product / multi-value benefit. Some of these benefits stem from components and attributes of a single tree, while other benefits are derived from groups of trees functioning together. What is the value of these multiple benefits? A 1985 study concluded that the annual ecological contribution of an average community tree was $270.

Values, functions, goods and services produced by community trees and forests can be evaluated for economic and quality of life components. While quality of life values are difficult to quantify, some of the economic values can suggest current and future negative or positive cash flows. In assessing changes in dollar values, concerns for tree evaluation are most prevalent within: risk management costs (liability and safety); value-added / capital increases to tree values; appreciation of tree and forest assets; maintenance costs of tree and forest assets; and, level of management effectiveness and efficiency (total quality management of community trees and forests -- TTQM).

Below are listed a selected series of goods, services, and benefits community trees across the nation and forests provide. These bullets of information are taken from a diversity of individual research projects and, as such, are individually meaningless except under similar conditions. These items together do suggest trends and concepts of value.

Environmental Benefits

Temperature and Energy Use

- Community heat islands (3 to 10°F warmer than surrounding countryside) exist because of decreased wind, increased high density surfaces, and heat generated from human associated activities, all of which requires addition energy expenditures to off-set. Trees can be successfully used to mitigate heat islands.
- Trees reduce temperatures by shading surfaces, dissipating heat through evaporation, and controlling air movement responsible for advected heat.

Shade

- 20°F lower temperature on a site with trees.
- 35°F lower hard surface temperature under tree shade than in full summer sun.
- 27% decrease in summer cooling costs with trees.
- 75% cooling savings under deciduous trees.
- 50% cooling energy savings with trees. (1980) 20°F lower room temperatures in uninsulated house during summer from tree shade.
- $242 savings per home per year in cooling costs with trees.
- West wall shading is the best cooling cost savings component.
- South side shade trees saved $38 per home per year.
- 10% energy savings when cooling equipment shaded (no air flow reduction).
- 12% increase in heating costs under evergreen canopy
- 15% heating energy savings with trees. (1980)
- 5% higher winter energy use under tree shade
- $122 increase in annual heating costs with south and east wall shading off-set by $155 annual savings in cooling costs.
- Crown form and amount of light passing through a tree can be adjusted by crown reduction and thinning.
- Shade areas generated by trees are equivalent to $2.75 per square foot of value (1975 dollars).

Wind Control

- 50% wind speed reduction by shade trees yielded 7% reduction in heating energy in winter.
- 8% reduction in heating energy in home from deciduous trees although solar gain was reduced.
- $50 per year decrease in heating costs from tree control of wind.
- Trees block winter winds and reduces "chill factor."
- Trees can reduce cold air infiltration and exchange in a house by maintaining a reduced wind or still area.
- Trees can be planted to funnel or baffle wind away from areas -- both vertical and horizontal concentrations of foliage can modify air movement patterns.
- Blockage of cooling breezes by trees increased by $75 per year cooling energy use.

Active Evaporation

- 65% of heat generated in full sunlight on a tree is dissipated by active evaporation from leaf surfaces.
- 17% reduction in building cooling by active evaporation by trees.
- One acre of vegetation transpires as much as 1600 gallons of water on sunny summer days.
- 30% vegetation coverage will provide 66% as much cooling to a site as full vegetation coverage.
- A one-fifth acre house lot with 30% vegetation cover dissipates as much heat as running two central air conditioners.

Air Quality

Trees help control pollution through acting as biological and physical nets, but they are also poisoned by pollution.

Oxygen Production

One acre of trees generates enough oxygen each day for 18 people.

Pollution Reduction

- Community forests cleanse the air by intercepting and slowing particulate materials causing them to fall out, and by absorbing pollutant gases on surfaces and through uptake onto inner leaf surfaces.
- Pollutants partially controlled by trees include nitrogen oxides, sulfur dioxides, carbon monoxide, carbon dioxide (required for normal tree function), ozone, and small particulates less than 10 microns in size.
- Removal of particulates amounts to 9% across deciduous trees and 13% across evergreen trees.
- Pollen and mold spore, are part of a living system and produced in tree areas, but trees also sweep out of the air large amounts of these particulates.
- In one urban park (212 ha), tree cover was found to remove daily 48 lbs particulates, 9 lbs nitrogen dioxide, 6 lbs sulfur dioxide, and ½ lbs carbon monoxide. ($136 per day value based upon pollution control technology).
- 60% reduction in street level particulates with trees.
- One sugar maple (one foot in diameter) along a roadway removes in one growing season 60 mg cadmium, 140 mg chromium, 820 mg nickel and 5200mg lead from the environment.
- Interiorscape trees can remove organic pollutants from indoor air.

Carbon Dioxide Reduction

- Approximately 800 million tons of carbon are currently stored in US community forests with 6.5 million tons per year increase in storage ($22 billion equivalent in control costs).
- A single tree stores on average 13 pounds of carbon annually.
- A community forest can store 2.6 tons of carbon per acre per year.

Hydrology

- Development increases hard, non-evaporative surfaces and decreases soil infiltration -- increases water volume, velocity and pollution load of run-off -- increases water quality losses, erosion, and flooding.
- Community tree and forest cover intercepts, slows, evaporates, and stores water through normal tree functions, soil surface protection, and soil area of biologically active surfaces.

Water Run-Off

- 7% of winter precipitation intercepted and evaporated by deciduous trees.
- 22% of winter precipitation intercepted and evaporated by evergreen trees.
- 18% of growing season precipitation intercepted and evaporated by all trees.
- For every 5% of tree cover area added to a community, run-off is reduced by approximately 2%
- 7% volume reduction in six-hour storm flow by community tree canopies.
- 17% (11.3 million gallons) run-off reduction from a twelve-hour storm with tree canopies in a medium-sized city ($226,000 avoided run-off water control costs).

Water Quality / Erosion

- Community trees and forests act as filters removing nutrients and sediments while increasing ground water recharge.
- 37,500 tons of sediment per square mile per year comes off of developing and developed landscapes -- trees could reduce this value by 95% ($336,000 annual control cost savings with trees).
- 47% of surface pollutants are removed in first 15 minutes of storm -- this includes pesticides, fertilizers, and biologically derived materials and litter.
- 10,886 tons of soil saved annually with tree cover in a medium-sized city.

Noise Abatement

- 7db noise reduction per 100 feet of forest due to trees by reflecting and absorbing sound energy (solid walls decrease sound by 15 db)
- Trees provide "white noise," the noise of the leaves and branches in the wind and associated natural sounds, that masks other man-caused sounds.

Glare Reduction

- Trees help control light scattering, light intensity, and modifies predominant wavelengths on a site.
- Trees block and reflect sunlight and artificial lights to minimize eye strain and frame lighted areas where needed for architectural emphasis, safety, and visibility.

Animal Habitats

- Wildlife values are derived from aesthetic, recreation, and educational uses.
- Lowest bird diversity is in areas of mowed lawn -- highest in area of large trees, greatest tree diversity, and brushy areas.
- Highest native bird populations in areas of highest native plant populations.
- Highly variable species attributes and needs must be identified to clearly determine tree and community tree and forest influences.
- Trees are living systems that interact with other living things in sharing and recycling resources -- as such, trees are living centers where living thing congregate and are concentrated.

Economic / Social / Psychological Benefits

Economic Stability

- Community trees and forests provide a business generating, and a positive real estate transaction appearance and atmosphere.
- Increased property values, increased tax revenues, increased income levels, faster real estate sales turn-over rates, shorter unoccupied periods, increased recruitment of buyers, increased jobs, increased worker productivity, and increased number of customers have all been linked to tree and landscape presence.
- Tree amenity values are a part of real estate prices.

Property Values -- Real Estate Comparisons

- Clearing unimproved lots is costlier than properly preserving trees.
- 6% ($2,686) total property value in tree cover.
- $9,500 higher sale values due to tree cover.
- 4% higher sale value with five trees in the front yard -- $257 per pine, $333 per hardwood, $336 per large tree, and $0 per small tree.
- $2,675 increase in sale price when adjacent to tree green space as compared to similar houses 200 feet away from green space.
- $4.20 decrease in residential sales price for every foot away from green space.
- 27% increase in development land values with trees present.
- 19% increase in property values with trees. (1971 & 1983)
- 27% increase in appraised land values with trees. (1973)
- 9% increase in property value for a single tree. (1981)

Property Values -- Tree Value Formula (CTLA 8th edition)

- Values of single trees in perfect conditions and locations in the Southeast range up to $100,000.
- $100 million is the value of community trees and forests in Savannah, GA
- $386 million is the value of community trees and forests in Oakland, CA (59% of this value is in residential trees).

Products

- Community trees and forests generate many traditional products for the cash and barter marketplace that include lumber, pulpwood, hobbyist woods, fruits, nuts, mulch, composting materials, firewood, and nursery plants.

Aesthetics

- Conifers, large trees, low tree densities, closed tree canopies, distant views, and native species all had positive values in scenic quality.
- Large old street trees were found to be the most important indicator of attractiveness in a community.
- Increasing tree density (optimal 53 trees per acre) and decreasing understory density are associated with positive perceptions.
- Increasing levels of tree density can initiate feelings of fear and endangerment -- an optimum number of trees allows for visual distances and openness while blocking or screening developed areas.
- Species diversity as a distinct quantity was not important to scenic quality.

Visual Screening

- The most common use of trees for utilitarian purposes is screening undesirable and disturbing sight lines.
- Tree crown management and tree species selection can help completely or partially block vision lines that show human density problems, development activities, or commercial / residential interfaces.

Recreation

- Contact with nature in many communities may be limited to local trees and green areas (for noticing natural cycles, seasons, sounds, animals, plants, etc.) Trees are critical in this context.
- $1.60 is the willing additional payment per visit for use of a tree covered park compared with a maintained lawn area.

Health

- Stressed individuals looking at slides of nature had reduced negative emotions and greater positive feelings than when looking at urban scenes without trees and other plants.
- Stressed individuals recuperate faster when viewing tree filled images.
- Hospital patients with natural views from their rooms had significantly shorter stays, less pain medicine required, and fewer post-operative complications.
- Psychiatric patients are more sociable and less stressed when green things are visible and immediately present.
- Prison inmates sought less health care if they had a view of a green landscape.

Human Social Interactions

- People feel more comfortable and at ease when in shaded, open areas of trees as compared to areas of hardscapes and non-living things.
- People's preferences for locating areas of social interactions in calming, beautiful, and nature-dominated areas revolve around the presence of community trees and forests.
- Trees and people are psychologically linked by culture, socialization, and coadaptive history.

Reference for most of this material: Literature Review for the QUANTITREE computer program -- "Quantifiable Urban Forest Benefits and Costs; Current Findings and Future Research." In a white paper entitled *Consolidating and Communicating Urban Forest Benefits*. Davey Resource Group, Kent, OH. 1993. pp.25.

Contact the Ottawa Forests and Greenspace Advisory Committee
Contact City of Ottawa Forestry Services

Tree Ordinance Guidelines

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Developing a community forest management strategy

Many community tree ordinances have been developed in response to public outcry over specific perceived problems. Unfortunately, a "band-aid" approach to developing tree ordinances often leads to ordinances that are not consistent with sound management practices, and which can actually thwart good management. We believe that communities need to develop or review their overall urban forest management strategy before considering a new or revised tree ordinance. Policy makers must recognize that the primary goal is effective management of local tree resources, not simply regulation.

Tree ordinances provide the legal framework for successful urban forest management by enabling and authorizing management activities. However, methods for managing the urban forest ecosystem are continually evolving, and the input of trained professionals to the management process is critical. Therefore, we believe that **ordinances should facilitate rather than prescribe management.** Successful tree ordinances follow this guiding principle.

If the role of a tree ordinance is to facilitate resource management, the tree ordinance must be part of a larger community forest management strategy. Most of the shortcomings attributed to tree ordinances can usually be traced to the lack of a clearly thought-out management strategy. Poor planning leads to poor ordinances, and even the best-written ordinance is unlikely to succeed in the absence of an overall urban forest management strategy. We have found that few existing tree ordinances have been developed as part of a comprehensive management strategy.

How to develop a management strategy

We have generally followed Miller's (1988) model of the management planning process. More recently, the descriptive term ***adaptive management*** has been applied to this process. Miller (1988) presents the management planning process in terms of three basic questions:

- What do you have?
- What do you want?
- How do you get what you want?

Developing an appropriate tree ordinance may be a partial answer to the third question, i.e., it is one way of trying to get what you want. However, it should be clear that the first two questions need to be answered before the third can be addressed. Thus, assessment (determining what you have) and goal-setting (determining what you want) should precede any consideration of an ordinance.

In practice, answering the first two questions is often an iterative process. Communities may have ideas about what they want before they fully assess what they have. However, an assessment of existing tree resources can help point out needs that might not be obvious, and will help the community to establish appropriate goals.

Since the urban forest resource and the external factors that affect it are continually changing, developing a management strategy must be an ongoing process. Asking a fourth question helps to bring the process full circle:

- Are you getting what you want?

Miller (1988) represents this phase as a feedback step which connects the third question back to the first. If the planning process is to be effective, it is necessary to determine whether you actually achieve what you want. If not, methods for getting what you want may need to be changed. Alternatively, it is possible that what you get is no longer what you want, and goals will need to be revised as well.

We can define a number of specific steps that address each of these four basic questions. These steps have been defined in similar ways by various authors (Lobel 1983, Miller 1988, Jennings 1978, McPherson and Johnson 1988, World Forestry Center and Morgan 1989). For the purposes of our discussion, we recognize seven distinct steps which are discussed below.

Working through these steps need not be overly complicated or arduous. The entire process is driven by the specific resources and goals of the individual community. By following the process outlined below, a small community with very modest tree management goals can develop a simple ordinance that addresses its limited goals. On the other hand, communities seeking to develop a comprehensive tree management program or expand their existing programs can do so following the same process. Ordinances developed through this process will be uniquely suited to the needs of each community.

WHAT DO YOU HAVE?

Step A. Assess the tree resource.

An assessment of tree resources provides the basic information necessary for making management decisions. It also provides a baseline against which change can be measured. Ideally, this assessment should include all tree resources within the planning area of the municipality. However, in communities that are just starting to consider municipal tree management, an incremental approach may be more practical. In this case, the assessment may be focused on a certain portion of the urban forest, such as street trees or trees in a particular geographic area.

Tree resource assessments are based on various inventory methods, most of which require some type of survey. Complete tree inventories of all public trees are relatively common, and play a central role in many tree management programs. However, for the purposes of setting goals and initiating a management strategy, information from a representative sample of the urban forest will often suffice.

Information that may be useful for management planning includes:

- total number of trees classified by species, condition, age, size, and location;

- problem situations, such as sidewalk damage, disease and pest problems, or hazardous trees, preferably linked to the basic tree data listed above;
- amount of canopy cover by location.

Inventories vary in complexity depending on the size of the community and the nature of the data collected. They can be made by city staff, consultants, or trained volunteers. In one small community, an inventory of street trees was conducted as an Eagle Scout project. However, it is important to ensure that the data collected is valid and reliable, since this information provides a basis for decisions made in later steps in the process. Several simple sampling and evaluation techniques applicable to urban forestry are described in the Evaluation pages.

Step B. Review tree management practices.

An important part of understanding the status of the urban forest is knowing how it has been managed. This requires information on both past and current management methods and actions, such as:

- municipal tree care practices, including planting, maintenance, and removal;
- existing ordinances, and the level of enforcement practiced (numbers of violations, permits and citations issued, penalties and fines collected);
- planning regulations and guidelines that pertain to trees, and numbers of tree-related permits granted, modified, or denied;
- activities of municipal departments and public utilities that impact trees.

The specific types of information involved will vary by jurisdiction, depending on the level of past and current tree management. Municipal records are the most reliable source of this information. However, records on maintenance or ordinance enforcement may not exist in some cases, and the information may have to be obtained by interviewing local government staff involved with these activities.

The point of this step is to identify all of the activities that affect trees in the community, especially those that are under municipal control of one form or other. For instance, various ordinances and planning regulations seemingly unrelated to the tree program may impinge on tree resources and their impact must be taken into account. Before trying to change community forest management, we need to consider both current and historical management practices and identify all of the players involved.

WHAT DO YOU WANT?

Step C. Identify needs.

With information on the status of their tree resources and tree management in hand, a community is in a good position to assess its urban forestry needs. Urban forestry needs can be grouped into three broad categories, although many needs may actually fall into more than one category. **Biological needs** are those that are related to the tree resource itself. Typical needs in this category include the need to:

- increase species and age diversity to provide long-term forest stability;
- provide sufficient tree planting to keep pace with urban growth and offset tree removal;
- increase the proportion of large-statured trees in the forest for greater canopy effects;
- ensure proper compatibility between trees and planting sites to reduce sidewalk damage and conflicts with overhead utilities that lead to premature tree removal.

Management needs refer to the needs of those involved with the short- and long-term care and maintenance of the urban forest. Some common management needs include:

- develop adequate long-term planning to ensure the sustainability of the urban forest;
- optimize the use of limited financial and personnel resources;
- increase training and education for tree program employees to ensure high quality tree care;
- coordinate tree-related activities of municipal departments.

Community needs are those that relate to how the public perceives and interacts with the urban forest and the local urban forest management program. Examples of community needs include:

- increase public awareness of the values and benefits associated with trees;
- promote better private tree care through better public understanding of the biological needs of trees;
- foster community support for the urban forest management program;
- promote conservation of the urban forest by focusing public attention on all tree age classes, not just large heritage trees.

The needs listed above are common to many communities. However, the specific needs of each community will vary, and may include others not noted here.

Step D. Establish goals.

Now that we know what we have and what we need, we are ready to set goals to address local urban forestry needs and to guide the formation of the management strategy. To establish realistic goals, it's important to consider limitations posed by the level of community support, economic realities, and environmental constraints. Because of limited resources, communities may be unable to immediately address all of the needs identified. If this is the case, it will be necessary to prioritize goals. In setting priorities, it is important not to neglect goals that require a long-term approach in favor of those that can be achieved quickly.

At this point in the process, it is absolutely critical to get community involvement and support. Most tree ordinances rely heavily on voluntary compliance by the public. Such compliance is only likely to be achieved if members of the community support the goals which have been set. Management goals reached through public involvement are likely to reflect community values and therefore enjoy public support. Public participation in the goal-setting process also serves an educational function, providing an opportunity for citizens to see how urban forest management affects their community.

Goals are the tangible ends that the management strategy seeks to achieve. It is therefore important to set goals which are quantifiable in some way, so that progress toward the goals can be monitored. For example, while it is admirable to seek to "improve the quality of life" or "protect the health and welfare of the community", such goals are generally too diffuse to be measured in any meaningful way. However a goal such as "establish maximum tree cover" can be made quantifiable by setting canopy cover or tree density standards. Typical tree program goals which are consistent with good urban forest management are discussed in more detail on the Ordinance Goals page.

HOW DO YOU GET WHAT YOU WANT?

Step E. Select tools and formulate the management strategy.

The objective of this step is to develop a management strategy that addresses your specific goals. There are many approaches that can be used to address each goal, and the pros and cons of each approach should be considered. Feasibility, practicality, legality, and economics should be considered in selecting the appropriate management tools. Some typical tools include:

- public education programs;

- assistance and incentive programs;
- voluntary planting programs;
- mitigation guidelines;
- planning regulations and guidelines, including the general plan and specific plans;
- ordinances.

Community involvement and support continues to be important in this phase of the process. Management approaches and tools that are unacceptable to the community are unlikely to succeed. If a local government intends to push for more progressive tree management than local citizens are ready to accept, it should choose tools that will build community awareness and support, including educational and incentive programs. Your assessment of current and past management practices, should provide ideas about the effectiveness of various methods that have been used in your community. Public input and comment should be sought for any new approaches that may be contemplated or developed.

In analyzing the approaches or tools that may be used, the role of the tree ordinance in the overall strategy should become clear. In some cases, ordinance provisions will be necessary to authorize various management approaches, such as establishing the position of municipal arborist, requiring the development and implementation of a community forest master plan, or mandating a program of public education. In other cases, ordinance provisions may directly provide necessary parts of the strategy, for example by outlawing destructive practices.

The provisions placed in the tree ordinance should be directly related to the goals your community has established for its community forest. As noted earlier, these provisions should designate responsibility, grant authority, and specify enforcement methods. They should set basic performance standards, yet allow for flexibility in determining how these standards can be met. You can follow this link to see our goal-driven Guide to Drafting a Tree Ordinance, but be sure to read about the last two critical steps in the management process below.

Step F. Implement the management strategy.

Although a plan may appear ideal on paper, it clearly cannot achieve anything unless implemented. This requires the commitment of resources necessary to hire personnel, enforce ordinances, run educational programs, and carry out other components of the management strategy. The number of steps involved in implementing the management strategy may differ between communities. Steps typically involved in implementation may include:

- passing an ordinance,
- budgeting necessary funds,
- hiring a municipal forester or arborist,
- appointing a citizen tree advisory board,
- formulating a master tree management plan,
- developing public education programs.

Since a number of steps are usually involved in implementing the management strategy, it is useful to map out an implementation schedule. This time/action schedule should show the steps that are involved and the time frame within which they should be completed. Progress checks should be built into the schedule to ensure that delays or problems are detected and dealt with. These progress checks could be in the form of required progress reports to the city council or county board of supervisors. It is important to maintain a high profile for the management program during implementation to foster public interest and maintain the commitment of the local government. If interest and support dissipate before the strategy is implemented, the efforts spent to get to this point may be for naught.

ARE YOU GETTING WHAT YOU WANT?

Step G. Evaluate and revise.

Even a successfully implemented management strategy must be monitored to ensure that progress is being made and standards are being met. Evaluation provides the feedback necessary to determine whether the management strategy is working. Periodic evaluation also provides an opportunity to reassess the needs and goals of the community. The management strategy may need to be adjusted to reflect new or altered goals. By providing for regular evaluation as part of the management process, the need for change can be identified before a crisis develops.

If you have set quantifiable goals, evaluating progress will be a relatively straightforward process. The types of evaluation techniques you will use will vary with the goal being evaluated. The Evaluation Methods page describes a number of simple techniques that can be used to monitor ordinance effectiveness.

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ISA home page | Submit comments or suggestions

P.O. Box 3129, Champaign, IL 61826
(217) 355-9411
Email comments & questions to isa@isa-arbor.com
Sunday, October 10, 2010 1:10:09 PM (CST/ISA Headquarters Time)

Be Sewer Smart!

ABAG's Sewer Smart Planting Guide

Avoid planting-related sewer problems

Your home's sewer is connected to the sewer main (a large pipe often running under the street) via a pipe known as a lateral that extends from your home, across your property, and into the sewer main. Responsibility for maintenance of this lateral varies from community to community. But in most cases, the homeowner is responsible for the line at least out to the property line.

Blockages in the lateral are always bad news for the homeowner. Blockages can cause the flow of waste from the home into the sewer main to slow or stop completely. When this happens, sewage can overflow from the lowest opening in the home; for example, a downstairs toilet or shower.

Is my lateral at risk of tree-root invasion?

Depending on the age of your home, your sewer lateral may be made of tile, cast iron, concrete or plastic. Regardless of material, your lateral is filled with water and other nutrients that make it an attractive target for tree roots. Over the years, earthquakes and shifting soil can cause the lateral to move, often creating cracks. Once roots find moisture, they'll grow right into the pipe itself. That means you may be in for expensive plumbing repairs. Of course, it's best to avoid this unhappy circumstance by knowing what, where and how to plant trees with avoiding sewer problems in mind! You can help by following the Sewer Smart Tips found elsewhere on this Web site and by following some simple rules for planting above or near your sewer lateral.

First, find your lateral

The first step in observing Sewer Smart planting rules is to have a general idea of where your lateral runs across your property and into the sewer main.

One of the best ways to find your lateral is to refer to the survey documents you likely received when you purchased your home. If you don't have these documents, your city planning or public works department can most likely provide copies for you to view. In some cities, they're even available online.

No need to despair if you don't have them, though. You can determine the general location of your sewer lateral - good enough for planting purposes -- by following these three steps:

STEP 1: Find the point where the lateral leaves the house by locating the cleanout.

STEP 2: Find the point where the lateral leaves your property and crosses into the street by:

1. Locating an "S" or other similar mark in or on the curb.
2. Locating a second cleanout at the property edge, in the sidewalk or roadway. This cleanout may be under an access cover marked with an "S" or "Sewer."

STEP 3: Draw an imaginary line between the two above points. Sewer laterals normally run in straight lines.

What to Plant, What Not to Plant

Once you've determined the general location of the lateral on your property, you should avoid planting - or maintaining - any plants, bushes or trees that are likely to grow into or otherwise foul your lateral.

For more information on where-to-plant considerations, visit the International Society of Arboriculture (ISA)'s Webpage, *Avoiding Tree & Utility Conflicts*, at trees are good.

The type of tree you plant is also important for preventing future sewer problems. Depending on the species of tree, the "safe" distance from your lateral varies. For example, roots of some poplar trees have been known to reach into sewer lines nearly 100 feet away.

Planting appropriate types of trees is of critical importance. Tree roots tend to grow toward sources of water - including sewer pipes. If you're making additions to your home's landscaping, you can save yourself headaches and money by choosing trees with deeper root systems. In particular, avoid planting trees with shallow, spreading root systems near your lateral. Tree roots, in many cases, mirror somewhat the tree's above ground canopy, growing in a "pancake" several feet thick below the surface. However, some particularly ambitious trees can extend roots far beyond the drip line, or limits of their canopies, as they pursue water sources.

There are a number of "problem" trees that should be avoided if sewer laterals and other underground utilities are a concern. These problem trees include ***poplars, willows, figs, rubber trees and large eucalyptus trees***. Two of the more troublesome trees are the fruitless mulberry and the Modesto ash.

For an extensive guide on tree selection, visit Cal Poly's site and select "low" for "Root Damage Potential" along with the other tree attributes you seek.

More Sewer Smart Planting Tips

After you select a tree, follow proper planting procedures. Be sure to dig a deep enough hole, but not too deep. If your hole is too shallow, the tree's roots will be more likely to spread horizontally making it more likely that they'll meet, and possibly penetrate, sewer pipes and other underground utilities.

However, if your hole is too deep, the tree's root crown will be buried and disease and decay may result. According to the ISA, "It's better to put a $100 tree in a $200 hole than to put a $200 tree in a $100 hole." For more on tree planting, visit tree care.

Remember, there are other non-sewer reasons to plan before you plant. Trees in the wrong places can also wreak havoc with your home's foundation, driveways, sidewalks and other structures. A properly selected, planted tree will be a beautiful and healthy addition to your home's landscaping and won't cause headaches -- or backups -- in the years ahead.

More Sewer Smart Planting Information

Your local nursery may also be a good source of planting information. For a list of nurseries and garden centers in the San Francisco Bay Area that are participating in the Be Sewer Smart program, visit the California Association of Nurseries and Garden Centers.

For more useful, local tree resources, visit the City of Oakland's Public Works Agency tree program. Still more tree information can be obtained from the University of California Cooperative Extension program.

For more specific information on desirable and undesirable plantings in your community, contact your city's public works department or your local sanitary district.

The Market Value of Mature Trees in Single-Family Housing Markets.

Jan, 2000
Appraisal Journal

abstract

How does the existence of mature trees change the market value of single-family homes? This article demonstrates the use of multiple regression analysis to estimate the market value added by the existence of mature trees in a residential real estate market. The marketderived estimate shows that mature trees contributed about 2% of home values in the examined market. Although the magnitude of the reported results may be location specific, the described technique can be applied in other markets.

Appraisers have the difficult task of determining why housing prices differ and how differences can be attributed to particular existing characteristics. This article illustrates how multiple regression analysis (MRA) can be used to estimate the value added by the existence of mature trees in residential single-family housing markets.

The marker value of some attributes, such as the existence of mature trees, may be difficult to measure. However, because they may significantly contribute to the value of property appraisers should consider them in the valuation analysis. For example, a company that sells trees in Cincinnati reports that it would sell a red maple tree measuring only seven inches in diameter for about $2,400. (Price quotes of this magnitude were also obtained for different types of trees of similar size from sellers in Louisiana and Texas.) An informal survey of real estate professionals active in the subject area revealed that, all else being equal, homes with mature trees are preferred to homes without mature trees. However, the professionals surveyed did not quantify how much value could be attributed to mature trees.

The Counsel of Tree & Landscape Appraisers provides a detailed guide for establishing value estimates of trees. [1] The recommended appraisal technique for valuing trees in residential markets focuses on a cost approach. [2] The replacement cost approach is straightforward for transplantable trees. Current market values for transplantable trees can be used along with estimated labor and transportation costs.

A cost approach is also suggested when appraising trees that are too large to transplant. A value estimate can be arrived at by estimating a cost per unit of trunk area from the largest transplantable tree and applying this cost per unit measurement to the trunk area of the subject tree. [3] An alternative technique involves adding the maintenance costs and compounded interest costs to the replacement cost of a transplantable tree for the number of years that it would take the replacement tree to reach the size of the subject (not transplantable) tree.

Mature trees (those more than 9 inches in diameter) are not often transplanted successfully. Therefore, mature trees are typically not transferable attributes between home sites. The lack of transferability makes cost-based estimates less applicable than market-derived methods for estimating the value associated with mature trees.

One study estimates the value of mature trees by comparing the mean sales price of homes that had mature tree cover on their lots to the mean sales price of homes that did not have mature tree cover on their lots. [4] The study arrived at the estimated tree values by comparing the mean values of what were considered comparable house sales to estimates for mature tree values. (These values were based on the cost approach and the Guide for Establishing Values of Trees and Other Plants.) [5] The result was a significantly higher tree value estimate from the comparable sales method than the value obtained from evaluating trees on individual lots based on the arboricultural appraisal cost method (or $9,500 versus $6,000). These authors acknowledge that the reported mean values contain properties with different characteristics (besides mature tree cover). Hence, there may be other factors driving the large discrepancy in estimated tree values.

Appropriate comparable sales are often difficult to obtain for paired sales analysis, which can determine the market value that mature trees can add. MRA, which captures multiple factors determining marker values, can be valuable in many circumstances, including determining the market value added by the existence of mature trees in a residential real estate market.6 Our focus is not on the replacement cost of trees--since mature trees may be difficult or impossible to replace--but on how the existence of mature trees contributes to single-family house sales prices.

Data

The data used in this study come from Baton Rouge, Louisiana. A standard MRA model controls for physical and locational characteristics, time trends, and unusual conditions of sale. Three variables are created to control for the location of the property and one variable to control for below-market financing. For further control purposes, the transactions had to meet the following two criteria: (1) the land use is residential single-family detached; (2) the sales date must be between the start of 1985 and the end of 1994.

Because analysts must select variables for inclusion and choose the functional form, the potential for bias is often a criticism incurred by studies like this. Appraisers should use the model that is believed to reflect the "true" price-determining mechanism subject to the realistic constraints imposed by the availablity of data. These guidelines are used to establish the model employed here, using data obtainable for the subject market area (see table 1).

The average sales price in the sample of homes sold was $93,272. The sales prices ranged from $31,000 to $179,900. The living area for the sample homes ranged from 931 square feet to slightly more than 3,100 square feet. The sample homes had an average living area equal to 1,979 square feet. On average, these homes were a little older than nine years and averaged about 2 1/2 months on the market. The sample contains 269 homes, with notations on the existence of mature trees as a highlighted characteristic for the home. The identification of mature trees employed herein may not be perfect. It is possible that a real estate agent did not highlight this

feature for a home that did have the mature tree characteristic. Classification imperfections of this nature should bias the sample away from finding any contribution from the existence of mature trees.

Model

The employed model is:

[LNSP.sub.it] = f([LIVAREA.sub.i] [OTHERAREA.sub.i], [AGE.sub.i] [YEAR.sub.t] [FP.sub.i], [LOC.sub.i] [DOM.sub.i] [VAC.sub.i] [BM.sub.i] [TREES.sub.i])

where, [LNSP.sub.it] is the natural log of sales price of the ith house at time t, and the independent variables are defined as follows: (The findings reported here are essentially the same when sales price is the dependent variable.)

[LIVAREA.sub.i] = Amount of living area in square feet

[OTHERAREA.sub.i] = All other constructed area such as garages

[AGE.sub.i] = Age of the house

[YEAR.sub.it] = 1 if the ith house sold in year t and zero otherwise

[FP.sub.i] = 1 if the house has a fireplace and zero otherwise

[LOC.sub.in] = 1 if the ith house is located in the nth area and zero otherwise

[DOM.sub.i] = Number of days the ith house was on the market

[VAC.sub.i] = 1 if the ith house was vacant and zero otherwise

[BM.sub.i] = 1 if below-market financing were used in the transaction of the ith house

[TREES.sub.i] = 1 if the ith house sold had mature trees and zero otherwise

Given that people are willing to pay more for more space, the amount of living area (LIVAREA) and other area (OTHERAREA) are expected to be positively related to sales price. However, the marginal utility of acquiring more and more living area is expected to decline. Therefore, living area squared ([LIVAREA.sup.2]) and other area squared ([OTHERAREA.sup.2]) are included in the model. [LIVAREA.sup.2] and [OTHERAREA.sup.2] are expected to be negatively related to sales price, thus reflecting the declining marginal utility of additional space.

Older homes, all else being equal, have experienced greater depreciation than newer homes. Therefore, the age (AGE) of the property is expected to be negatively related to sales price. However, homes typically depreciate at a slower pace as time goes on. A home may depreciate more in its first five years than from its 10th through 15th years of existence. Hence, [AGE.sup.2] is included to capture the declining rate of depreciation.

In light of the decline and recovery of the examined real estate market during the sample period, the year (YEAR) variables that control for market conditions (relative to the first year in the sample, 1985) are anticipated to be negatively related to prices during the first few years, followed by a positive relationship in the later years.

Fireplaces (FP) are often a desired characteristic in owner-occupied homes and may or may not be desired by landlords. These individuals may appreciate the potential increased rent that this feature may bring, but may not want the potential fire hazards associated with fireplaces. Overall, the prediction is that fireplaces will be positively related to home sales values.

According to one study, owners of vacant homes will lower reservation prices to reflect comparatively higher carrying costs vis-a-vis owner occupied homes. [7] Therefore, vacant homes (VAC) are expected to be negatively related to sales prices. The days on market variable is used to control for how long a property was on the market (DOM). It is difficult to predict how DOM relates to sales prices a priori. On the one hand, a seller may be more willing to settle for a lower price after a given time period. On the other hand, a home that has been on the market longer potentially has more time to appreciate in value. A variable is used to control for any significant interaction between VAC and DOM

NOTE: All illustrations and photos have been removed from this article.

Trees and the Law

There is even a case where an injured neighbour was awarded substantial damages from a neighbour who refused to deal with his trees. In *Hayes v. Davis*, which went as far as the B.C. Court of Appeal in 1991, the Hayes' had told their neighbour, Davis, that they were concerned that his trees swayed toward their house during windstorms. They asked him to remove the trees; but he refused, saying he had no money. A few months later, two trees were blown down in a severe storm, injuring Mrs. Hayes. Mrs. Hayes sued for damages for nuisance, and won. Davis, having failed to take reasonable steps to address foreseeable risk of damage or injury, was ordered to pay $65,000 in general damages and nearly $3000 in special damages. The conviction stood on appeal, and Davis' attempt to appeal to the Supreme Court of Canada was refused.

In an Ontario case, *Doucette v. Parent* in 1996, the Parents' diseased tree fell during a windstorm and damaged Doucette's property. However, Doucette's claim was dismissed. Although there were a few bare branches, neither party knew that the tree was sick. Growing trees is a natural use of land that does not attract liability; only dead or dying trees and branches that are noticeably liable to cause damage need to be cut back.[(a)]

(a) http://workcabin.ca/index.php?option=com_content&task=view&id=62&Itemid=43 and http://envirolaw.com/2007/08/07/tree-trimming/

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Trees in the Home Landscape

Trees are important components of home landscapes. They can increase the livability and value of a home, provide environmental benefits, attract wildlife, and increase the overall beauty of the landscape. This NebGuide will describe the functional and aesthetic benefits of using trees in the home landscape, as well as explain basic growth and maintenance requirements for healthy trees.

Anne M. Streich, Extension Horticulture Educator
Steve N. Rodie, Extension Landscape Horticulture Specialist

Functional Uses of Trees

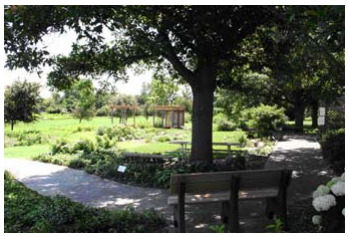


Figure 1. The dense shade produced by a red oak creates a comfortable seating area on a hot summer day.

Provide shade. Trees can alter the temperature of outdoor living spaces, making them cooler and more usable during the summer *(Figure 1)*. Trees and other landscape plants are more successful in reducing air temperatures than built structures are, due to transpiration (water loss through leaves which creates a natural "air conditioning" effect) that occurs in plants.

Shade patterns cast by trees will change depending on the time of day and season. Afternoon sun in mid-summer will produce the smallest shade pattern due to the sun's high location in the sky and will cast shade to the north/northeast. As a result, large shade trees planted on the south or southwest sides of a home can help cool the home and reduce energy costs during the summer.

Low sun angles during the winter will produce the largest shade patterns. As deciduous trees planted on the south and southwest sides of the home lose their vegetation in the fall, the winter sun will provide some heat to the home.

Key factors in selecting shade trees to be planted on the south and southwest sides of a home include selecting trees with wide upright or vase-shaped growth habits and avoiding trees with evergreen foliage or persistent leaves.

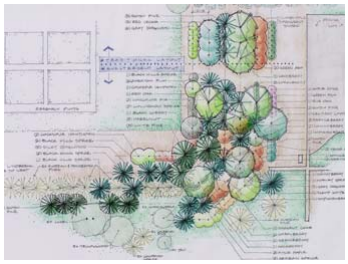


Figure 2. A variety of tree species, combined with a backbone of evergreen trees, provides wind protection, habitat value, and biodiversity.

Trees with wide upright or vase-shaped growing habits will maximize shade coverage on the house during the summer, while trees with persistent leaves (leaves that tend to stay on the tree through winter) will cast shade on the house rather than letting the sunlight warm the house in the winter. Examples of large shade trees that grow well in Nebraska include maples, ginkgo, Kentucky coffeetree, honeylocust, walnut, and hackberry. Oaks (excluding pin, shingle and sawtooth oak, which tend to have persistent leaves) also make quality shade trees.

Provide wind protection. Trees can be used to buffer or direct winds to benefit outdoor living spaces *(Figure 2)*. Cold winter winds originate from the north/northwest and can be blocked or slowed with a combination of evergreen and deciduous trees and shrubs planted on the north and west sides of a home. Multiple rows are not necessary for blocking wind, but do increase the ability to slow and divert winds for a greater distance than a single row or two can. Important windbreak considerations include diverse tree species selection and proper placement for maximized benefits and minimized snow drifting and other maintenance issues. Planting several trees of one species can be problematic when insects or diseases occur.

For more information about windbreaks, see the UNL Extension NebGuide series on windbreaks located at: *http://extension.unl.edu/publications* under the forestry subdivision. This series includes information on windbreak design, establishment, management, renovation, and attracting wildlife.

Provide framework. Trees contribute to the visual quality of a landscape through their size, form, texture and color. Among these four factors, size is the most important visual contribution to the landscape framework. Trees provide framework for the entire landscape and are often the first plant noticed when viewing a home landscape from a distance. Select trees that are suited for a space, even as they continue to grow. Avoid placing trees too close to the home, as they can cause damage to the roof and fill gutters with plant debris. Plant trees at a minimum distance of half the mature canopy width away from the home. Due to environmental stresses and climatic extremes in Nebraska, trees planted in Nebraska rarely reach the expected heights and widths stated in non-Nebraska plant references. When such references are used, the mature size of a tree can typically be reduced to 75 percent of its stated height and width.

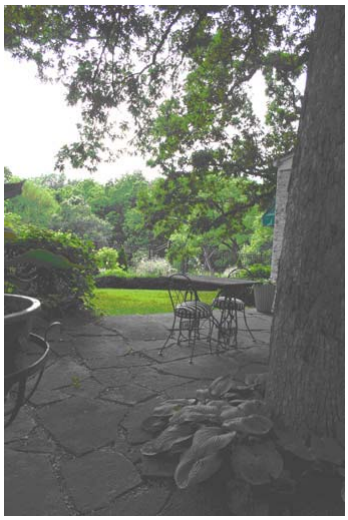


Figure 3. An intimate feeling, appropriate for a small patio area, is created by the "ceiling" of the low hanging branches.

Provide scale. Trees can create a variable sense of scale on a property, and can either help emphasize or de-emphasize the home and help it blend into the landscape. Tree distances from the home, home location on the site, and site slopes can all affect property scale.

Generally, homes that are placed near the top of hills, and have only small trees planted around them tend to appear very dominant. On large lots in town or in large open spaces in the country, trees not only need to be planted near the home but be incorporated into the landscape away from the house. Planting away from the house and in groupings of trees and other landscape plants will help the house blend into the surrounding landscape and avoid making the house appear too dominant.

Conversely, large trees planted near a home may make the home appear very small, especially if it is a single-story house. Placing large trees far enough away from single story homes to prevent them from dwarfing the house can be difficult. To some, this is a less serious problem because of the many benefits trees provide in making the landscape more comfortable to use and grow plants.

Define space/provide privacy. Another major function of trees in home landscapes is the provision of "ceilings" and "walls" to outdoor rooms. "Ceilings" can be created by enclosing the overhead space with tree canopies. Canopy height can impact how the space feels. Overhead canopy heights 12 feet or lower create intimate outdoor rooms, while canopies greater than 12 feet create an open feeling *(Figure 3)*.

"Walls" can be created by using small trees with upright form and relatively dense foliage or by creating an implied wall or edge with closely-spaced tree trunks or multiple-trunked trees. When using trees to screen views and enhance privacy, strategic locations should be selected to enhance screening value. Small trees placed closer to the living area will simultaneously define space and provide privacy while still allowing outward views *(Figure 4)*.

Aesthetic Uses of Trees

Soften architecture. Trees and other landscape plants can be used to visually soften the corners of houses. Select plants that are approximately 2/3 the height of the eave. Shorter plants are not visually pleasing, while taller plants may dwarf the house *(Figure 5)*. Rounded forms are more effective than pyramidal or conical-shaped plants. Trees are also effective in visually breaking up large facades created on house ends of two-story and walkout homes.

Figure 4. The left photo shows the potential lack of privacy due to neighbor views from windows and deck. The right photo shows two tree locations that will enhance privacy; a tree at location A will also strongly define space.

Figure 5. The trees in the left picture were planted too close to the house and are out of scale with the house; the evergreen tree on the corner of the house in the picture on the right is in proper scale.

Enframe views. Trees planted in the backyard can successfully enframe a house when viewed from the street/road. Trees can also be used to enframe views from inside of the home looking out into the landscape. Avoid planting trees directly in the middle of the front yard, as that visually divides the view of the house. Instead, trees used in the front yard should be used to enframe the entire house, front walk and/or entrance *(Figure 6)*.

Figure 6. Front yard trees, especially where they will not shade the house, are best planted to enframe house corners (right) rather than break up views of the house (left).

Accent. Trees can be used as accents. This is commonly done with tree form. In Nebraska, the most dominant tree forms are round and spreading. Because of their commonness, they do not attract attention. Other shapes that are uncommon in Nebraska, such as columnar (Taylor juniper), pyramidal (spruces, linden), weeping (weeping willow) or picturesque (Japanese treelilac), can be used to draw attention to an area.

Accents can also be accomplished with attractive bark, flowers, fruits, fragrance or leaves, although some of these plant characteristics are only evident for short periods. An accent tree may be strategically located to be viewed from inside and outside of the house. The number of accent plants should be minimized in small areas. A landscape containing several accent plants will seem visually chaotic if they can all be seen at the same time. As the space gets larger and more landscape "rooms" are created, more accent plants can be used.

Other Considerations

Restricted Rootzones. The amount and quality of underground rooting space impacts tree growth. Tree roots are typically found in the top 18 inches of soil and often extend past the canopy. Trees growing in restricted rootzones, such as between the sidewalk and street, or in new subdivisions with compacted sub-soil, often succumb to pests quicker, exhibit slower growth rates, and reach shorter mature heights than trees growing in open spaces.

Reduce maintenance. Selecting native or adapted trees is important for long-term survival and reduced maintenance. Site conditions, such as soil type and pH, moisture availability, sun and wind exposure, and pest susceptibility are important factors to consider before selecting and planting trees. Without carefully analyzing these conditions, increased maintenance and decreased plant vigor may occur. In addition, tree characteristics such as branching height, fruit persistence, and leaf drop timing are important items to consider. For example, trees that have heavy fruit fall are not desirable near sidewalks or decks and trees that have low branching habits will require more pruning when planted near a sidewalk or in front of a window.

Proper planting and initial pruning. Proper tree planting is critical to a tree's future success. Considerations such as planting too deep, improper staking, and inconsistent watering can inhibit healthy tree establishment and lead to long-term tree decline and additional maintenance requirements. Early tree pruning, if done properly, can significantly minimize future maintenance problems such as double leaders, which can lead to weak branch structure. Corrective pruning at an early age is much simpler and more cost-effective than corrective pruning of a large established tree that develops structural, form or environmental damage over time. Proper tree management and pruning information can be found in the publication section of the Nebraska Forest Service Web site, *www.nfs.unl.edu*.

Safety/Health. Fast-growing trees, such as silver maple and poplars, typically possess weak wood and are often short-lived. In addition, trees with narrow crotch angles are susceptible to limb damage from snow/ice storms due to weak branch connections. Pruning can help eliminate narrow branch attachments, but some trees, such as yellowwood and Bradford pear, inherently have narrow crotch angles and pruning will not be a solution. Fast-growing trees and trees with narrow crotch angles should be planted away from houses and other buildings to avoid potential damage from falling limbs. Under good growing conditions, trees known for slow growth rates, such as oaks, can grow up to two feet per year, and will provide long-term benefits. Asthma/allergy sufferers should avoid planting seedless or fruitless tree cultivars, which often have staminate (male) flowers that produce pollen.

Competition. Trees with large leaves and dense canopies, such as maples and lindens, produce dense shade, making it difficult to grow grass or other plants under their canopies. Airy, fine-textured trees, such as honeylocust, are more conducive to understory planting. In addition, certain tree species, such as poplars and maples, typically exhibit shallow roots that extend above the soil surface as they mature, making it difficult to mow under the canopy or incorporate other landscape plants.

It is best to develop a mulched landscaped bed in areas where tree roots are exposed to reduce potential mower damage to the roots. The NebGuide, *Landscaping Around Established Trees* (G1452), provides additional information about tree root growth and how to avoid tree damage when landscaping around mature trees.

Utilities. Avoid overhead and buried utility lines. The Digger's Hotline (800-331-5666) should be called before digging to plant trees or other landscape plants. In addition, avoid planting trees near septic tank/drain field systems. Shallow-rooted fast-growing trees such as willows and cottonwoods, which naturally prefer high soil moisture, can be especially problematic in these areas. Trees should be planted minimally 5-10 feet away from the septic field edge, although greater distances would be desirable, if possible.

Summary

Mature trees make significant visual and environmental enhancements to the landscape. Properly selecting tree species and identifying ideal planting locations around the house will maximize visual interest, reduce long-term maintenance, and improve microclimate conditions for many years. Unfortunately, trees can rarely be placed to meet all desired aesthetic and functional requirements, nor can one "perfect" tree species be selected that isn't without limitations or maintenance issues. As a result, decisions must be made on species selection and location based on a cost/benefit analysis that will be unique for each landscape situation.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Laxton & Company v. West Vancouver (District),* 2010 BCSC 1297

Date: 20100915
Docket: S102108
Registry: Vancouver

Between:

Laxton & Company Personal Law Corporation, 1932 Investments Ltd., No. 124 Cathedral Ventures Ltd. and No. 218 Cathedral Ventures Ltd.

Plaintiffs

And

The Corporation of the District of West Vancouver

Defendant

Before: The Honourable Mr. Justice Grauer

Reasons for Judgment

Counsel for the Plaintiffs:	R. Davies, Q.C.
Counsel for the Defendant:	F. Marzari
Place and Date of Hearing:	Vancouver, B.C. August 25 and 26, 2010
Place and Date of Judgment:	Vancouver, B.C. September 15, 2010

INTRODUCTION

[1] The four plaintiff corporations are the registered owners of waterfront property in the District of West Vancouver. The directing mind of each of them is John N. Laxton, Q.C., and I shall henceforth refer to them collectively as "Laxton", including therein for convenience any predecessors in title through the relevant span of time.

[2] Part of the waterfront property consists of filled foreshore that includes a breakwater. In their customary inexorable way, wind, wave and tide have had their effect upon this breakwater, and threaten, without remedial work, to destroy it altogether. Laxton wishes to effect repairs to the breakwater and submitted two proposals, which were rebuffed. The district maintains that the breakwater is a lawful non-conforming use and siting, within the meaning of s. 911 of the *Local Government Act*, R.S.B.C. 1996, c. 323 ("*LGA*"), so that no repair that would have the effect of increasing the surface area or bulk of the breakwater may be carried out without first applying for a development variance permit. Alternatively, the district says that its *Zoning Bylaw* prohibits the sort of work that Laxton proposes in the absence of such a permit.

[3] Laxton has not applied for a development variance permit. He maintains that he is not obliged to do so. Laxton seeks to cut through the Gordian knot of municipal resistance by this summary trial application for declaratory relief concerning the applicability of the district's *Zoning Bylaw* to his proposed course of action, and the correct interpretation of those bylaws. The district accepts that, in the circumstances, clarification would be helpful, and that it is appropriate to proceed in this manner.

[4] It is worth noting that much of the difficulty in resolving the issues that arise in this case is due to the unusual nature of the property in question. It may well be unique. As the district's Director of Planning, Lands and Permits understated in correspondence to Laxton, the application of the zoning bylaw to Laxton's proposal is "less than clear".

[5] It is also important to note that this judgment is concerned only with the authority and the bylaws of the District of West Vancouver. It is intended neither to affect nor determine Laxton's obligations in relation to the Crowns Provincial and Federal.

ISSUES

[6] The first issue that falls for consideration is whether the district's *Zoning Bylaw* has any application at all to what Laxton proposes to do. Laxton maintains that his proposed repairs to the breakwater do not constitute a "use" of land that is subject to regulation by a local government using its powers under s. 903 of the *LGA*.

[7] If the work Laxton proposes to carry out on his breakwater is subject to regulation by the local government, then the second issue involves the interpretation of the relevant portions of the district's *Zoning Bylaw*. Laxton maintains that the bylaw does not prevent him from carrying out what he proposes.

[8] Laxton acknowledges that he is obliged to obtain a building permit for any such work.

CHRONOLOGY

[9] Laxton's property originally consisted of four waterfront lots, being parts of District Lot 890 as set out in Plans 19278, 6617 and 13486. The western boundary of these lots was the high water mark of the waters of Howe Sound (the "original shoreline").

[10] In 1968 or 1969, Laxton leased from the Provincial Crown the foreshore beyond the original shoreline for the specified purpose of building a breakwater to create a protected boat moorage. The lease and plans were reviewed by the district, which raised no objection. The evidence indicated that the district followed a practice of never explicitly approving such leases. If it had concerns, it would object. If it found nothing objectionable, it did not object. Thus, over the years, "did not object" became recognized as 'district-speak' for "approved".

[11] Laxton then proceeded with the filling of the foreshore, ending up with an artificial point of land that provided the desired protected water as well as a pleasant littoral area, both of which were covered by lawn.

[12] In 1968, the district enacted its *Zoning Bylaw No. 2200, 1968*.

[13] In 1987, the *Zoning Bylaw* was amended to establish parameters for the siting of buildings on residential sites abutting the waterfront.

[14] In 1992, the *Zoning Bylaw* was amended to provide for the regulation of the siting, size and dimensions of retaining walls and the creation of artificial grade.

[15] In 2003, Laxton purchased from the Provincial Crown the fee simple of the filled foreshore above the high water mark. This was consistent with the customary principle that the ownership of waterfront property ends at the high water mark. Laxton, however, went further. He continued with negotiations, and in 2007 completed the purchase of an additional portion of the filled foreshore consisting principally of the seaward (weather) slope of the breakwater between the low water mark and the high water mark. This represents a vertical rise of approximately 5 metres, depending on the tide. On a horizontal plane across the slope, the width ranges between approximately 7 and 10 metres. Laxton persisted in pursuing this additional portion of the filled foreshore in order to ensure that he would be in a position to maintain the breakwater. The consideration paid for these purchases was substantial.

[16] As a term of this transfer, the district lots newly created from the filled foreshore were consolidated with the upland lots (the lots landward of the original shoreline) to form one parcel of land. This consolidation was approved by the district's Approving Officer and registered in the Land Title Office in early 2008. The western boundary of the parcel is formed by the low water mark of a significant portion of the filled foreshore, and the high water mark of the rest. The original shoreline is now some distance inland of the waterfront boundary.

[17] Under the district's *Zoning Bylaw*, the upland area is zoned *Single-Family Zone 3*, while the filled foreshore area is zoned *Marine Zone 1.*

THE RELEVANT BYLAW PROVISIONS

[18] As a result of the amendments of 1992, the *Zoning Bylaw* provides as follows with respect to finished grade and retaining walls:

> 125.1 No creation of grade above the natural grade shall exceed the grade line described herein.
>
> 125.2 The grade line is an envelope described by drawing a line up four (4) feet vertically from natural grade, or existing grade where grade has been altered as a result of the construction of a public road, at any and all points on the site lines, thence inward over the site, perpendicular to such site lines, at an angle of 36 7/8º (75% slope) from a front property line or flanking side property line, or 45º (100% slope) from all other property lines. On a waterfront property line, the grade line shall be calculated from the natural grade on the waterfront property line (natural high water mark) rather than from a point four (4) feet above it.
>
> 125.3 No retaining wall used in the construction of artificial grade shall extend above the grade line, nor shall the exposed face of any retaining wall exceed eight (8) feet in height.
>
> 125.5 The construction of artificial grade, whether by retaining walls or otherwise, is governed by this regulation.
>
> 125.11 The exposed height of a retaining wall is that height above ground level. In the case of an excavated wall (a shoring wall below natural grade), it is the height above ground level or above a permanently constructed and integral structure at the base of the wall and at least two (2) feet in depth such as a permanent bench, planter or platform, provided the combined exposed height of such excavated wall and structure does not exceed ten (10) feet.

[19] Relevant definitions include the following:

> B/L 4060 GRADE, FINISHED – shall mean the final ground surface after development, exclusive of artifice such as minor planters or mounding of soil, and window wells with a clear width measured out from the wall of less than 2 feet
>
> B/L 4020 GRADE, NATURAL – shall mean the undisturbed ground level formed without human intervention or, where the undisturbed ground level cannot be ascertained because of an existing building or structure, the undisturbed existing grade.
>
> B/L 3363 SITE, LINE(S) OR LOT LINE(S) – shall mean the lines bounding any site or lot. Where such site or lot line(s) abut the waterfront the line shall be known as the waterfront site line and shall be that line as determined from the Plans listed under that portion of PART 10, DIVISION 2, SUBDIVISION 1 of this Bylaw entitled LEGAL PLANS DEFINING WATERFRONT BOUNDARY.

[20] The reference in the definition of "site line(s) or lot line(s)" to the portion of Part 10 entitled *Legal Plans Defining Waterfront Boundary*, which comes from the 1987 amendment, has the effect of establishing the "waterfront site line" for waterfront residential lots as the particular "boundary between the lot and the foreshore" shown on specified Plans registered in the Land Title Office prior to 1980. For the four original parcels at issue in this case, being parts of District Lot 890, the relevant Plans provide that the boundary between the lot and the foreshore is what I have described above as the

original shoreline. The new district lots formed by the raising of title to the filled foreshore area in 2008 are not, of course, shown on any registered plans prior to 1980.

[21] According to the Notice of Public Hearing concerning the 1987 amendment, the proposed amendment was "[t]o establish for purposes of building siting, the waterfront lot line of residential sites abutting the waterfront ...". Its expressed purpose was:

> To establish the use of the High Water Mark or Natural Boundary as shown on Registered Plans prior to 1980 for calculating setbacks of waterfront sites in residential zones by referencing specific plans.

[22] According to a memorandum from the Director of Planning and Development to the municipal manager concerning the 1992 bylaw amendments, the intent of the retaining walls provisions was, *inter alia*, "[t]o limit walls to their primary purpose for adjusting site levels, rather than have them become major structures in themselves". The recommendations included the adding of "a restriction on the waterfront, limiting the walls to an envelope that begins at elevation zero on the foreshore property line, and extends up at an angle of 45 degrees from that point".

DISCUSSION

A. Does the district have the authority to regulate the proposed repairs?

[23] Laxton argued that he has a common law right to protect his property against the elements, which right is not subject to regulation. To support this proposition, he took us back to *Rex v. The Commissioners of Sewers for Pagham, Sussex* (1828), 8 B. & C. 355; 108 E.R. 1075, and *McBryan v. The Canadian Pacific Railway Company* (1899), 29 S.C.C. 359. These indeed established the first part of Laxton's proposition, which the district does not dispute. As between adjoining landowners:

> ...every landowner exposed to the inroads of the sea has a right to protect himself, and is justified in making and directing such works as are necessary for that purpose....(per Bayley J. in *Pagham* at p. 361)

[24] Where such a landowner acts *bona fide* and does no more than is reasonably and honestly necessary for the protection of his property, then an adjoining landowner who suffers damage as a result has no claim. But that is not what concerns us here. The question is whether a landowner's exercise of that common law right can be the subject of municipal regulation.

[25] As a general principle, that question must be answered in the affirmative. There is no doubt that the district has the power to pass zoning bylaws that regulate the use of the foreshore and foreshore waters as well as the land: *Salt Spring Island Local Trust Committee v. B&B Ganges Marina Ltd.*, 2007 BCSC 892, upheld 2008 BCCA 544; *North Pender Island Trust Committee v. Hunt*, 2008 BCSC 391, 2009 BCCA 164; see also *Ovcharick v. North Saanich (District)* (1998), 46 M.P.L.R. (2d) 128 (B.C.S.C.), upheld (1999), 50 M.P.L.R. (2d) 147 (B.C.C.A.). That is presumably why the Provincial Crown forwarded to the district for its consideration a copy of its proposed foreshore lease with Laxton in 1968 or 1969.

[26] But Laxton argued that the district's regulatory power as set out in s. 903 of the *LGA* is limited to

regulating the *use* of land, buildings and other structures, and that his proposed repair of the breakwater cannot in law be considered to be such a use. It therefore cannot be regulated.

[27] Taking us to another jurisdiction and a different century, Laxton relied upon the decision of the Ontario Court of Appeal in *Pickering Township v. Godfrey*, [1958] O.R. 429, which considered whether a landowner's making of a gravel pit, and the removal of gravel from his land, contravened a bylaw that prohibited the use of the land for commercial or industrial use.

[28] As the municipality was clearly authorized to pass bylaws prohibiting the use of land for such purposes as it may set out, as well as for prohibiting erection or use of buildings or structures, the question that the court considered was whether "the making of a quarry or pit falls within the meaning of words 'use of land.'" The court concluded that it did not, defining the word "use", when applied to more durable forms of property such as land, as meaning "the employment of the property for enjoyment, revenue or profit without in any way otherwise diminishing or impairing the property itself."

[29] The court compared the removal of gravel and other substances to a *profit à prendre*, as it was removing parts of the land itself. It concluded that the making of pits and quarries was not a "use of land" within the meaning of the relevant provision of the *Municipal Act*, so that the bylaw could not prevent the owner from digging and removing gravel or other substances from his lands. Laxton argued that, similarly, his proposal constitutes an attempt to preserve land for use, and cannot be considered a use of land.

[30] This decision has been applied in British Columbia under nearly identical circumstances: *Corporation of the City of Vernon v. Okanagan Excavating (1993) Ltd.,* (unreported, 22 September 1993), Vernon Reg. # 10589 (S.C.).

[31] Laxton relied also on the decision of the Court of Appeal in *Squamish (District) v. Great Pacific Pumice Inc.* (2000), 75 B.C.L.R. (3d) 144, where Crown land was leased to the defendant. To the defendant's argument that the use of that land should be defined by the Crown's act of leasing it, rather than the lessee's operations, Newbury J.A. said this:

> [22] Nor am I convinced that the leasing of land - obviously a form of tenure - constitutes a "use" thereof within the meaning of this section. No authority was cited for this proposition and if one were to consider how the word "use" is used in its ordinary or everyday meaning, it would in my view exclude leasing out land to others. If a landlord were asked, for example, what use he was making of his property, one would normally expect him to answer "I am not using the property - I have rented it out to a tenant."

[32] Counsel for Laxton argued that in response to Newbury J.A.'s question, "what use are you making of your property", Laxton would reasonably answer that he is not proposing to use it, but rather to preserve it by preventing it from disappearing. This argument illustrates what I conceive to be the principal complicating feature of this case: the breakwater has in fact become the land, and now constitutes District Lots 8020, 8021, 8022 (the above high water portions), 8097 and 8098 (the high water to low water portions).

[33] In these circumstances I do not find either the *Pickering Township* case or the *Great Pacific Pumice* case to be particularly helpful. Both turn on very specific sets of facts which are completely distinguishable from the facts before me. The repair of the breakwater is a far cry from removing gravel (it is adding, not subtracting), and is nothing like a *profit à prendre.* It is not even remotely similar to the situation considered by Newbury J.A., and the question she posed, in my view, is not apposite to our circumstances.

[34] As I see it, the whole point of Laxton obtaining the foreshore was to facilitate the construction of the breakwater to provide shelter. It seems to me, then, that the use of the foreshore is to support and form the breakwater. The foreshore has no real utility to Laxton other than that. If the breakwater now requires further support, then that is a further use of the foreshore. In arriving at this conclusion, I take comfort in the reasoning of Bauman J., as he then was, in *Service Corporation International (Canada) Inc. v. Burnaby (City)* (1999), 9 M.P.L.R. (3d) 242 (B.C.S.C.), appeal allowed in part: 2001 BCCA 708.

[35] The district submitted that even if the act of repairing the breakwater is not properly a "use" of the land within the meaning of the *LGA*, the district's authority does not stop there, but extends to the breakwater through s. 903(1)(c)(iii) of the *LGA*, which provides as follows:

> **903** (1) A local government made, by bylaw, do one or more of the following:
>
> ...
>
> (c) regulate within a zone
>
> (i) the use of land, buildings and other structures,
>
> (ii) the density of the use of land, buildings and other structures,
>
> **(iii) the siting, size and dimensions of**
>
> **(A) buildings and other structures, and**
>
> **(B) uses that are permitted on the land, and**
>
> (iv) the location of uses on the land and within buildings and other structures;
>
> [Emphasis added]

[36] The power to regulate the siting, size and dimensions of buildings and other structures was present in the relevant *Municipal Act* provisions in the *Pickering Township* case as well, but was not considered. Laxton argues that where there is no use that can be subject to regulation, the local government may not get around that by relying on the subsidiary power to regulate siting, size and dimensions. The *LGA* does not, however, make the latter a subsidiary power. Rather, the powers to regulate the use of land and to regulate the siting, size and dimensions of buildings and other structures, and of uses, are but two examples of the regulatory authority granted to the local government - see the *Service Corporation* case.

[37] Nevertheless, I do not see how the power to regulate the siting, size and dimensions of buildings and other structures, and of uses that are permitted on the land, can be interpreted to cover the regulation of what is in fact the land itself, being the breakwater and its foundation. That authority, in my view, must come in this case under s. 903(1)(c)(i), as discussed above.

[38] I conclude that pursuant to s. 903(1)(c)(i) of the *LGA*, the district has the authority to regulate Laxton's proposed repairs to the breakwater pursuant to its power to regulate the use of the foreshore as land within a zone.

B. Does the zoning bylaw prevent or restrict the proposed repairs?

[39] Having concluded that the district has the authority to regulate Laxton's proposed repairs to the breakwater, the question becomes whether the relevant portions of its *Zoning Bylaw* in fact do so, and if so, how?

[40] The district's position in this regard is based upon the application of the Finished Grade and Retaining Walls portion of the bylaw, section 21-125, which appears in Division 1 of Part 2 of the *Zoning Bylaw*, applicable to all zones.

[41] In interpreting this portion of the bylaw, the district urged a contextual and purposive approach that takes into account what it says is the over-arching intent to limit the erection of structures, including retaining walls and the fill behind them, to an area within the originally defined upland parcels. This intention is to be garnered from the bylaw itself. Counsel for the district relied upon the approach adopted by the Court of Appeal in *Neilson v. Langley (District)* (1982), 134 D.L.R. (4th) 550 (BCCA) and applied in the *North Pender Island Trust* case at para. 27. The Court of Appeal said this at para.18:

> It is necessary to interpret the provisions of the zoning by-law not on a restrictive nor on a liberal approach but rather with a view to giving effect to the intention of the Municipal Council as expressed in the by-law upon a reasonable basis that will accomplish that purpose.

[42] With this in mind, the district noted that the bylaw defines "site line(s) or lot line(s)" as used in section 125 dealing with Finished Grade and Retaining Walls to mean "the lines bounding any site or lot", and goes on to say:

> Where such site or lot line(s) abut the waterfront the line shall be known as the waterfront site line and shall be that line as determined from the Plans listed under that portion of PART 10, DIVISION TWO, SUBDIVISION ONE of this Bylaw entitled LEGAL PLANS DEFINING WATERFRONT BOUNDARY.

[43] It will be recalled that the portion of Part 10 referred to in the definition set the waterfront boundary for the original lots (the additional lots had not been created at that time although the foreshore had already been filled) as the original shoreline.

[44] This makes it clear, asserted the district, that the waterfront lot line or site line of the lots as they were at the time that the bylaw was passed would forever be maintained at the original shoreline, regardless of any changes due to natural accretion or artificial fill. All grade lines and site lines moved inland from that original shoreline, so that no structure or fill on the seaward side could be added thereafter. The filled foreshore that already existed beyond the original shoreline thus became a lawful non-conforming use, the district argued, and nothing further may be done with it without obtaining a variance permit, other than repair that does not increase its size or bulk.

[45] The proposed work, however, is not to be undertaken on any of the district lots covered by the

Plans referred to in the definition of "site line(s) or lot line(s)", but rather on district lots created afterwards with entirely new shorelines. I do not see how new district lots where title has been raised and registered with the approval of the district Approving Officer can, on the basis argued, constitute a nonconforming use in these circumstances. The amendment that the district submitted has this effect was enacted with the stated purpose of establishing a specified natural boundary for "calculating setbacks of waterfront sites in residential zones". The area in question is not in a residential zone, and setbacks can hardly apply to a breakwater built in tidal water.

[46] A good deal of time was spent with the district's alternative argument that even if the waterfront site line or lot line must be taken to be the waterfront boundary of the new district lots, not the original shoreline, then application of the retaining wall portions of the bylaw would still prevent any additional structure that would increase the size or bulk of the breakwater. It would do so by establishing an envelope starting at the low water mark boundary and angling up at 45 degrees. What Laxton proposes would not be confined to this envelope.

[47] Try as I might, I have been unable to find any way to construe section 125 of the bylaw as applying, or as ever having been intended to apply, to the sort of work contemplated by Laxton on the foreshore lots including the breakwater.

[48] Section 125.2 refers not to waterfront site lines, but to the "waterfront property line", providing that on a waterfront property line the grade line shall be calculated from the natural grade which, it indicates, is the natural high water mark (that is, the mark of the high water on the land). That surely could not have been intended to apply to filled foreshore where the waterfront property line is some 5 metres below and 10 metres beyond the natural high water mark.

[49] Laxton argued that the bylaw should be interpreted as meaning that the 45° grade line, within which work must be carried out, must be measured from the defined natural grade (natural high water mark) *above* the waterfront property line 5 metres below it, so that the 5 metres can be filled in, as it were, before the siting rules begin to apply. If anything, that simply illustrates how inapt the retaining wall portion of the bylaw is for attempting to regulate the action contemplated here. It simply does not fit. It is intended to regulate construction on land abutting the water with a reference to natural grade. There is nothing natural about the grade here.

[50] Moreover, a breakwater is not a retaining wall. Its purpose is to break the natural force of the sea, not to create artificial grade above the natural grade of the land. Thus section 125.3 states that "No retaining wall used in the construction of artificial grade shall extend above the grade line...". The breakwater is not a wall used in the construction of artificial grade, and it exists almost completely below the grade line. To try to stretch these provisions to fit this situation yields what I apprehend to be absurd results.

[51] As I have already indicated, it is my view that the district is entitled to regulate the foreshore and the work performed upon it. I conclude, however, that the provisions of *Zoning Bylaw No. 2200* to which I was referred in this hearing, being the Finished Grade and Retaining Walls portion (section 125) and

the relevant definitions including the definition of “Site Lines or Lot Lines” with its reference to Part 10, Division 2, Subdivision 1 of the bylaw, do not accomplish that regulation. Those portions of the bylaw are simply inapplicable to the work proposed by Laxton, and have not had the effect of creating a nonconforming use.

[52] I heard no argument on the extent to which Part 5 of the *Zoning Bylaw*, dealing with *Marine Zone 1*, governs Laxton's proposal or creates a nonconforming use in the filled foreshore, and I make no comment in that regard. I do note that the regulatory sources in cases such as *Salt Spring Island Local Trust* and *North Pender Island Trust* were provisions specifically governing the foreshore zone.

CONCLUSION

[53] The application by Laxton for a declaration that the District of West Vancouver does not have the authority to regulate his proposed repairs to the breakwater under the *LGA* is dismissed.

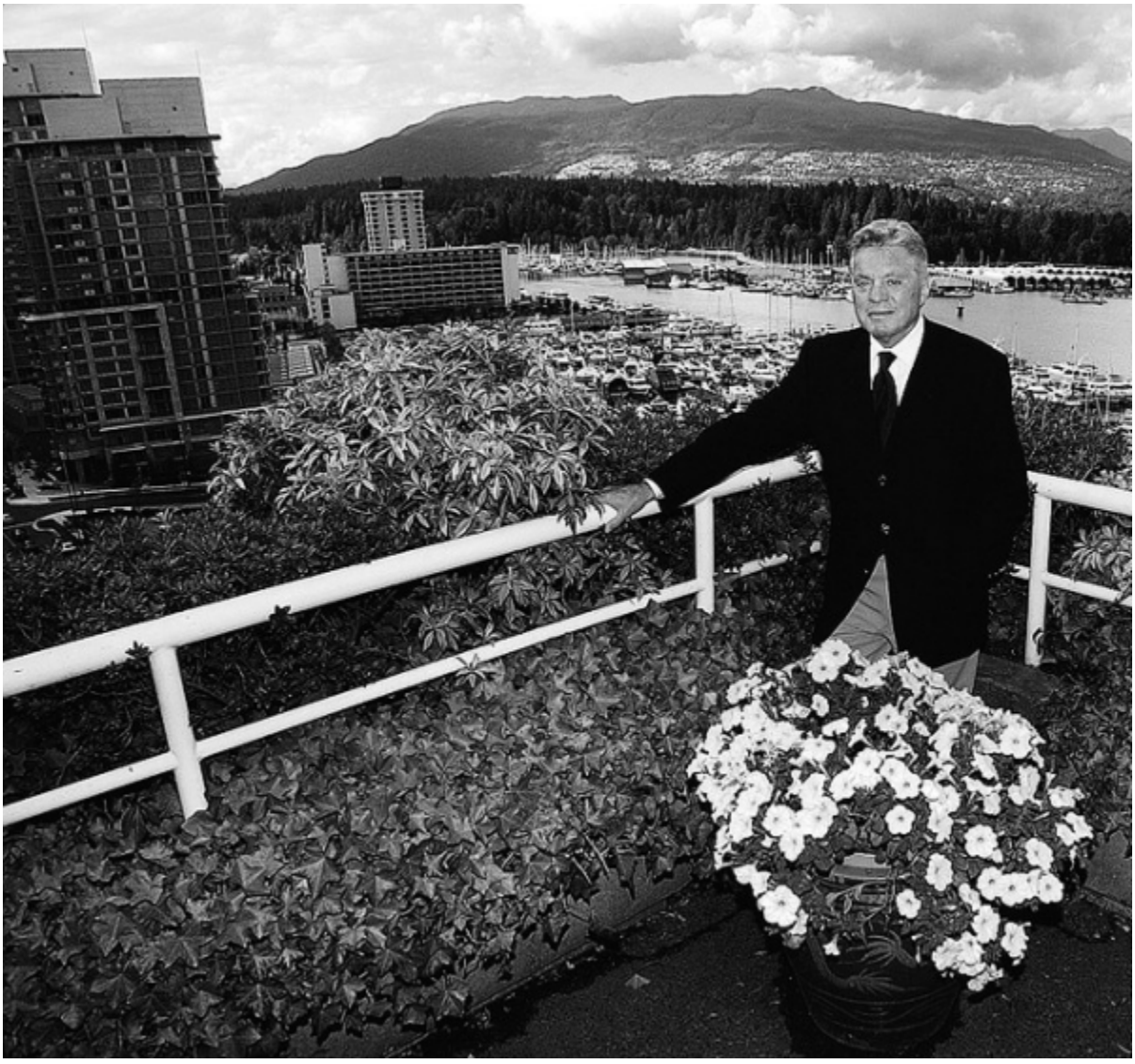
[54] With respect to the application concerning the interpretation of the Finished Grade and Retaining Walls portion (section 125) of the district’s *Zoning Bylaw*, together with and the relevant definitions including the definition of “Site Line(s) or Lot Line(s)” with its reference to Part 10, Division 2, Subdivision 1 of the Bylaw, Laxton is entitled to a declaration that the stated provisions do not govern or prohibit his proposed repairs to the breakwater, as a lawful nonconforming use or otherwise. I will leave it to the parties to draft the appropriate wording for the declaration.

“GRAUER, J.”

Lawyer wins battle with West Van to repair breakwater

B.C. Supreme Court rules in favour of John Laxton, who owns four properties

BY JANE SEYD, NORTH SHORE NEWS OCTOBER 2, 2010



West Vancouver denied lawyer John Laxton a permit in 2008 for repairs on a breakwater that protects four waterfront properties he owns in the municipality. Laxton took the case to court and got a favourable ruling.

Photograph by: Steve Bosch, Vancouver Sun Files, North Shore News

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A prominent waterfront property owner in West Vancouver has won his fight with city hall with a B.C. Supreme Court ruling that he should be allowed to repair a controversial breakwater built to protect his land.

The decision by Justice Christopher Grauer is the latest chapter in a fight over the breakwater that has been going on between the municipality and John Laxton, a prominent lawyer, developer and former chairman of BC Hydro, for several years.

Laxton wanted to do major repairs on the breakwater, which protects four waterfront properties he owns along Marine Drive, facing Howe Sound near Pitcairn Place.

The breakwater consists of an artificial point of land, created by filling in the foreshore, which Laxton previously leased

from the province. Between 2003 and 2007, Laxton bought the newly created land -- both above and below the original high-tide mark -- from the province, for what Grauer described as a "substantial" sum of money.

Laxton then applied for a permit to rebuild the breakwater, which would involve construction of a large wall of rock or lock blocks on the foreshore to replace the crumbling structure.

When the municipality refused to grant Laxton permission for the repairs in 2008, he took the case to court, arguing the repairs aren't land use that can be regulated by the municipality.

In court, Laxton's lawyer argued he had a common-law right to protect his property from the elements and that his repairs can't be regulated by district bylaws.

In his decision, Grauer said the municipality does have the right to regulate use of the foreshore. But he added he couldn't see how that would prohibit Laxton's planned repairs.

The judge noted a major complicating feature of the case is that "the breakwater has become the land."

The creation of additional land on waterfront properties by filling in the foreshore has long been a sore spot with the municipality, which has sought to restrict construction of retaining walls and fill on waterfront properties to land above original high tide lines and has previously opposed the province selling off artificially created land to adjacent waterfront owners.

In the past, the convention was that waterfront property owners could legally own land extending only to the high-tide mark.

"Everything below that was provincial land," said Bob Sokol, director of planning for the District of West Vancouver.

In the past decade, the province has sold off some of its foreshore.

Sokol said Laxton's proposal has been a concern for the municipality, because it would involve filling in subtidal waters.

Laxton said now that the court fight is behind him, he's hoping he can soon get on with rebuilding the breakwater.

"There's no bylaw that prohibits this," he said, noting the municipality has spent a lot of money fighting an issue that nobody seems to be concerned about.

"There seems to be no policy reason to oppose the repair of the breakwater," Laxton said.

"I presume the dispute is ended."

Owner wins West Vancouver foreshore fight

BY JANE SEYD, NORTH SHORE NEWS OCTOBER 1, 2010

A prominent waterfront property owner in West Vancouver has won his fight with town hall, after a B.C. Supreme Court judge ruled John Laxton should be allowed to repair a controversial breakwater built to protect his land.

The decision by Justice Christopher Grauer is the latest chapter in a fight over the breakwater that has been going on between Laxton, a prominent lawyer, developer and former chair of B.C. Hydro, and the municipality for several years.

The latest battle blew up after Laxton wanted to do major repairs to the breakwater that protects four waterfront properties he owns along Marine Drive that face Howe Sound near Pitcairn Place.

The breakwater itself consists of an artificial point of land, created by filling in the foreshore, which Laxton previously leased from the province. Between 2003 and 2007, Laxton bought the newly created land -- both above and below the original high-tide mark -- from the province, for what Grauer described as a "substantial" sum of money.

Laxton then applied for a permit to go ahead with rebuilding the breakwater, which would essentially involve construction of a large wall of rock or lock blocks on the foreshore to replace the crumbling current structure.

When the municipality refused to grant Laxton permission for the repairs to his breakwater in 2008, he took the case to court, arguing the repairs aren't land use that can be regulated by town hall.

In court, Laxton's lawyer argued he had a common-law right to protect his property from the elements and that his repairs can't be regulated by district bylaws.

In his decision, Grauer said the municipality does have the right to regulate use of the foreshore. But he added he couldn't see how that would prohibit Laxton's planned repairs.

The judge noted a major complicating feature of the case is that "the breakwater has become the land."

The creation of additional land on waterfront properties by filling in the foreshore has long been a sore spot with the municipality, which has sought to restrict construction of retaining walls and fill on waterfront properties to land above original high tide lines and has previously opposed the province selling off artificially-created land to adjacent waterfront owners.

In the past, the convention was waterfront property owners could only legally own land extending to the high-tide mark. "Everything below that was provincial land," said Sokol, director of planning at the District of West Vancouver.

But in the past decade, the province began selling off some of its foreshore.

Sokol said Laxton's proposal to build a large wall on the foreshore and fill in everything behind it in order to bolster his breakwater has been a concern for the municipality, because it would involve filling in subtidal waters.

Before approving that kind of construction, the municipality would still want approval from the Department of Fisheries and Oceans, he said.

But Laxton said he doesn't see why it's up to the municipality to enforce fisheries regulations. "We don't have a problem with fisheries," he said. "I have an environmental report saying it will actually improve fisheries habitat."

Carrie Mashima, communications advisor for DFO, said the department has not so far received a proposal for work on Laxton's property. Mashima said it's up to owners doing work in foreshore areas to make sure they comply with fisheries regulations.

Laxton said now the court fight is behind him, he's hoping he can soon get on with rebuilding the breakwater.

"There's no bylaw that prohibits this," he said, noting the municipality has spent a lot of money fighting an issue that nobody seems to be concerned about.

"There seems to be no policy reason to oppose the repair of the breakwater," he said. "I presume the dispute is ended."

Riparian Rights and Public Foreshore Use In the Administration of Aquatic Crown Land

Occasional Paper No. 5

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Contents

1. Introduction

In British Columbia the Ministry of Environment, Lands and Parks administers aquatic Crown lands. This paper reviews the riparian rights of property owners and provides guidelines on how to protect these rights and the privilege of public access, while making such land available for other uses.*

Aquatic lands are the foreshore and beds of streams, rivers, lakes and bounded coastal water, such as Georgia Straight, the Strait of Juan de Fuca and inlets. In British Columbia, the Crown retains the title to lands below the upland natural boundary, except where they were Crown-granted long ago.

The Ministry of Environment, Lands and Parks administers these aquatic lands and provides for various, commercial, industrial, conservational, and recreational uses. In doing so, it respects the common law rights of waterfront property owners and recognizes the importance of public access to and passage along the foreshore.

Owners of property located adjacent to a body of water have traditionally enjoyed certain riparian (stream or river banks) and littoral (sea or lake-shore) rights. For simplicity, the term riparian is used for all rights pertaining to the shore or bank of a body of water.

Riparian rights, which run with an upland property, include access to and from the water, protection of the property from erosion, ownership of naturally accreted material, and use of water of undiminished flow and quality for domestic purposes. Some, but not all, of these rights are still recognized in British Columbia today.

This paper reviews these rights and demonstrates the ways in which they affect and, in turn, are affected by the administration of Crown land.

The guidelines provided explain how the Ministry can protect riparian rights in carrying out its administrative function and how it can assert the Crown's right to eroded land. The paper also describes the mechanisms by which the Crown can retain or acquire riparian rights.

While much of the information in the paper is based on case law concerning riparian rights, the conclusions and administrative guidelines outlined are not legal opinions on either the nature or the extent of such rights.

* In 1995 when this document was last revised, administration of aquatic Crown lands was under the jurisdiction of the Ministry of Environment, Lands and Parks. As of 2001, aquatic Crown lands are administered by Land and Water B.C. (LWBC). LWBC operates under the jurisdiction of the Ministry of Sustainable Resource Management (SRM), which assumed many of the responsibilities of the now-defunct Ministry of Environment, Lands and Parks. For reasons of historical accuracy, the references to the former Ministry of Environment, Lands and Parks have been left in this document although the administrative responsibility for aquatic Crown lands now rests with LWBC and SRM.

2. Riparian Rights and Public Foreshore Use: Historical and Legal Foundations

The Origin of Riparian Rights

For centuries it has been recognized that water bodies and watercourses are essential for marine commerce. Non-navigable streams have also received special attention because of their value
in supplying potable water for domestic use and for irrigation. Over time, certain rights have been established for these uses.

Access to and from waterfront property, maintenance of the quality and quantity of surface water flow, and the ownership of naturally and imperceptibly accreted material are not rights granted by statute. Instead, they developed as common law rights, and the courts have defined their nature and extent in numerous legal proceedings.

Some of the original riparian rights have been specifically or incidentally eliminated by statute. Others remain entrenched as common law rights incidental to ownership of riparian property and "run with the land." They are not associated with the title of the land; they arise by virtue of its ownership, and they do not follow the owner who moves to another property.

The Rights of the Crown and Public Use of and Access to Aquatic Crown Land

The Land Act and Land Title Act provide the authority under which the Ministry of Environment, Lands and Parks administers aquatic Crown land.

The Ministry recognizes and respects the riparian rights of waterfront property owners. But in special cases it may assert its own right to protect the public interest or to make aquatic Crown land available for commercial, industrial, conservational or recreational purposes.

The Crown recognizes the importance of providing for public use of aquatic Crown lands and public access to and along the foreshore, but these are not public rights, and they cannot be guaranteed in all cases.

The public does enjoy a privilege or bare licence to use the foreshore and other aquatic lands held by the Crown. The only rights that exist, however, are the right to land boats and to embark from the foreshore in cases of emergency, and the rights of navigation, anchoring, mooring, and fishing over those lands covered by water.

Navigation is under federal rather than Provincial control. The Canadian Coast Guard exercises this management responsibility under the authority of the federal *Navigable Waters Protection Act.*

Anyone who wishes to build structures in navigable waters must obtain approval from the federal government. If the building causes special damage, however, this approval does not guarantee protection from legal action. This damage usually involves interference with a commercial operation.

3. The Nature and Extent of Riparian Rights in British Columbia and in Other Jurisdictions

Riparian rights involve the relationship between water and the land beside which or over which it rests or flows. In common law, riparian rights generally include the following:

- protection from erosion by an owner
- quality and quantity of surface water flow
- ownership of naturally accreted material
- access to and from the water

The question of how far property rights extend out into a river or other body of water is also often included in the discussions of Riparian rights although, strictly speaking, it is the ownership of
the bed of such water bodies that is involved, not rights.

Similarly, constructing facilities on the foreshore below the natural boundary to enhance access to and from the water is also often thought of as a riparian right. In Canada, such construction generally requires the consent of the Crown and is not a "right" of the upland owner.

However, because these two subjects arise so often, they have been included in this analysis.

Protection of Land

British Columbia recognizes the right of shoreland property owners to protect their land from erosion or flooding, by building embankments, dykes, or other protective improvements. This right extends only to the natural boundary of the property. Owners therefore have the right to install protective structures on their own land; but they require the consent of the Crown to extend such structures below the natural boundary.

Quality and Quantity of Surface Water Flow

The original and fundamental riparian right was the right to use and divert water in a stream or river for domestic purposes.

Since many people used a common stream traversing their lands for domestic supply and irrigation, their equal right to water of undiminished flow and quality became a basic riparian right.

This right was effectively abrogated in British Columbia with the passage of the *Water Act*. Even as early as 1884, these rights were limited when the *Land Act* made provision for the control and recording of all water used or appropriated from streams and rivers.

The water-licensing system now in place still retains concern for the quality of water enjoyed by downstream users, but users are limited in the amount of water they may take for their own use and cannot divert water without consent of the Crown.

Natural Accretion and Erosion

Land abutting any body of water is subject to certain forces of erosion and deposition (accretion). The ownership of accreted land has long been a subject of legal debate.

According to the generally accepted principle in British Columbia, the waterfront property owner does not own land created by a sudden deposit of material by flood or an artificial interference in natural processes, or by an addition to the upland that occurs as a result of a natural uplifting of a lake or stream bed.

However, the waterfront property owner does own land that has accreted to the upland through gradual and imperceptible natural deposition. This rule also applies, in some cases, where the material has gradually and imperceptibly accreted as a result of a structure placed on another property by another party.

Changes to the natural boundary of a property that result from accretion can be determined in accordance with the *Land Title Act* and, in the event of disagreement, by the *Land Title Inquiry Act.*

This situation can also operate in reverse. When the upland is eroded, the property lost becomes part of the foreshore or bed of the adjacent water body. The Crown then owns the land below the natural boundary.

Where erosion or accretion has occurred, the title to the upland may not reflect the actual extent of ownership.

Access: Ingress and Egress

The final major riparian right associated with waterfront property is the right to unimpeded access to and from that property to deep water for the purposes of navigation. This right exists separate and apart from the public right of navigation, and the right of access applies to non-navigable bodies of water as well.

This right of access to and from the water applies to every point along the water frontage, including every part of the foreshore in front of the upland property. As a result, improvements cannot be constructed on a waterfront property if they interfere with access. Whether or not an obstruction constitutes interference must be determined in each individual case. The types of obstruction likely to constitute interference are discussed in Section 4.

The right of access is still recognized as a riparian right in British Columbia. It is probably the most important of the remaining riparian rights acknowledged in the Ministry's administration of land.

Extension of Property Rights

The extent and control or "sphere of influence" of property rights has become an important issue in British Columbia as a direct consequence of historical claims to property rights over the beds of water bodies located adjacent to privately owned upland. Given that the riparian right of access extends along the entire foreshore in front of an upland property, the question at issue was how far out into the water that right extended.

1n the case of streams bounded on opposite sides by private land, the "sphere of influence" was considered to extend to a point equidistant from each bank to the centre or middle of the watercourse. This principle - *ad medium filum aquae* (literally, "to the middle thread of the stream") - could only be applied practically in the case of narrow streams, or small.bays where the distance between the shores was relativelv short. It was considered impractical to extend the sphere of influence of such rights to the centre line of any water bodies other than very small lakes.

In Kennedy v. Husband (1923), 1 D.L.R. 1069 (B.C. Co. Ct.) the court confirmed that the principle of *ad medium filum aquae* does not apply to large navigable bodies of water. In fact, it is not clear that it has ever applied to navigable waters in general.

This particular right - which is more a "property" right than a riparian right - has been largely abrogated in British Columbia as a result of an amendment to s. 52(1) of the *Land Act*. This amendment precludes private rights of ownership or control over the beds of streams, lakes, rivers, and other water bodies in the province.

Similarly, s. 108(2) of the *Land Title Act* provides that, when a subdivision plan is filed in the Land Title Office, any previous title to adjacent submerged land an upland owner may have held is automatically forfeited to the Crown. The shoreward extent of the property ownership thus ends at the natural boundary.

Construction of Facilities for Access

Waterfront property has always had strategic importance for the conduct of marine commerce. As a consequence, the traditional right of access to deep water for navigation has often been interpreted to include the right to construct facilities on the foreshore to provide such access.

Case law suggests that riparian owners have a limited right to construct floating wharves or docks that do not interfere with the public right of navigation and that are only affixed to their own upland property (Booth v. Ratte (1890), 14 A.C. 612 P.C.)). In fact, however, this right does not extend to facilities that are anchored or in any way affixed to the foreshore or bed of the adjacent water body.

Because title to most of the foreshore and beds of water bodies in British Columbia is vested in the Crown, in practical terms, owners require the express consent of the Crown to construct most facilities.

Riparian Rights In Other Jurisdictions

Most of the riparian rights reviewed in Section 2 are recognized in other jurisdictions. The three riparian rights still observed in British Columbia are all recognized in England under common law. The principles covering accretion and erosion, access to water, and protection from erosion of property are similar to those recognized here, as are the legal and jurisdictional arrangements for guaranteeing those rights.

In the United States, the right to accreted land is essentially the same as it is in Canada and in England. Similar principles are used in these jurisdictions to differentiate gradual and imperceptible accretion or erosion from sudden or artificial processes.

Because such a large percentage of the foreshore is privately owned in many states, property owners have greater rights to protect their land and to build facilities for access to deep water and public rights are more restricted.

In general, the position adopted by British Columbia with respect to the three types of riparian rights it continues to recognize is consistent with that of other jurisdictions -- both in the way in which these rights are defined and the legal and institutional arrangements used to ensure their protection.

Summary

Of the fundamental riparian rights and related property rights mentioned here, three have either been abrogated by statute in British Columbia or have, in fact, never existed as rights of waterfront property owners. They are:

- the principle of *ad medium filum aquae*
- the right to water flow of undiminished quality and quantity
- the right to construct facilities on the foreshore to provide for access to deep water.

Of the remaining three, the right to protect waterfront property from erosion is relatively well established. The limits of that right are defined by the boundaries of the upland property: the natural boundary as it exists from moment to moment is the line past which protective works are not to be erected without consent of the Crown.

In order to have accreted land included in the title, the owner must demonstrate that accretion occurred slowly and imperceptibly over time. This fact is sometimes difficult to establish.

The right of access has been specifically defined with respect to the waterfront property. Ingress and egress must be possible from every point along the water frontage over every part of the foreshore.

In administering and protecting these rights, there are three areas where difficulties may arise for the Ministry:

- foreshore and nearshore tenures while avoiding interference with the riparian right of access
- claiming ownership of eroded lands
- retaining riparian rights for the Crown through the mechanism of a statutory right-of-way over the riparian right of a waterfront property.

Guidelines for dealing with these issues are discussed in Section 5.

4. The Relationship Between Riparian Rights, Public Foreshore Use, And Land Act Tenure Administration

Under its mandate to administer aquatic Crown land, the Ministry of Environment, Lands and Parks employs various mechanisms to provide for public foreshore access, where feasible, and to protect the riparian rights of waterfront property owners. It also facilitates other uses of the foreshore and nearshore by providing various types of tenure granted under the *Land Act* and by implementing the specific commercial, industrial and recreational land use policies developed by the Ministry.

In granting tenure to aquatic land, the Crown makes every effort to facilitate public access to and along the foreshore. However, there are instances where it is not possible to accord this privilege.

Most tenures created over the foreshore or nearshore have specific limits on their nature and duration. The various types of tenure are described here in general terms.

In almost all cases, tenures granted by the Ministry over foreshore or nearshore areas are separate and distinct from the ownership of the upland property. The fact that a waterfront property owner
has obtained tenures over the adjacent foreshore does not mean that those tenures are automatically assigned to future purchases.

Confusion sometimes arises when prospective buyers of waterfront property are mistakenly led to believe that Ministry tenures held by the owner "go with the property." The Ministry must give its permission to transfer tenure from one party to another. This permission is not withheld unreasonably, however. In addition, should the former owners retain the leasehold of the foreshore after selling the property, they may have the right to restrain the new owner from trespassing on those leases. Of course, the leaseholder will also have to respect the riparian rights of the new upland owner, including the right of access to and from the property.

Prospective buyers should check with the Ministry to ensure that any development on the foreshore or nearshore adjacent to the property is legitimate. Also, such purchasers should not assume that any tenures in front of that property will be automatically assigned to them. Assignment may be possible, and it will be considered upon application to the Ministry.

The Nature and General Provisions of Tenure Issued Under the Land Act

Temporary Permit

A temporary permit to occupy aquatic Crown land may be issued to allow investigation or to authorize temporary short-term use. Generally, temporary permits are issued for commercial or industrial foreshore operations.

Investigative uses may be authorized for periods up to one year, while other temporary uses may be authorized for up to six months. This type of permit does not necessarily include the right to construct facilities or improvements on the land.

Licence of Occupation

A Licence of Occupation authorizes the holder to occupy Crown land for a given purpose for a period usually not exceeding ten years. The Licence is contractual and non-exclusive. It conveys a mere "right to occupy," and not an "interest" in the land. As a result, major improvements – including structures, buildings, and modifications to the land -- are not likely to be permitted under this form of tenure.

To protect the public interest, the Ministry often issues a Licence of Occupation where the tenure-holder does not require the long-term security of tenure. Because it does not convey an interest in the land, a Licence of Occupation does not give the holder a right to restrict public access across the licence area.

Lease

Lease tenure conveys a limited interest in the land and also allows for the construction of improvements on the land or for modifications to it. Often the applicant will have to provide a management or development plan to ensure appropriate and efficient use of a lease. The standard term for foreshore leases is thirty years.

As with other forms of tenure, a lease may be issued for a particular upland area, for a part of the foreshore, or for submerged land. The latter is usually physically distinct from and not abutting the mean ordinary low water mark.

The Ministry uses leases where the land is to be developed or improved over time and/or where the applicant requires a measure of security of tenure to obtain financing or liability insurance before undertaking development.

The long-term nature of such development makes lease tenure the most likely type to be involved in an infringement of the riparian rights of adjacent waterfront property owners. Since lease holders have an interest in the land, they technically acquire a right to restrict public access to and across the tenure area by posting or other notice. Ministry staff will often encourage leaseholders to provide public access where it is clearly not detrimental to the interests of the leaseholder.

Statutory Right-of-Way Over the Riparian Rights of Waterfront Property

Under s. 214 of the *Land Title Act*, the Crown may acquire a statutory right of way that takes precedence over the riparian rights of a waterfront parcel, thus securing the riparian rights associated with that parcel to the Crown. It can do so either by gaining the consent of the incumbent waterfront owner or, where the Crown still holds the waterfront parcel, by registering the statutory right-of-way against the parcel before it is sold or leased. The circumstances where the Crown may decide to seek a statutory right of way on its own behalf are discussed in Section 5.

Crown Grant or Fee Simple Disposition

In instances where Crown upland will be converted to private ownership, the Crown does not dispose of foreshore or the beds of adjacent waterbodies by grant or by fee simple. Maintaining such lands as a public trust is considered to be of prime importance.

Even long-term uses of the foreshore are almost always accommodated by lease tenure. As a result, permanent dispositions of Crown land are seldom involved in riparian rights conflicts.

Riparian Rights and *Land Act* Tenure Administration in British Columbia

In granting foreshore and submerged land tenure and ensuring public access to and along the foreshore, the Ministry takes the riparian rights of waterfront owners into account in the following general ways.

Protection of Land from Erosion

The Ministry does not always authorize the construction of improvements or the placing of fill for protection of waterfront property from erosion or flooding. If such improvements or fill would impinge on the right of access from an adjacent riparian property or on the public right of navigation, or if they unduly affect public passage along the foreshore, authorization may be denied.

Where such construction cannot be confined to an area above the natural boundary of the waterfront property, consent must be sought from any other waterfront property owner whose right of access may be infringed upon, before alterations to the foreshore are approved.

In general, when the Ministry approves improvements or fill below the natural boundary, it will ensure that public passage along the foreshore is maintained.

Since the right to protect waterfront property is generally exercised above its natural boundary, this right does not usually conflict with the Ministry's administration of land. However, where such improvements or fill have been located on the foreshore without the consent of the Ministry (that is, in trespass), decisions about legalizing them will not be made until the riparian rights of any adjacent waterfront property owners and the public interest are considered.
Owners of waterfront property who have suffered some degree of erosion should check with the Ministry before making improvements. If the land on which they wish to place fill or build protective structures is owned by the Crown, consent will be required.

Accretion and Erosion

Accretion

Where material gradually and imperceptibly accretes to a waterfront property and extends its natural boundary towards the water, common law holds that the property owner owns the accreted land. Because it is difficult to establish whether the land is in fact an accretion, conflicts over the ownership of purportedly accreted land often have to be resolved on a case by case basis. The provisions of the *Land Title Act* and, in rare cases, the *Land Title Inquiry Act* guide the resolution.

Where the accretion is valid and the waterfront property has thus been altered, the Ministry makes the necessary adjustments in its land administration decisions regarding the adjacent foreshore.

Erosion

A more problematic question arises when erosion moves the natural boundary of a waterfront property inland.

In the case of properties covered by a subdivision plan filed in the Land Title office, section 108(2) of the *Land Title Act* provides that the owner's title is extinguished over land that was covered by water at the time of subdivision (R. in Right of British Columbia v. Ogopogo Investment (1980), 23 B.C.L.R. 43 (B.C.S.C.)). The Ministry takes the view that title would be extinguished even if the erosion had not occurred gradually and imperceptibly but, rather, by avulsion.

This view is based on an interpretation of s. 108(2) of the *Land Title Act*, but at present** there is no case law in British Columbia on this point.

Where the property has not yet been covered by a subdivision plan, the common law and the Torrens land title system appear to be at odds. The Ministry holds that the common law concerning erosion would apply in such circumstances: that is, vhere an erosion has occurred through gradual and imperceptible processes, the Crown can lay claim to the land located below the newly-receded natural boundary.

The Crown may not be able to raise title to such land in the land title system until a court declaration has been obtained. In the Ministry's view, however, it may proceed to make land administration decisions in the interim based on the common law doctrine that eroded land is owned by the Crown.

The Ministry may have to act in the public interest on instances of erosion of property. Should a waterfront property owner decide at a later date to construct improvements or place fill at the site of the former natural boundary, the alterations might well impede public passage along the foreshore or block it altogether.

**Note that this document was originally written in 1990 and most recently amended in 1995.

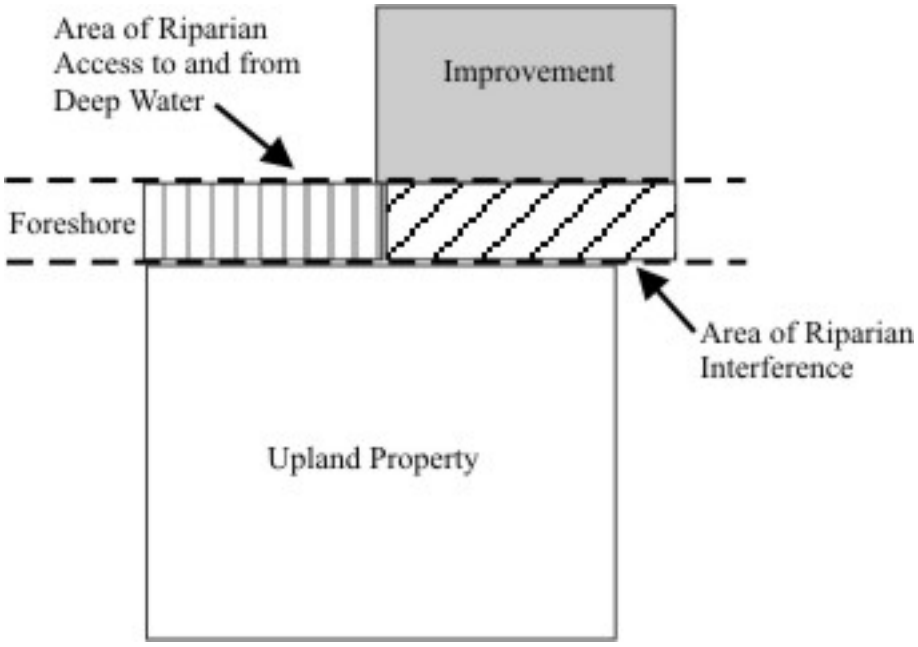

Figure 1: Tenure with Improvements Located Adjacent to the Foreshore in Front of a Riparian Owner

Access: Ingress and Egress

The final remaining riparian right - unimpeded access to and from every point along the foreshore adjacent to a waterfront property - has a significant impact on the Ministry's administration of land.

Tenure Abutting or Covering the Foreshore

Figure 1 illustrates how the riparian right of access can become a problem. This diagram shows an upland property and the adjacent foreshore and nearshore areas.

The improvement that abuts the mean ordinary low water mark in Figure 1 would undoubtedly constitute an obstruction and an actionable interference with tile owner's right of access. In this case, the property owner would not have access to deep water for the purposes of navigation from every point along the foreshore in front of the property.

It is not enough that the property owner could get to deep water from every point along the natural boundary of his property (that is, from the mean ordinary high water mark). The improvement would still constitute an infringement of the Riparian right of access.

In Attorney General of the Straits Settlement v. Wemyss (1888), 13 A.C. 192 (P.C.), it was held that the riparian right of access extends "from every part of the frontage, over every part of the foreshore." Thus, if the improvement only covered part of the foreshore, it would make no difference. The improvement would still constitute an interference.

Therefore, where a foreshore lease abuts the mean ordinary low water mark or covers part of the foreshore and also extends in front of privately owned waterfront property, it is likely that any improvements placed on that lease will constitute an interference with the owner's right of access.

Tenure Located Nearshore or Offshore

Baldwin v. Chaplin (1915), 21 D.L.R. 846 (Ont. S.C.) indicates that whether an interference with the riparian right of access has occurred will always be a question of fact. Thus, the circumstances and resolutions will differ from case to case.

In cases where a waterlot lease does not abut the mean ordinary low water mark or cover part of the foreshore but still extends in front of privately owned waterfront property, the situation is more problematic.

To make sure there is no infringement on an upland owner's right of access, the Ministry takes a conservative approach. Foreshore leases in front of private waterfront are not normally approved. This policy has been based on the finding in Redwood Park Motel Limited v. British Columbia Forest Products Limited (1953), 8 W.W.R. (NS) 241 B.C.S.C.). The decision in this case held that the Crown has no power to authorize a lessee to obstruct navigation or to unduly interfere with a riparian proprietor's right of access.

In Figure 2, an offshore lease extends in front of a privately owned waterfront property. Any improvement on that lease (such as a log boom) would interfere with the upland owner's ability to travel directly to the point marked "X" on the diagram. However, it would not prevent the upland owner from having access to deep water from every point along the foreshore (indicated by the shaded area on the diagram).

While this type of improvement might not constitute an interference with the waterfront property owner's right of access, it could be actionable as an interference with their public right of navigation. The decision in Redwood Park (p. 242) affirmed that the Crown has no power to authorize an interference with navigation:

The right of navigation in tidal waters is a right of way thereover for all the public for all purposes of navigation, trade and intercourse. It is a right given by the common law, and is paramount to any right that the Crown or a subject may have in tidal waters, except where such rights are created or allowed by an Act of Parliament. Consequently every grant by the Crown in relation to tidal waters must be construed as being subject to the public rights of navigation. It is not right of property; it is
merely the right to pass and to repass and to remain for a reasonable time.

When the Ministry locates waterlot tenures, it must ensure that any improvements will not constitute an interference with the public right of navigation. According to common law, the waterfront property owner's right of navigation is equivalent to that enjoyed by any other member of the public.
The Ministry cooperates with the provisions of the federal Navigable Waters Protection Act in locating foreshore and waterlot leases and licenses.

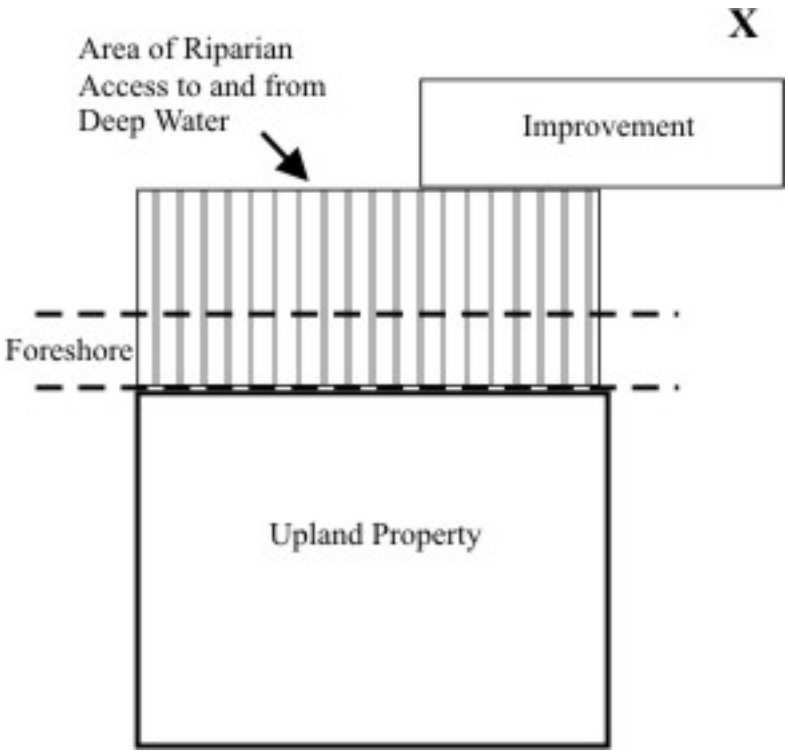

Figure 2: Tenure with Improvements Located Nearshore in Front of a Riparian Owner

Provided that an improvement, such as the one shown in Figure 2, is far enough away from the mean ordinary low water mark to allow the adjacent waterfront property owner access to deep water from every point along the foreshore in front of the property, and provided that the improvement does not hinder the public right of navigation, the improvement should not infringe on the waterfront property owner's rights.

The Baldwin decision was appealed to the Ontario Supreme Court Appellate Division in 1915. In dismissing the appeal, Justice J. Hodgins noted that:

... interference with the right of navigation which only renders access more difficult, but not impossible, is an interference with a public and not a private right and special damage must be proved by the riparian owner who complains of such interference.

While no case law precedent establishes how far offshore such an improvement would have to be located to ensure that it does not interfere with the property owner's rights of access or navigation, the Ministry has developed a guideline based on the decision of justice MacFarlane in Nicholson v. Moran (1950), 1 W.W.R. 118 (B.C.S.C.). This guideline is described in Section 5.

In questions of navigation, the federal Minister of Justice and provincial Attorney General are the only authorities able to take action where the breach of navigation affects the public but does not affect particular individuals. Individuals can only take action in situations where they can show special damage affects them. This damage usually involves interference with a commercial operation.

Summary

The riparian right of access and the right to navigation enjoyed by riparian owners, in common with the public, have the greatest impact on the Ministry's administration of land.

The riparian right of access requires that the waterfront property owner be able to get to and from deep water in a navigable craft of reasonable size from every point along the waterfront property and from every point along the foreshore directly in front of it.

Any obstruction that makes it impossible to reach every point along the adjacent foreshore from deep water is likely to be actionable. The obstruction is an infringement of the waterfront property owner’s riparian right of access.

An obstruction located in front of privately owned waterfront property, which does not infringe upon the riparian right of access, may nonetheless constitute an impediment to the owner’s public right of navigation. However, the owner must be able to show special damage or the owner will only receive the same consideration as the general public.

5. Administrative Guidelines

The following guidelines are designed to help the Ministry recognize and protect the rights of riparian property owners, as well as the interests of the general public in administering aquatic Crown land. These guidelines are general in nature. More specific procedural policies covering these matters are set out in the Ministry's Land Administration Manual.

Accretion and Change of the Natural Boundary in Favour of the Waterfront Owner

Where a riparian owner believes that there has been a change in the natural boundary of the property over a period of time, resulting either from accretion or from a receding of the level of the adjacent water body, the owner can apply to the Ministry to determine whether this new land can be included in the title. The Surveyor General, under delegated authority from the Minister, makes this decision according to the provisions of ss. 94 and 118 of the *Land Title Act*.

The factors used to decide whether the land has been accreted include:
Has the land formed gradually and imperceptibly?
Has the land grown outward from the bank, or has it emerged from the bed of the water body?
Is most of the land in question now dry?
Does the land now lie above the natural boundary?
What is the character of the soil and vegetation now found on the land? (This determination provides an indication of accretion only; it is not necessarily definitive).

Ministry regional offices can supply a list of the specific information required in applications submitted to change the extent of title to recognize an accretion.

If the accretion of land is found to be valid, there is no charge for the land and the owner's title will be amended accordingly. However, the owner will be required to pay survey costs and any administrative charges.

Erosion and Acquisition of Land by the Crown in the Public Interest

On occasion, the Ministry will find it necessary to take formal notice of the fact that a waterfront property owner's natural boundary has moved inland as a result of gradual and imperceptible erosion.

To protect the interests of the public (particularly in attempting to maintain the privilege of public foreshore access and use) and also to provide for other uses of aquatic Crown land, the Ministry may lay claim to eroded land.

According to common law, land that has been gradually encroached upon by water ceases to belong to the riparian owner and becomes the property of the owner of the bed of the water body (Southern Theosophy v. South Australia (1982), 1 All E.R. 283 and Bruce v. Johnson (1953), O.W.N. 724 (Ont. Co. Ct.)). The requirement for **gradual** encroachment is specified in A.G.B.C. v. Nielson (1956), 5 D.L.R. (2d) 449 (S.C.C.)

Section 108(2) of the *Land Title Act*, provides that in cases where the erosion has occurred before a subdivision plan covering the property in question was filed in the Land Title Office, the waterfront property owner's title to that eroded material is automatically extinguished. In the Ministry's view, this is also the case in "avulsion" (where the process has occurred suddenly) provided that the area is covered by water at the time of subdivision.

Where no subdivision plan has been filed, the Ministry believes that the common law doctrine of accretion and erosion still applies. Accordingly, in the Ministry's view, such eroded land belongs to the Crown even before the title of the waterfront property is amended to show the new water boundary.

Staff of the Ministry's regional offices may monitor areas of shoreline that are particularly subject to forces of erosion. Where erosion has clearly occurred over time and where any action by a waterfront property owner to reclaim the eroded area to the former property boundary by improvements or fill would have a negative impact on public use of the foreshore or on other uses of the aquatic Crown land, the Ministry mav assert its claim to that land. It would then seek the necessary adjustments to the title of the property.

Retaining the Riparian Rights of a Waterfront Property for the Crown

The Ministry is aware that retaining the riparian rights of waterfront property in the name of the Crown under s. 214 of the *Land Title Act* is sometimes in the public interest. In such cases the Ministry may seek the permission of an existing waterfront property owner to allow statutory right-of-way on behalf of the Crown. In cases where the upland is still Crown land, the Ministry may choose to establish such a right-of-way before allocating the parcel.

The Ministry may use this mechanism to gain or retain riparian rights in the name of the Crown where it is clear that planned foreshore uses may be affected (over the long term) by changes in the ownership of the adjacent upland and corresponding changes in consent with respect to riparian access.

The Ministry uses this mechanism selectively; it is not designed to diminish the legitimate riparian rights of the majority of waterfront property owners in the province.

Protecting the Right of Access in the Case of Foreshore Tenures Involving Improvements

Unless the Crown has secured the riparian rights of the adjacent waterfront property, the Ministry will not allow foreshore tenures (on which improvements may be added) in front of privately owned upland without the written consent of the owner. Such consent does not abrogate the riparian rights that run with the land and is not binding on subsequent owners of the property. Where the upland is held in some form of tenure but not in fee simple, the Ministry attempts to ensure that the term of tenure issued on adjacent aquatic Crown land is concurrent with the term of the upland tenure.

If the Ministry has established a statutory right of way in the name of the Crown, thus securing the riparian rights, no consent is required from subsequent upland owners.

Protecting the Right of Access in the Case of Nearshore and Offshore Tenures Involving Improvements

No firm guidelines exist for determining how far out into the water an improvement must be located so that it does not interfere with either the waterfront property owner's right of access or the public right of navigation.

1n order to "err on the side of caution," the Ministry follows the remarks of Justice MacFarlane in Nicholson v. Moran (1950), 1 W.W.R. 118 (B.C.S.C.) as a policy guideline. In discussing interference and reasonable access, Justice MacFarlane used a boat 30 to 40 feet long with a draught of from 3.5 to 5 feet as a standard to determine reasonable access. Such a boat is "a boat of reasonable size to use in safety in the adjacent waters, being the waters of the Gulf Islands, on practically all occasions."

The Ministry recognizes that interference with access and navigation has to be assessed differently in every situation because of variables such as the shape of the coastline, depth of water, tides, and so forth. However, Ministry staff will generally attempt to locate nearshore and offshore tenures so that at lowest tide a 40-foot boat could still have comfortable access to every point along the foreshore adjacent to the waterfront property, and to and from deep water with enough room to maneuver and turn around.

Providing that these guidelines are followed and that the tenure does not create an interference with the public right of navigation or specially damage the waterfront property owner, consent of the owner should not be required.

The Right of Access and Tenure Not Involving Improvements

Temporary permits and licences of occupation issued for the foreshore or restricted to nearshore or offshore Crown land should not require the consent of the property owner, if they do not involve improvements that would impede access.

If such tenures do involve improvements, however, even temporary ones, the guidelines given above would apply.

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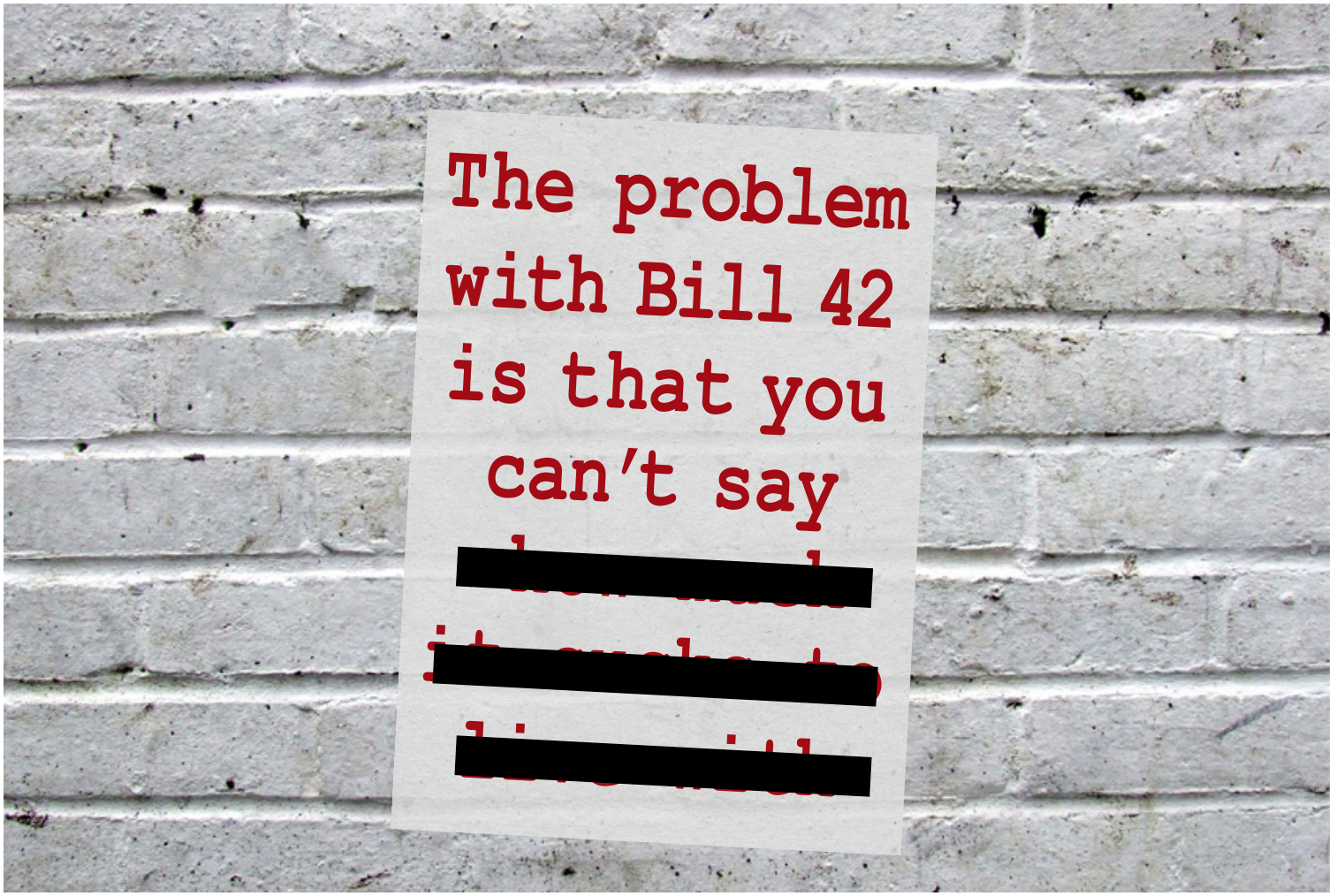
Election Chill Effect

The Impact of BC's New Third Party Advertising Rules on Social Movement Groups

by Shannon Daub and Heather Whiteside

October 2010



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ELECTION CHILL EFFECT: THE IMPACT OF BC'S NEW THIRD PARTY ADVERTISING RULES ON SOCIAL MOVEMENT GROUPS

October 2010

Canadian Centre for Policy Alternatives – BC Office, BC Civil Liberties Association, and the BC Freedom of Information and Privacy Association

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Summary

"For groups to be scared to speak up about the government…or scared to know what they could and could not do, is really bad. It was not a good feeling."

IN MAY 2008 THE BC GOVERNMENT PASSED BILL 42, the Election Amendment Act, which limits spending on election advertising by "third parties" (any individual or group other than political parties and candidates running for office).

Bill 42 had significant and disturbing impacts on public debate in the lead-up to the 2009 provincial election, particularly for "social movement organizations:" charities, non-profits, coalitions, labour unions and citizens' groups. These problems resulted from features of the third party advertising rules other than the spending limits themselves, in particular:

- *An extremely broad definition of election advertising:* The new definition covers a host of activities that most people likely would not think of as "advertising." It includes non-partisan analysis of public policy issues and public communication that "takes a position on an issue with which a registered political party or candidate is associated." The definition does not rule out free or low-cost tools like websites, social media, emails, petitions, or public forums.
- *Zero-dollar registration threshold:* Third parties must register with Elections BC before they conduct any "advertising," even if they plan to engage *only* in free or low-cost activities; all registered third parties are publicly listed as election advertising sponsors on Elections BC's website.
- *Volunteer labour defined as an election advertising "expense":* If a third party uses volunteers in its advertising activities, the market value of their work must be reported as an expense. Political parties and candidates, in contrast, are not required to report volunteer labour as an election expense.
- *60-day pre-campaign period:* Rather than limit third party advertising during the official 28-day election campaign only, the new rules extended the limits to an additional 60-day pre-campaign period. The BC Supreme Court subsequently struck down the spending limits during this extra 60 days, but the requirement to register and report on advertising activities for the entire 88 days remains in force.

Bill 42 sparked heated media debate and a strong public reaction, mostly focused on how it would affect the speech rights of "big spenders" like corporations and large unions. Indeed, the new third party advertising rules were created, according to then-Attorney General Wally Oppal, to ensure electoral fairness—to level the playing field so those with the deepest pockets cannot dominate the election discourse. Contrary to this objective, however, the rules also extensively regulate the activities of "small spenders"—individuals and groups that spend little or nothing on election advertising.

This study examined the impact of BC's new third party advertising rules specifically on social movement organizations in the lead-up to the 2009 provincial election. Sixty-five social movement groups participated in the research, 60 of which were aware of the new third party advertising rules prior to being contacted. Most are non-profit societies, 10 per cent are coalitions and 27 per cent are labour groups. Sixty-one per cent have annual budgets of less than $500,000.

LEGISLATING CONFUSION

- The rules led to widespread confusion among study participants, which resulted in contradictory and incorrect interpretations, and arbitrary responses such as self-censorship.
- Participants had particular difficulty determining whether the very broad new definition of advertising and the inclusion of free and low-cost communication activities meant that their normal, mandate-driven education and advocacy work was suddenly re-defined as election advertising.
- Eighty-seven per cent of participants reported finding the definition of election advertising somewhat or very confusing.
- Confusion persisted for many groups despite expert advice from lawyers or Elections BC.

"Like other non-profit organizations, our website is our primary tool of communication with and information for our members and the general public…But with these rules, the very same website—unchanged—suddenly becomes election advertising. This is neither logical nor supportive of democracy."

REGULATING THE WRONG GROUPS

- An analysis of the disclosure reports filed with Elections BC by 232 organizations registered as third party sponsors reveals that 59 per cent spent less than $500 during the 2009 election campaign period. More than three quarters (76 per cent) spent well below even the $3,000 limit for a single constituency.
- Because most non-profits are careful to remain non-partisan, and because registered charities are strictly prohibited under federal law from engaging in partisan activities, the prospect of being publicly labeled as a "third party advertising sponsor" created anxiety for many of the participant organizations.
- Six participant groups censored their public communication activities specifically in order to avoid having to register as advertising sponsors. Ten others did not register because they felt the law was illegitimate, as it does not distinguish between advertising versus information and analysis that contributes to healthy democratic debate.

- The third party advertising rules disproportionately burden small organizations, which are often entirely volunteer-run or have only one or two staff members. Small groups tended to spend inordinate amounts of time figuring out the rules and their potential reputational impact, tracking financial contributions and expenses and second-guessing their decisions—which disrupted their core activities and services.
- The rules were particularly problematic for small spenders and charities, many of which represent vulnerable citizens and less economically powerful interests—the very groups that should benefit from third party advertising limits.

CHILL EFFECT

"The term 'election advertising' is a misnomer; it's actually 'speaking out legislation.'"

The most troubling finding of this research is that a significant number of organizations self-censored in order to comply with the new election advertising rules—including both registered and non-registered groups. In other words, the rules cast an anti-democratic chill over election discourse. As a result, public debate during the months leading to the 2009 BC provincial election did not benefit from the full range of perspectives historically made available to voters by local charities, non-profits, coalitions and other social movement organizations.

- Forty per cent of participants altered their normal or previously planned activities as a result of the new rules. The spending limits themselves were only relevant to a few of these alterations (i.e., some reduced their activities in order not to over-spend the limits). Between 27 and 33 per cent of participants self-censored for other reasons, including confusion about the rules, decisions to err on the side of caution, and/or to avoid having to register as an election advertising sponsor.
- Most of the activities the participants altered had little to do with commercial advertising. For example, nine groups did not post new material on their websites; four removed previously posted material from their websites; four altered the tone or content of their communications; five temporarily halted an existing campaign or project; three refrained from using online social networking sites; four refrained from issuing or endorsing a call for changes to government policy or legislation; and one group withdrew from two coalitions.

Definition of Election Advertising in BC's Election Act (S. 228)

"Election advertising" means the transmission to the public by any means, during the period beginning 60 days before a campaign period and ending at the end of the campaign period, of an advertising message that promotes or opposes, directly or indirectly, a registered political party or the election of a candidate, including an advertising message that takes a position on an issue with which a registered political party or candidate is associated, but does not include

(a) the publication without charge of news, an editorial, an interview, a column, a letter, a debate, a speech or a commentary in a bona fide periodical publication or a radio or television program,

(b) the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value, if the book was planned to be made available to the public regardless of whether there was to be an election,

(c) the transmission of a document directly by a person or a group to their members, employees or shareholders, or

(d) the transmission by an individual, on a non-commercial basis on the internet, or by telephone or text messaging, of his or her personal political views.

- Five groups refrained entirely from public commentary in the mainstream media, an activity that is explicitly exempt from the definition of "election advertising."

KEY RECOMMENDATIONS

The following recommendations would, provided they are implemented together, clarify BC's third party advertising rules and shift their focus away from small spenders. We are of the view, however, that if these recommendations are not implemented, Bill 42 should be repealed, as its harmful effects on the democratic process outweigh any benefits.

The provincial government should abandon its appeal of the BC Supreme Court ruling that struck down spending limits during the 60-day pre-campaign period, and amend BC's Election Act to:

- Remove all references and requirements related to the 60-day pre-campaign period.
- Revise the definition of election advertising so that it is easier to interpret and focuses more narrowly on commercial advertising activities, rather than the broad range of political speech activities currently encompassed. A revised definition of election advertising should also adequately deal with the realities of online communication.
- Establish minimum spending thresholds, indexed to inflation, below which third parties would not be required to register. These should be set at $1,000 for advertising within a single constituency, and $5,000 for province-wide advertising.
- Require third parties to register only once they reach the threshold, as is the case in the Canada Election Act.
- Exempt charities from the third party advertising rules altogether, as they are already federally regulated and in order to achieve registered charity status must demonstrate that they are non-partisan and make a contribution to the public good.
- Exempt volunteer labour from the definition of an election advertising expense (as is the case federally, and as the BC Election Act does for political party and candidate expenses).

"We meet in each others' homes, in our living rooms, and we do it all for free… I really think that these kinds of rules, it's good to have them…for big corporations, for unions. …But, it shouldn't be about us small groups that are volunteer based that are doing things out of our living rooms for goodness' sake."

The following additional recommendations are particularly important if the provincial government does not fix the third party advertising rules prior to the next election:

- The provincial government should provide additional funds to Elections BC to improve administration of the rules.
- Elections BC should develop case examples that explain more clearly and concretely how the rules apply, in particular with regard to what kinds of communication activities and messages are covered.
- Elections BC should provide advance rulings to groups seeking clarity about how the rules work in relation to their specific communication activities.

Ultimately, third party advertising limits should not be enacted in a vacuum, but rather should be considered in the context of a broader examination of electoral reforms that can deepen democratic rights and increase participation in elections.

SECTION 1

Introduction

Public debate on the new rules was focused mainly on "big spenders" like corporations and large unions. As the election drew nearer, however, the CCPA began to hear anecdotal evidence from charities, non-profits and small coalition groups that they were struggling to interpret the new rules and in some cases were self-censoring as a result.

In May 2008, the BC government brought in new rules governing how much third parties can spend in the lead-up to a provincial election. These rules prohibit individuals and groups (other than political parties and candidates running for office) from spending more than $150,000 province-wide or $3,000 in a single constituency on a broad range of communication activities defined as "election advertising."

The new third party advertising rules, introduced through Bill 42 (the Election Amendment Act), were highly controversial. Most of the media coverage and broader debate surrounding them focused on whether it is acceptable to limit the speech rights of "big spenders" like corporations and large unions. As the 2009 provincial election drew nearer, however, the CCPA began to hear anecdotal evidence from charities, non-profits and small coalition groups that they were struggling to interpret the new rules and in some cases were self-censoring as a result.

The difficulties these groups experienced—and that the CCPA itself also encountered—relate to problematic features of the rules other than the spending limits themselves. These include:

- *A very broad definition of election advertising:* Bill 42 established a wide-ranging definition that captures many speech activities most people would not likely think of as "advertising," such as non-partisan analysis of government policies posted on websites, distributed using social media tools or published in a brochure. Election advertising is defined to include any advertising message "that promotes or opposes, directly or indirectly, a registered political party or the election of a candidate, including an advertising message that takes a position on an issue with which a registered political party or candidate is associated," with some exemptions.[1] See *Definition of Election Advertising* on page 6 for the full definition.

1 Province of BC, *Election Act*, sec. 228.

- *A zero-dollar registration threshold:* The new rules did not set a minimum spending threshold below which third parties need not register with Elections BC. Even if a group (or individual) plans to engage *only* in free "advertising" activities (using no-cost tools like Facebook, for example), or spend just a few dollars (such as photocopying a brochure), the group is required by law to register *before* it even conducts its advertising activities.[2] Registered groups (and individuals) are then publicly listed on the Elections BC website as election advertising sponsors, and are required to file an extensive disclosure report listing all recent financial contributions and details about advertising expenses (including the "market value" of no-cost activities).

- *Volunteer labour is included in the definition of an election advertising expense:* If a third party uses volunteers in its "advertising" activities, the market value of this labour must be reported as an expense.[3]

- *60-day pre-campaign period:* Rather than limit third party advertising during the election campaign only (i.e., the four-week lead-up to election day), the new rules extended the limits to an additional 60-day pre-campaign period.[4] The BC Supreme Court subsequently struck down the spending limits during this extra 60 days, but the requirement to register and report on advertising activities remains in force. Thus, if a third party wishes to conduct election advertising during the 60-day pre-campaign period, it must still register with Elections BC and report on its activities (even though it can spend without limit during that time).

"There's a fine line between advertising and promotion, and then education and information sharing. And that's where our efforts as an organization are — trying to spread information, so that voters can make educated decisions."

These features of BC's third party advertising rules, combined with significant penalties for violations, created a great deal of confusion and anxiety for small groups (many of which have annual budgets smaller than the provincial advertising limit of $150,000) and organizations that spend little or nothing on commercial advertising. Did they need to register or not? If so, would it affect their status as a registered charity, or their reputation as a non-partisan organization? If they misinterpreted the rules or decided not to register, would members of their board or staff be hit with fines or even go to jail? Did the rules apply to informal groups, such as networks or unincorporated non-profits? Exactly what activities "counted" as election advertising? Could a group's ongoing, mandate-driven education and advocacy activities suddenly be defined as election advertising by these new rules? Would it be safer to simply stop doing such activities until the election was over? Every conversation about the new rules seemed to produce new questions, the answers to which were not evident from reading the legislation or the information available on Elections BC's website.

This research study set out to assess whether problems interpreting the new rules were experienced broadly among social movement groups in BC (charities, non-profits, coalitions, labour unions and citizens' groups); to document the impacts of the new rules on their public communication activities in the lead-up to the 2009 provincial election; and to assess whether these impacts support the rationale of electoral fairness on which the rules are based.

The paper begins with a brief history of third party election regulation in Canada and some context about Bill 42 in BC (below). Section 2 details the method used in the study, and provides an overview of the organizational characteristics of the groups that participated in

2 Ibid., sec. 239.
3 Ibid., sec. 228.
4 Ibid.

the research. Sections 3, 4 and 5 detail the key findings that widespread confusion resulted from the rules; the rules over-regulate "small spenders" and charities; and, the rules led to a chilling effect for a significant number of organizations. Recommendations to improve BC's third party advertising rules are made in the conclusion.

BACKGROUND: CANADIAN ELECTIONS, THIRD PARTIES AND ELECTORAL FAIRNESS

Two fundamental democratic rights are at stake in the regulation of third parties in elections—freedom of speech on one hand, and on the other, the right to meaningful participation in elections, which includes the public's right to be informed by a broad diversity of viewpoints.[5] In Harper v. Canada (2004), the Supreme Court ruled that third party advertising limits represent a legitimate infringement on free speech under Section 1 of the Charter of Rights and Freedoms.[6] Section 1 establishes that Charter rights are subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."[7] The court's ruling upheld federal third party limits on the basis that they serve the objective of electoral fairness, by preventing economically powerful individuals and/or groups from dominating election discourse and drowning out others' voices, including those of candidates and political parties.[8]

"Normally we would be trying to get noticed, get our stances on issues noticed during an election period…and finding ourselves [this time] going 'ahh, maybe we'll kind of keep our heads down.' So it was all about not drawing attention."

The burden of showing that infringements on Charter rights are justified under Section 1 is on the government, however, and such infringements must meet a very high standard. While in Harper v. Canada the court was unanimous in finding that third party advertising limits are a legitimate infringement on free speech given the objective of electoral fairness, the dissenting judges felt the dollar limits were overly restrictive. And Justice Bastarache, writing for the majority, cautioned that spending limits "must be carefully tailored."[9]

Federal efforts to regulate third party interventions in elections date back to legislation enacted in 1974, in response to recommendations made by the 1966 Barbeau Committee on Election Expenses.[10] Since the 1980s, various iterations of third party spending limits have been subject to a series of Charter challenges, mainly in the Alberta courts. In 1997, the Supreme Court of Canada established electoral fairness as a valid legislative aim for the first time in Libman v. Quebec—though it nevertheless overturned the third party limits set out in Quebec's Referendum Act on the grounds that they were overly restrictive.

The current federal framework was adopted in 2000, but was challenged successfully in the Alberta courts by Stephen Harper (in his capacity at that time as President of the National Citizens Coalition). The rules enacted in 2000 came into force only after the 2004 Supreme Court decision discussed above.

Only one other province—Ontario—had third party advertising rules in place prior to 2009, but Alberta (Bill 205) and New Brunswick (Bill 10) have recently enacted new rules.

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5 Supreme Court of Canada, *Harper v. Canada (Attorney General), 2004 SCC 33, [2004] 1 S.C.R. 827*.
6 Ibid.
7 *Canadian Charter of Rights and Freedoms*, sec. 1.
8 Supreme Court of Canada, *Harper v. Canada (Attorney General), 2004 SCC 33, [2004] 1 S.C.R. 827*, 46-47.
9 Ibid., 51.
10 Elections Canada, "Chronology of the Federal Campaign Finance System of Third Parties in Canada."

BILL 42 AND THIRD PARTY LIMITS IN BC

Bill 42 was not the first effort to limit third party advertising in BC. In 1995, the province's NDP government introduced third party limits of $5,000, along with the requirement that third party advertisers register with Elections BC and report their expenditures. These rules applied only during the 28-day campaign period and used a more limited definition of election advertising than the one enacted in 2008. The spending limits were overturned by the BC Supreme Court in 2000 (following a challenge by the newspaper group Pacific Press). However, the requirement that third parties register with Elections BC and report expenditures remained in force during subsequent provincial elections.

In 2001, the newly elected Liberal provincial government introduced fixed election dates. During the next general election in 2005, the government faced an intensive advertising campaign by several public sector unions critical of its first-term record. Together these unions spent more than $3 million.[11] Fixed election dates—which allow third parties to plan well in advance of election day—were cited by the government as a key reason for reintroducing third party limits, and in particular for creating a "pre-campaign" period.[12]

The broader rationale of electoral fairness established in Harper v. Canada was also echoed by then-Attorney General Wally Oppal when he introduced Bill 42.[13] He argued third party advertising limits were needed to create a more level election playing field and to prevent "the hijacking of the process by wealthy participants."[14] The labour movement was widely viewed as the unofficial target of Bill 42.[15]

When then-Attorney General Wally Oppal introduced Bill 42, he argued third party advertising limits were needed to create a more level election playing field and to prevent "the hijacking of the process by wealthy participants."

While the federal limits served as a framework for Bill 42 in BC, there are several crucial differences relevant to this study, including:

- Bill 42 capped third party election advertising at $150,000 province-wide and $3,000 in a single electoral district. Federally, the same dollar limits apply, but during the 28-day election campaign period only. In contrast, when Bill 42 was first introduced, it extended the provincial limits over an extra 120 pre-campaign period.[16] As discussed below, the pre-campaign period was later shortened to 60 days and then partially overturned by the BC Supreme Court.
- The definition of advertising set out in Bill 42 is somewhat broader than the federal definition.
- There is no minimum threshold for registration, whereas federally a third party need not register until it spends $500 on election advertising.
- Volunteer labour is included in the definition of an advertising expense, whereas federally it is excluded.

11 BC Supreme Court, *British Columbia Teachers' Federation v. British Columbia (Attorney General), 2009 BCSC 436*, 59.
12 Province of BC, "Hansard – Official Report of Debates of the Legislative Assembly – Tuesday, May 27, 2008 a.m. – Vol. 35, No. 1 (HTML)," 1025.
13 Province of BC, "Hansard – Official Report of Debates of the Legislative Assembly – Wednesday, April 30, 2008 p.m. – Vol. 31, No. 8 (HTML)," 11773.
14 Justine Hunter, "Third parties loudly boo legislation to tone them down," S.3.
15 Michael Smyth, "Premier's gag order aims to silence public-sector unions; Pre-Election tactic."
16 Province of BC, *Bill 42 – 2008: Election Amendment Act, 2008 [First Reading]*.

See Appendix on page 47 for a more detailed comparison of relevant sections of the third party advertising rules set out in BC's Election Act and the Canada Elections Act.

When introduced, Bill 42 set off a storm of controversy. Media commentators, newspaper editorial boards, labour unions, civil libertarians, business groups, lawyers and others took issue with the new rules, which they viewed as an attack on free speech—a "gag law" intended to stifle criticism of the government's policies.[17] Of particular concern was the 120-day "pre-campaign period," an unprecedented provision in Canadian electoral law. Combined with the 28-day election campaign period, it meant the spending limits would be in force for nearly five months prior to the election—a period that would include the Throne Speech, the provincial budget, and the introduction and passage of new legislation.[18]

"Our activities were much less than they might otherwise have been because we had to spend so much time trying to figure this out… It was onerous."

In response to these concerns, the government cut the pre-campaign period in half, a move that did little to quell the controversy. The amended Bill 42 became law on May 29, 2008, and a group of labour unions subsequently filed a court challenge, arguing it violated rights to freedom of expression and freedom of association under the Charter. On March 30, 2009—less than two months before the May 12 provincial election—the BC Supreme Court struck down the spending limits during 60-day pre-campaign period, leaving the rules otherwise intact.

17 See, for example: Michael Smyth, "Hypocritical Libs are killing free speech – B.C. gov't playing mean to keep critics off its back"; *The Vancouver Sun*, "Third-party spending laws are unnecessary and unwarranted."; Vaughn Palmer, "Campbell goes with his interests now, not his principles from the past"; Justine Hunter, "Third parties loudly boo legislation to tone them down"; Lindsay Kines, "B.C. Liberals' gag law triggers political uproar; Bill 42 would slap limits on advertising for five months prior to election date"; and BC Civil Liberties Association, "BCCLA Opposes Ad Restrictions in Bill 42."

18 In 2001, the provincial government introduced fixed election dates, the second Tuesday in May every four years. The Throne Speech typically is made on the second Tuesday in February, and the BC Budget is tabled on the third Tuesday in February.

SECTION 2

Method

THIS RESEARCH SET OUT TO EXAMINE the effect of BC's new third party election advertising limits on social movement organizations in the period leading up to, and immediately following, the May 12, 2009 general provincial election. We use the term "social movement organization" broadly in this paper and include non-profits, charities, advocacy groups, labour unions, citizens' groups, and coalitions. These organizations may be formal (i.e., legally constituted) or informal; all have non-profit aims and structures.

The study used a sequential, mixed-methods research design, conducting a structured survey of a sample of social movement organizations, followed by in-depth semi-structured interviews (by phone and email) with a smaller subsample. The study also draws on a review of relevant public policy, jurisprudence, and academic and non-academic literature. This included a review of media coverage related to the new rules. Recent developments in other provinces relating to third party spending restrictions were also examined. Finally, an analysis was conducted of all filings submitted by 2009 third party advertising sponsors to Elections BC.

The survey was distributed to a purposive sample of approximately 380 social movement groups in BC during September and October 2009. The aim was to send the survey to a mix of registered and non-registered groups.[19]

The survey sampling frame of 380 social movement organizations was constructed in August, September and October 2009. This sampling frame included registered (195) and non-registered (185) groups, of a variety of organizational types (non-profits, charities, coalitions, neighbourhood associations, formal and informal citizens' groups, and labour unions). These organizations worked across a variety of issue areas (such as social services, the environment, labour, housing, people with disabilities, child and family services, mental

The survey was sent to groups that worked across a variety of issue areas—social services, the environment, labour, housing, people with disabilities, child and family services, mental health, the arts, women's rights, and others.

19 The sampling frame was compiled from the CCPA's own extensive contacts; publicly available lists (for example, an environmental network); and the list of all 240 organizations registered as 2009 election advertising sponsors, which was captured on June 23, 2009 from the Elections BC website and coded for social movement groups (195 of 240).

health, the arts, women's rights, and others), with different mandates (education, advocacy, research, social services provision, and membership-based services). We did not include businesses (which are for-profit entities, not social movement organizations), business associations (which may be structured as non-profit societies but whose aim is to support or further the interests of businesses) or individuals.

The survey was sent primarily by email. Over the course of four weeks, three attempts were made to contact groups by email. The survey was sent by mail when a functioning email address was not available. Sixty-five valid surveys were returned,[20] for a response rate of 17 per cent. Survey responses were analyzed using SPSS software.

"I was very surprised to hear that we needed to register with Elections BC, considering we are a completely non-partisan association and our only interest in 'advertising' was to bring [these] issues to the fore during the campaign period so that candidates from all political parties were aware of the importance of provincial investment in [these] initiatives and programs. We spent $0 on this campaign."

Follow-up interviews were conducted with 11 groups in fall 2009. These were in-depth, semi-structured interviews, conducted over the phone and in person. Of the 11 groups, six had registered with Elections BC as election advertising sponsors and five had not. Fourteen other groups responded to follow-up queries.

Participants were asked whether they were aware of the third party election advertising limits prior to receiving the survey. Five of 65 were not, and any responses they provided to subsequent survey questions were deleted from the sample. The survey asked for details about the participating organization (see Table 1); what activities the group undertook during the 2009 provincial election campaign period; whether it registered as a third party advertising sponsor; whether the group sought legal advice and/or assistance from Elections BC; whether the group altered its normal activities as a result of the new third party advertising limits, and if so, what activities were altered; and about their views on the new rules. Participants that did not register as third party advertising sponsors were asked questions about their decision and whether they sought legal advice and/or assistance from Elections BC. Participants that did register as advertising sponsors were asked whether they sought legal advice and/or assistance from Elections BC, and for details about their spending on election advertising.

Given the potential legal implications of asking organizations to disclose information about their compliance with the law, all research participants were assured of confidentiality, and all survey and interview data are reported anonymously in this study. Quotes and comments from the surveys and interviews have been altered to remove identifying information about the group or interviewee (specific words or references that might identify them were removed, and all interviewees are described using the male gender). Any references in this paper to specific organizations were drawn from publicly available statements or examples discussed in media stories.

A request for information was also sent to Elections BC regarding the administration and enforcement of the third party advertising rules in the 2009 election. The response received was reasonably timely and very thorough.

20 One additional survey was deleted from the sample because it was from a group not relevant to the focus of this study.

PROFILE OF PARTICIPANT ORGANIZATIONS

Table 1 offers a breakdown of the study participants by organizational characteristic for the overall sample, as well as by registered and non-registered status, and by whether groups altered their activities as a result of the rules. The five groups that were not aware of the third party rules before receiving the survey are not included below, and subsequent references to "all participants" do not include them. (The five non-aware groups included three non-profits, two coalitions and one "other"; four are charities.)

Table 1: Profile of study participants and responses to new third party advertising rules

	Total		Did your organization register as a third party advertising sponsor with Elections BC for the 2009 provincial election?		Did your organization alter its normal or previously planned activities or public statements in any way as a result of the new third party advertising rules?	
	#	%	Registered	Did not register	Altered activities	Did not alter
			%	%	%	%
All respondents n = 60	60	100	52	48	40	60
Type of organization (n=60)			% of registered	% of did not register	% of altered	% of did not alter
Non-profit society	34	57	29	86	38	69
Coalition	6	10	16	3	13	8
Informal/semi-formal network	3	5	3	7	0	8
Labour union or association	16	27	52	0	50	11
Other	1	2	0	3	0	3
Is organization a registered charity? (n=57)						
Yes	21	37	14	59	19	47
No	36	63	86	41	81	53
Organization's 2008 operating budget (n=59)						
Less than $100,000	19	32	33	31	29	34
$100,000 – $499,000	17	29	23	35	25	31
$500,000 or more	23	39	43	35	46	34
Organization's primary activities (n=60, multiple responses allowed)						
Social/community services	16	27	13	41	13	36
Legal services	4	7	7	7	17	0
Health services	1	2	0	3	4	0
Education	32	53	52	55	54	53
Advocacy	42	70	77	62	83	61
Research	14	23	26	21	38	14
Other	13	22	26	17	25	19

SECTION 3

Legislating Confusion

Confusion about the rules resulted in arbitrary, inconsistent and incorrect interpretations of the rules for a significant number of participants in the lead-up to the 2009 provincial election.

The surveys and interviews revealed widespread confusion about BC's new third party election advertising rules. Uncertainty surrounded what exactly constitutes election advertising; whether a group's activities warrant registering with Elections BC; and how to report expenses. Confusion persisted for many groups despite receiving advice from lawyers and Elections BC. Confusion about the rules resulted in arbitrary, inconsistent and incorrect interpretations of the rules for a significant number of participants in the lead-up to the 2009 provincial election.

CONFUSION ABOUT WHAT CONSTITUTES ELECTION ADVERTISING

Survey participants were asked how easy or difficult they found it to understand the definition of election advertising in relation to their organization's activities. Eighty-seven per cent reported finding it somewhat (63 per cent) or very (23 per cent) confusing. (The definition of election advertising as spelled out in the Election Act was included in the survey for reference.) Participants' comments also indicated widespread difficulty interpreting the definition. For example:

> *The challenge is that the legislation is so nebulous that the only thing they can do is provide more examples and more details for one to have to read through—the direction [that they do provide] is pretty nebulous as well.*

Many participants thought of election advertising as commercial advertising activities (such as mainstream media ads, billboards or lawn signs) with partisan messages. They found it difficult to interpret the much broader definition in the Election Act.

All of the groups in this study have mandates related to one or more issues associated with BC's political parties. As Justice Cole noted in his March 2009 ruling:

> *Practically speaking, it is not readily apparent when an issue is not associated with a candidate or political party. The Liberal Party's campaign platform for the 2005 election demonstrates the extent to which this is the case…[It] sets out the*

> *party's platform regarding a wide range of topics: education, including life-long learning and advanced education; the arts; cultural diversity; healthier living and physical fitness; health care; seniors; children and families; First Nations; women; public safety; democratic reform; partnerships with local governments; parks; environmental protection; job creation; free enterprise; income taxes; research and technology; forestry industry; sustainable development in the energy and mining industries; the 2010 Olympics; tourism; new "gateways" to the Asia Pacific; transportation; northern development; regional growth; and relations with the federal government and other provinces. Against this platform, it is difficult to conceive of an issue that is not associated with the Liberal Party. [emphasis in original].*[21]

Participants had difficulty figuring out whether this effectively meant that nearly every organization in the province was thus a third party advertiser, or whether some aspect of the tone, content or purpose of their communications qualified it as election advertising.

The executive director of one group was advised that communication dealing with an issue that is associated with a political party could be considered advertising depending on its tone and content. He described sitting in front of his computer while on the phone to an Elections BC representative, jointly combing through the organization's website to determine which sections included "advertising messages." However, he was unable to clearly understand the rationale for why some sections of the site qualified as advertising and others did not. Since virtually all of the group's public statements relate to government policies one way or another, in the end he simply labeled the entire website with the authorization statement that must appear on third party advertising messages. Similarly, another group decided to label every communication it put out during the campaign period as advertising—including exempt communication such as emails to members—just to be sure it didn't inadvertently break the rules.

"When I'd tell people… 'You know, it's election advertising,' they'd say 'We don't do election advertising. We can't afford to run ads.' But it's not about running ads, you know, so that's the biggest misunderstanding."

Participants also found it difficult to understand the wide range of activities captured by the broad definition of advertising, which includes "the transmission [of an advertising message] to the public by any means." For example, one of the interviewees related the experience of trying to explain to people from other organizations that their group might need to register as third parties:

> *When I'd tell people…"You know, it's election advertising," they'd say "We don't do election advertising. We can't afford to run ads." But it's not about running ads, you know, so that's the biggest misunderstanding.*

Participants also found it difficult to interpret the four categories of exemptions. For example, one group commented:

> *The overly-broad definition of election advertising remained questionable to us, and the fuzziness of the exceptions (e.g. what's a "bona fide" periodical—does it include electronic publications?) left us unclear on their application to our circumstances.*

More importantly, the exemptions do not rule out a host of common communication activities and tools used by these groups, such as websites, online social media tools (such as

21 BC Supreme Court, *British Columbia Teachers' Federation v. British Columbia (Attorney General), 2009 BCSC 436*, 106.

Facebook groups), email broadcasts, brochures, posters, petitions, rallies or protests, public forums and others.

In the survey comments and interviews, participants described conflicting understandings of what activities are captured by the definition. For example, some groups had the impression that public events (such as rallies, protests or all-candidates meetings) do not "count" as advertising, and that any materials produced to promote those events, such as handbills or posters, were also exempt. At least one of these groups had been in contact with Elections BC to get help interpreting the rules. Other groups had the opposite interpretation. One of them refrained from organizing a public all-candidates debate during the campaign period as a result. Another stated that it was required to monitor and report the costs of organizing and promoting a public meeting.

"Like other non-profit organizations, our website is our primary tool of communication with and information for our members and the general public… [W]ith these rules, the very same website—unchanged—suddenly becomes election advertising. This is neither logical nor supportive of democracy."

The question of "intent" was particularly troublesome for a significant number of participants. That is, activities that groups undertook or materials they produced in the normal course of their work—that they would not normally think of as "advertising" and that were not undertaken with the intention of affecting the outcome of an election—were transformed during the election into third party advertising messages. Their confusion was compounded by the fact that it doesn't matter when such materials are created—as long as they are publicly communicated during the pre-campaign or campaign periods, they are considered to be advertising messages. For example, one participant commented:

> *Like other non-profit organizations, our website is our primary tool of communication with and information for our members and the general public. It's also an important public accountability tool—who we are and what we stand for is clearly shown and publicly accessible. But with these rules, the very same website—unchanged—suddenly becomes election advertising. This is neither logical nor supportive of democracy.*

Another group noted that:

> *Most of the materials I distributed [and reported as advertising to Elections BC] were the same exact materials I have been distributing for the past year.*

A third described the uncertainty about what constitutes advertising that lingered after the group decided not to register as an advertising sponsor:

> *There was more of a generalized concern that things that we do in our normal course of business, that would have been there on the website during an election, might have been interpreted in a way that suggested we were entering into a lobbying activity.*

It is not surprising, then, that when asked to characterize the definition of advertising, 87 per cent said it is too broad and restricts too many activities. Neither is it surprising that Elections BC states in one of its Frequently Asked Questions documents that "the definition of advertising is broad and in some cases it can be difficult to determine if an item or activity is election advertising."[22]

22 Elections BC, "Frequently Asked Questions: Election Advertising, Election Act Part 11," 1.

CONFUSION ABOUT WHETHER TO REGISTER

Participants reported extensive confusion about whether they needed to register as third party advertising sponsors. Unlike in the Canada Election Act, BC's third party advertising rules do not set out minimum a spending threshold below which individuals and groups need not register. Remarkably, Elections BC's own website states, "Election advertising sponsors must be registered with the Chief Electoral Officer, even if the election advertising they are conducting does not cost any money."[23] The inclusion of no-cost activities as third party advertising expenses added to groups' confusion and led to the adoption of contradictory strategies by various "small spenders."

Confusion about the definition of election advertising, compounded by the zero-dollar threshold, led at least some participant groups to not register when they likely should have. One in three that did not register chose this course of action because they did not believe the new third party advertising rules applied to their organization's activities (see Table 2). Non-registered groups were somewhat less active than registered groups during the election campaign, but engaged in fairly similar activities (see Table 3). Indeed, of all the 29 non-registered participant groups, there are only five to whom the advertising rules quite clearly did not apply based on the activities they reported undertaking in the survey and selective follow-up interviews, and a brief review of their websites.

"Elections BC was confused about whether we needed to register, but advised us to do so because then our bases would be covered."

Table 2: Organization's reason for not registering

Q: Please indicate the reason your organization did not register	Did not register as a third party advertising sponsor (n = 27)	
	#	%
We did not think the new third party advertising rules applied to our organization's activities	9	33
We altered our activities during the election period in order to avoid having to register	6	22
We felt the law as written was illegitimate and therefore chose to ignore it	10	37
Other	2	7

Our assessment that only five of 29 non-registered groups likely did not need to register is not definitive and depends to some extent on how narrowly one interprets the rules. Without asking Elections BC to review and rule on each of these groups' activities and the content of their public communications, it is not possible to say with certainty how many should have registered. However, most are quite active organizations with a direct interest in provincial public policy issues, and other groups with similar mandates and/or activities did register.

Many participants simply did not realize that their organization's activities could be considered election advertising, or that groups spending very small amounts of money would

23 Elections BC, "Advertising Sponsors."

be required to register—which led some to break the rules inadvertently. For example, the executive director of one group explained:

> *My understanding was that the registration had a lot to do with the amount of money that might be spent by any organization. And I don't think we felt that, certainly our own organization, would ever be anywhere near the limits.*

Additional anecdotal evidence from conversations with people who did not take part in this research suggests unintentional violations of the rules were not uncommon.

Table 3: Activities undertaken during campaign

Q: Please indicate which of the following activities (if any) your organization undertook during the 2009 provincial election campaign period.	Total (n = 55)		Registered as a third party advertising sponsor?	
			Yes	No
	#	%	% of registered	% of did not register
Commented in the mainstream media (radio, television, newspapers)	31	56	73	36
Sent information by email or mail to your organization's members	46	84	93	72
Sent a call for action to your organization's members (for example, a request for member to writer letters or post information on social networking sites, etc.)	36	66	73	56
Paid for advertisement(s) in the mainstream media (radio, television, newspapers)	15	27	47	4
Paid for advertisement(s) in an online venue	3	6	10	0
Posted, printed or distributed signs (billboards, lawn signs, etc.)	15	27	47	4
Distributed a brochure, leaflet or poster	28	51	67	32
Published commentary, analysis, facts or news releases on your organization's website	32	58	67	48
Published or circulated commentary, analysis, facts or news releases on a social networking site	19	35	47	20
Published a report or research paper	10	18	17	20
Published a book	0	0	0	0
Posted a video or interactive tool online	13	24	27	20
Organized, sponsored or participated in an all-candidates debate	23	42	40	44
Organized, sponsored or participated in a public meeting, forum, speech, rally, conference or teach-in	25	46	53	36
Organized or sponsored a meeting with other organizations	10	18	17	20
Endorsed a call for change in government policy, actions or legislation	26	47	40	56
Issued a public call for action (asked people other than your organization's members to write a letter, sign a petition, contact an elected official or candidate for office, etc.)	21	38	47	28
Other	4	7	3	12

Of equal concern, however, is that some participants registered to err on the side of caution, without having clarity about whether it was necessary. For example, one participant reported:

> *We found the rules very confusing. Although we felt this may not have applied to our group, we registered because we did not have a definitive answer as to whether or not we were required to register.*

Another group reported a similar dilemma, despite having contacted Elections BC for clarification:

> *Elections BC was confused about whether we needed to register, but advised us to do so because then our bases would be covered.*

A participant from a third organization, a registered charity with an annual budget of less than $500,000, said:

> *I was very surprised to hear that we needed to register with Elections BC, considering we are a completely non-partisan association and our only interest in 'advertising' was to bring [these] issues to the fore during the campaign period so that candidates from all political parties were aware of the importance of provincial investment in [these] initiatives and programs. We spent $0 on this campaign.*

"We found the rules very confusing. Although we felt this may not have applied to our group, we registered because we did not have a definitive answer as to whether or not we were required to register."

Taken together, these examples suggest there was little or no consistent rationale governing groups' decisions about whether to register. Organizations with similar profiles in terms of mandate, size, and type and tone of materials chose very different courses of action.

CONFUSION ABOUT THE REPORTING PROCESS

Groups that registered as third party advertising sponsors were required to file a disclosure report with Elections BC. The disclosure report must include a summary of advertising expenses by class (or type) incurred during the 28-day campaign period, and a separate summary by class for expenses during the 60-day pre-campaign period. (As discussed in the introduction, the requirement to *report* spending during the pre-campaign period remains on the books, despite the BC Supreme Court ruling that spending *limits* are not in force during that time.) A detailed listing of all contributions over $250 received by the third party in the previous six months plus 28 days is also required. Third parties that spent less than $500 during the combined pre-campaign and election campaign periods were simply required to submit a one-page form indicating this fact.

Participants reported particular difficulty determining the cost or value of their advertising efforts. The Election Act defines the value of election advertising as:

> *(a) the price paid for preparing and conducting the election advertising, or (b) the market value of preparing and conducting the election advertising, if no price is paid or if the price paid is lower than the market value.*[24]

24 Province of BC, *Election Act*, sec. 228.

Elections BC's Election Advertising Sponsor Disclosure Report Completion Guide[25] includes quite a lot of detail about how to report contributions, but almost no guidance on how to calculate expenses.

Questions about online communication were particularly common. For example, how to calculate the value of an organization's website that is online year-round and includes a wide variety of content, some having to do with public policy issues and some not? What kinds of costs, and what portion of them, should be included—internet connection costs, website design and hosting fees, the value of staff time spent preparing materials and maintaining the site, computer workstation costs for that staff person, etc.? Questions also arose about assigning a market value to free communication, such as a Facebook group. Another group wondered about its email newsletters to members—an exempt activity—which it always also posted on its website—not an exempt activity. How much of the costs associated with producing and distributing the email newsletter should be exempt, and how much reported as an advertising expense?

"So all of the stuff that I gave out that I printed in 2007 and 2008, I had to calculate the unit cost and number of things distributed… So I started getting very nervous about, if we're looking at a [xx]-year-old organization, what the aggregate costs are over time…That was particularly frustrating. I'm one person, imagine how long this kind of crap takes."

Materials that were created well before the election period were also a source of confusion. For example, one participant with an organization that has only one staff person described spending hours tracking down old invoices in order to calculate the value of materials used during the campaign and pre-campaign periods:

> *So all of the stuff that I gave out that I printed in 2007 and 2008, I had to calculate the unit cost and number of things distributed…[during both pre-campaign and campaign periods]. And the same goes for material printed in 2003. So I started getting very nervous about, if we're looking at a [xx]-year-old organization, what the aggregate costs are over time…That was particularly frustrating. I'm one person, imagine how long this kind of crap takes.*

This sense of frustration with the reporting process was echoed by several other participants.

CONFUSION PERSISTED DESPITE EXPERT ADVICE

Getting legal advice or seeking clarification from Elections BC about the third party advertising rules did not eliminate confusion or anxiety for a number of groups.

Twenty-five participants received legal advice, but many of them nevertheless reported ongoing confusion and/or decisions that suggest they continued to struggle to interpret the rules. For example, after receiving a legal opinion, one group altered its activities to avoid having to register and likely acted with excessive caution, explaining:

> *We were very nervous about what we could do because really nobody could tell us, and we just had to be sure. I mean the last thing we wanted was the [group] to be in trouble, not because it had made the decision to take a chance, but because we didn't know what we were doing…It was just too difficult to figure out what the chances were.*

25 Elections BC, "Election Advertising Sponsor Disclosure Report Completion Guide."

Several other groups reported being more confused after receiving legal advice, or receiving conflicting advice.

Twenty-six groups were in contact with Elections BC about whether to register as third party sponsors (by phone and online). Of those, eight reported that Elections BC's advice was very helpful; nine reported it was somewhat helpful; nine reported it was not helpful. One group commented:

> *The rules do not give adequate direction regarding what can be posted on websites. The FAQs that were on the Elections BC website actually added to uncertainty over what was allowed.*

Advice about the reporting process was more effective. Nearly three quarters (23 of 31) of the groups that registered consulted Elections BC for assistance—almost half (11) found the advice helpful, though eight groups reported the advice was not timely.

In a number of cases, groups had entirely different interpretations of specific aspects of the rules, even though all were in contact with Elections BC. Others reported that Elections BC was unable to answer their questions. A common complaint was that Elections BC would quote the legislation in response to questions, instead of interpreting it, leaving groups without clear answers.

In a number of cases, groups had entirely different interpretations of specific aspects of the rules, even though all were in contact with Elections BC. Others reported that Elections BC was unable to answer their questions.

In fairness to Elections BC, is important to point out that these rules were enacted by the legislature. It is Elections BC's role to administer and enforce them. We are unaware of any additional or one-time funds provided to Elections BC for this purpose, despite the controversy surrounding the new third party advertising regime.

SECTION 4

Over-regulation of "Small Spenders" and Charities

A key finding that emerges from this research is that the rules have a number of perverse impacts that together effectively over-regulate small organizations and charities—groups that generally spend little on election advertising and avoid partisan activities.

BC'S THIRD PARTY ADVERTISING RULES were created, according to then-Attorney General Wally Oppal, to ensure electoral fairness. He argued:

> *...in the Supreme Court of Canada, the Hon. Mr. Justice Michel Bastarache, in upholding third-party campaign spending, wrote: "Without the limits, a few wealthy groups could drown out others in debates on important political issues." We agree with that, and that is why we are setting reasonable limits on what third parties can spend.*[26]

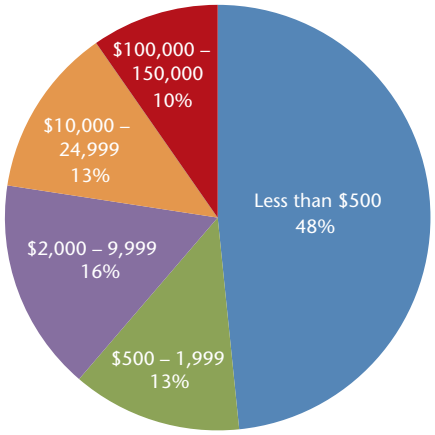
A key finding that emerges from this research, however, is that the rules have a number of perverse impacts that together effectively over-regulate small organizations and charities—groups that generally spend little on election advertising and avoid partisan activities.

REGULATING THE WRONG GROUPS

The clearest demonstration that the new third party advertising rules are not effective in focusing on big spenders comes from the disclosure reports of registered third party sponsors in the 2009 election. As Figure 1 shows, of the 31 registered participants in this research study, the median amount spent during the election campaign period was a mere $815, and the average was $13,957. Nearly half—15 of 31 registered groups—spent less than $500 (and for these groups, less than $500 was spent during the entire 88-days before the election, not only during the 28-day campaign period). Another four spent between $500 and $1,999 during the campaign period itself—meaning that nearly two thirds of registered participants

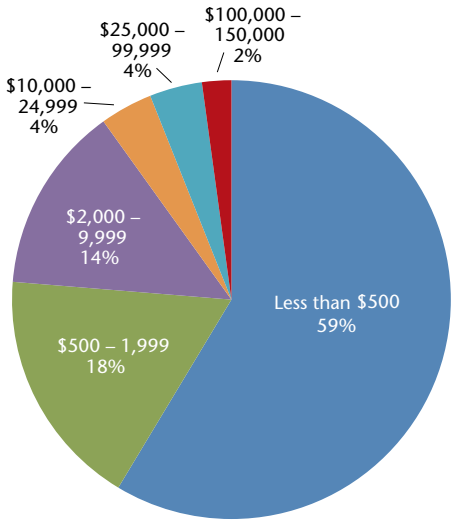
26 Province of BC, "Hansard – Official Report of Debates of the Legislative Assembly – Monday, May 5, 2008 p.m. – Vol. 32, No. 4 (HTML)," 1530.

Figure 1: Election advertising expenses of registered participants



median: $815 average: $13,957

Figure 2: Election advertising expenses reported by all registered sponsors



median: $0/less than $500 average: $6,712

Source: Participant surveys and Election Advertising Sponsor Disclosure Reports accessed in Elections BC database, British Columbia Disclosure Reports, http://142.36.252.26/bcimg/

Table 4: Election advertising expenses of registered participants, by organization type

Amount spent	Charity (#)	Organization type (#)			
		Non-profit	Coalition	Network	Labour
<$500	4	5	2	1	7
500 – 1,999		1	1		2
2k – 9,999		4			1
10k – 24,999		1			3
25k – 99,999					
100 – 150k					3
Total	**4**	**11**	**3**	**1**	**16**

Source: Participant surveys and Election Advertising Sponsor Disclosure Reports accessed in Elections BC database, British Columbia Disclosure Reports, http://142.36.252.26/bcimg/

in this study spent well below even the $3,000 limit for a single constituency. Table 4 shows expenses by organization type.

Remarkably, the expenditures by groups that participated in this study are slightly higher than those of all 232 organizations that registered as advertising sponsors for the 2009 provincial election and filed disclosure reports (see Figure 2). An online search of these reports reveals that the median amount spent by all registered sponsors during the election campaign period is "less than $500"—in fact, 59 per cent (136) of registered sponsors spent less than $500. An additional 41 groups spent between $500 and $1,999—meaning that 76 per cent of registered sponsors spent well below the $3,000 limit for a single constituency. Only five registered sponsors spent $100,000 or more during the campaign period.

DISPROPORTIONATE BURDEN ON SMALL ORGANIZATIONS

Complying with BC's third party advertising rules imposed a significant burden on groups' resources, which was particularly onerous for small organizations. One participant from a large labour union that made extensive use of legal expertise noted, "[It] would be extremely difficult for small organizations and groups without the resources or staff of an organization like [ours]." Indeed, many of the participants spent inordinate amounts of time figuring out the rules, tracking contributions and expenses, and second-guessing their decisions and activities.

"We had to spend so much time trying to figure this out as a very small volunteer organization. And we took the responsibility seriously…I guess we could have just said 'what the heck with it anyhow,' but we didn't."

The time and effort required to navigate the rules diverted resources from other activities. Nine of 11 groups interviewed for this study reported spending extensive amounts of time dealing with the rules and most of them described the experience as disruptive to their normal mandate-driven work. A number of other participants commented in the survey on their frustrations with the amount of time and energy involved. One entirely volunteer-run group observed:

> *Our activities were much less than they might otherwise have been because we had to spend so much time trying to figure this out…There was so much confusion and so much discussion with it, our activities were altered because things were delayed…We had to spend so much time trying to figure this out as a very small volunteer organization. And we took the responsibility seriously…I guess we could have just said "what the heck with it anyhow," but we didn't…It was onerous.*

Small groups with one or two paid staff also reported a drain on resources. As one participant commented in regard to the reporting requirements, "These are very labour intensive things to do with one full-time staff position." Another noted, "There was a huge increase in time. I had a lot of time wasted just trying to figure out the rules, and then phoning to make sure we claimed the right thing."

DISPROPORTIONATE RISK TO SMALL ORGANIZATIONS AND CHARITIES

Beyond the resources required simply to navigate the rules, small organizations and charities also face a disproportionate risk if they fail to comply. Section 264 of the Election Act states that violations related to election advertising can result in fines of up to $10,000 and/or a jail sentence of up to a year. These penalties apply to any group (or individual) that sponsors election advertising without registering or without identifying the sponsor (and other violations). In addition, S. 235 states that a group that exceeds the election advertising limits can be fined 10 times the amount spent over and above the limits and be prohibited from participating in the next general election as an advertising sponsor.

For most small organizations, these risks are amplified by lack of access to in-house legal expertise and scarce resources for hiring lawyers. Indeed, even relatively modest legal bills could financially cripple many non-profits and charities, not to mention the impact on their reputations and/or charitable status. In addition, under S.235(2) of the Election Act, members of unincorporated groups are "jointly and severally liable" to penalties for exceeding the spending limits, meaning that members of informal coalitions or citizen groups, for example, are personally at risk of fines. Further, S. 253(2) stipulates that if an organization

violates the Election Act, "an officer, director, employee or agent of the organization who authorizes, permits or acquiesces in the offence commits the same offence, whether or not the organization is convicted of the offence."

In light of the potentially severe consequences of violating the third party election advertising rules, the degree of confusion and uncertainty they generated is even more problematic. The risk of penalty loomed large for a number of the participants, and contributed to decisions to self-censor during the election campaign (see Section 5: Chill Effect).

GUILT BY ASSOCIATION AND OTHER ORGANIZATIONAL WORRIES

The third party election advertising rules impacted several groups' internal relationships and associational activities. These participants worried about the prospect of 'guilt by association,' which arose when groups with formal relationships or partnerships took different approaches to the rules. This concern was particularly problematic in coalition settings, where organizations issued a joint or common position related to a specific public policy issue, or where a number of small locally-based groups pooled resources to coordinate some aspect of their ongoing work at a province-wide level.

"We did have one partnership, one group that we work with in a pretty informal way, and they were so worried. They were very worried…because they are a registered charity, and that…had a whole other layer of implications for them."

One coalition group reported its board worried that "those who are comfortable being part of an advocacy coalition…may be less comfortable linked to an organization that is registered for election advertising." Guilt by association was a concern even for a group with which the coalition worked only at an informal level:

> *We did have one partnership, one group that we work with in a pretty informal way, and they were so worried. They were very worried…because they are a registered charity, and that…had a whole other layer of implications for them. So that was trickier and that did affect, I'm not sure if solidarity is the right word, but it certainly affected their relationship in terms of what we were prepared to do and what they were prepared to do, and how we worked that through.*

The coalition went to significant lengths to avoid having its status as a registered advertising sponsor impact its members:

> *One of the things we do as a…coalition is try to activate local action, and we provide material…They [our members] rely on us to give them information that they can then use in their local communities. But then we were concerned because if they took our information and used it, then they would be caught in the election advertising thing…So that's why we offered to send photocopies to people, so that they wouldn't be photocopying anything, so then we had to say "contact us if you want copies of these materials," which was onerous and kind of crazy, but that was the way we felt we weren't putting them on the hook personally for something they may not know about or understand.*

A second group withdrew from two coalitions due to concerns about risk to its charitable status. In one case, it withdrew because the coalition had registered as an advertising sponsor—"we felt, well, if we stay, we're kind of registered by association." It withdrew from the other coalition—a small, informal group that did not register—to avoid being associated with any form of public policy advocacy that could be seen as election advertising under the new rules, and thus a breach of the law it would be indirectly party to.

For a third participant, the rules took a toll on internal relationships. This volunteer-run group initially decided not to register on principle, on the basis that its no-cost activities should be defined neither as advertising nor as directly or indirectly partisan. However, the potential of fines and jail time ultimately led the group to register following much internal discussion and some conflict. This participant noted that the group "really has not done a huge amount since that time, because the group itself, the dynamics, the personal relationships, are affected."

Three other participants cited an impact on funding as a result of the third party advertising rules. These groups receive financial contributions from unions—not for the purpose of election advertising, but as support for their ongoing mandate-driven work. However, concerns related to the Election Act's prohibition against indirect sponsorship of advertising (S.230) and the anti-combination provision (S.235.1(b)), led unions to delay their funding contributions.

CONFLICTING REGULATION OF CHARITIES

"As a registered charity, we do not endorse candidates or take partisan stands; however, because of the above definition [of election advertising], we would have to register as a third party advertiser which could put us at risk of violating the definition of a charity."

Twenty-one participants indicated they are federally registered charities. There was a clear reluctance among charities to be labeled as election advertising sponsors. Only four of the 21 registered. Of the remaining 17 charities, four altered their activities specifically to avoid having to register (in all four cases due to concerns about charitable status) and five others did not register because they felt the law was illegitimate. One participant from a charity noted:

> *As defined, a significant part of our advocacy work would qualify as advertising. We don't agree with that assessment. As a registered charity, we do not endorse candidates or take partisan stands; however, because of the above definition [of election advertising], we would have to register as a third party advertiser which could put us at risk of violating the definition of a charity, per CCRA [Canada Revenue Agency, which regulates charities]. It feels very much like a Catch-22. Though in this election, we chose to not change how we do our work, we did have to seek legal counsel to make that decision.*

Several other charities that did not register reported similar concerns.

Federally registered charities are already required under Canadian tax law to be strictly non-partisan and to limit advocacy activities to a small proportion of their overall work. They are prohibited from taking part in *any* partisan political activity, defined as "one that involves direct or indirect support of, or opposition to, any political party or candidate for public office."[27] Charities are, however, allowed to spend between 10 and 20 per cent of their resources on non-partisan political (or advocacy) activities,[28] provided these are directly linked to the charity's mandate.[29]

27 Canada Revenue Agency, "Charities & Giving – Policy Statement – Political Activities – Reference Number CPS-022," 32.
28 Ibid., 64-65.
29 Ibid., 37.

According to the Canada Revenue Agency:

> *An activity is political if a charity:*
>
> *a. explicitly communicates a call to political action (i.e., encourages the public to contact an elected representative or public official and urges them to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country);*
>
> *b. explicitly communicates to the public that the law, policy, or decision of any level of government in Canada or a foreign country should be retained… opposed, or changed; or*
>
> *c. explicitly indicates in its materials…that the intention of the activity is to incite, or organize to put pressure on, an elected representative or public official to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country.*[30]

In contrast, BC's Election Act defines election advertising as public communication that "promotes or opposes, directly or indirectly, a registered political party or the election of a candidate, including an advertising message that takes a position on an issue with which a registered political party or candidate is associated."[31] Given that federal law expressly prohibits charities from indirectly supporting or opposing a candidate or political party, it is not surprising that many were reluctant to register as advertising sponsors under rules that define taking a position on an issue in precisely those terms (i.e., taking a position on an issue with which a candidate or party is associated is defined as indirect support or opposition).[32]

Given that federal law expressly prohibits charities from indirectly supporting or opposing a candidate or political party, it is not surprising that many were reluctant to register as advertising sponsors under rules that define taking a position on an issue in precisely those terms.

Federal regulation allows charities to undertake non-partisan political activities in recognition that they enhance society's wellbeing, and that through their work society gains valuable knowledge about the impacts of public policy and the needs of particular communities and/or populations. The Canada Revenue Agency's Policy Statement on Political Activities states:

> *Canadian society has been enriched by the invaluable contribution charities have made in developing social capital and social cohesion. By working with communities at the grassroots level, charities are trusted by and understand the needs of the people they serve. This is important work that engages individuals and communities in shaping and creating a more inclusive society.*
>
> *Through their dedicated delivery of essential programs, many charities have acquired a wealth of knowledge about how government policies affect people's lives. Charities are well placed to study, assess, and comment on those government policies…their expertise is also a vital source of information for governments to help guide policy decisions. It is therefore essential that charities continue to offer their direct knowledge of social issues to public policy debates.*[33]

The availability of such expertise and knowledge is no more important than during election campaigns, when citizens assess the public policy positions and records of competing parties and candidates.

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30 Ibid., 38.
31 Province of BC, *Election Act*, sec. 228.
32 This is also a problem with the federal third party election advertising rules.
33 Canada Revenue Agency, "Charities & Giving – Policy Statement – Political Activities – Reference Number CPS-022," 7-8.

CONFLICTING VIEWS ABOUT WHAT CONSTITUTES ADVERTISING

Central to the difficulty groups experienced with the third party election advertising rules is a distinction many made between advertising versus contributions to healthy democratic debate through the provision of information about public policy. These participants understood their work to be in service of educating and informing the public, often on behalf of vulnerable groups.

Eighteen of the participant groups work directly and primarily on behalf of vulnerable populations such as children, low-income families, the homeless, marginalized women and other groups with low access to political power. An additional five work primarily on issues related to socio-economic inequities. (These numbers exclude the 16 participant groups that are labour unions or associations, however, several represent workers in low-wage job sectors, who can also be considered vulnerable populations.) These non-profits, charities and coalitions tend to view themselves as working on behalf of society's least powerful voices—they provide analysis of public policy and government decisions and enhance the range of perspectives available in the proverbial public square. In other words, they understand their activities to be in the realm of the public interest. The participants we interviewed from such groups were deeply uncomfortable with legislation that transformed their work into the crass purchase of influence. As one noted, "Anyone registering faces a stigma as a person or organization that is attempting to use money to influence the election, even if you actually spent nothing." Similar discomfort was echoed by participants from environmental sustainability and conservation groups.

"It's not that we didn't consider it seriously—we did. And we got several unofficial legal opinions, some of which contradicted each other, and we made the choice that we weren't going to do anything differently than in any other three month period… We tremendously disagreed with how they [the provincial government] tried to frame advertising."

A significant number of participants rejected outright the idea that issue-based communication should be defined as advertising by rules that equate taking a position on a public policy issue with "indirect" support or opposition of a political party or candidate. Ten participant groups did not register as sponsors because they felt the law was illegitimate. Five of these groups are charities, seven are non-profit organizations, and six have modest budgets of less than $500,000. One of these participants described the organization's decision as a serious and principled one:

> *It's not that we didn't consider it seriously—we did. And we got several unofficial legal opinions, some of which contradicted each other, and we made the choice that we weren't going to do anything differently than in any other three month period…We tremendously disagreed with how they [the provincial government] tried to frame advertising. Like distributing a brochure, on an issue we've been working on all along.*

Similar views about the definition of election advertising were expressed by others, including groups that did register, but reluctantly so. For example, one such participant pointed out:

> *There's a fine line between advertising and promotion, and then education and information sharing. And that's where our efforts as an organization are—trying to spread information, so that voters can make educated decisions, based on issues of interest to them. And that's where we've been sabotaged, I think, and restricted by the legislation.*

The disconnect between the third party advertising rules and groups' responses to them can also be seen in how participants answered the survey question, "How would you describe your organization's role during an election period?" As Table 5 shows, 47 groups—more than

three quarters of participants—selected "inform voters about specific issues." Twenty-five selected "increase voter turnout/get out the vote." Yet only 31 of the participants registered as advertising sponsors. Of the 29 that did not register, 20 (69 per cent) indicated their role is to inform voters about issues during an election period, and seven (24 per cent) seek to increase voter turnout.

Table 5: Organization's role during an election

Q: How would you describe your organization's role during an election period?	TOTAL (n = 60)		Registered as a third party advertising sponsor?	
			Yes	No
	#	%	% of registered	% of not registered
Our organization does not play any role during elections	4	7	0	14
Inform voters about specific issues	47	78	90	69
Encourage voters to choose specific candidates	6	10	16	0
Encourage voters to choose a specific political party	4	7	13	0
Increase voter turnout/ get out the vote	25	42	58	24
Other	17	28	29	28

ANTI-EGALITARIAN IMPACTS

Although BC's third party advertising rules were ostensibly implemented to level the playing field during elections, they instead over-regulate small spenders—the very groups that should benefit from caps on election advertising. They do so by turning a wide range of civic activities carried out in association with others into election advertising, including the work of small and volunteer-run groups with few financial resources, non-profit and charitable organizations that work with or on behalf of some of society's most vulnerable and least influential citizens, and groups that work to educate the public on various social, economic and environmental issues. These groups are also least likely to contribute to political parties or candidates—with charities prohibited by law from doing so. In contrast, corporations, business groups and unions—those with comparatively greater access to financial resources—do contribute to political parties, and in BC are free to do so without limit.[34] Indeed, only six participants endorsed a candidate and/or political party in the 2009 election, and all six are labour groups with relatively large budgets.

Although BC's third party advertising rules were ostensibly implemented to level the playing field during elections, they instead over-regulate small spenders—the very groups that should benefit from caps on election advertising.

The inclusion of volunteer labour in the definition of an advertising expense is especially problematic. Non-profits, coalitions, charities and informal associations rely extensively on volunteers. Political parties and candidates, in contrast, are not required to report volunteer

34 In the 2009 provincial election, corporations provided $5.97 million – 66 per cent – of total BC Liberal Party contributions (http://contributions.electionsbc.gov.bc.ca/pcs/Published/100116308.pdf, page 5); trade unions provided $2 million – 40 per cent – of total NDP BC contributions (http://contributions.electionsbc.gov.bc.ca/pcs/Published/100115118.pdf, page 6).

labour as an election expense. The rules thus treat political parties and third parties unequally, which favours citizens who participate in the realm of partisan politics over those who participate in organizations based on issues or social problems of interest to them.

The principle of one-person-one-vote that underlies liberal democracies vests the right to participate in determining the priorities and governance of a society with the individual. Third party advertising limits recognize that this right can be distorted by the unequal distribution of wealth, which can result in a small number of economically powerful voices dominating public discourse during elections. In this context, including volunteer labour as an advertising expense makes no sense. Unlike financial power, which is potentially unlimited and unequally distributed, volunteer labour is finite and equally distributed among all individuals (i.e., there are only so many hours in the day that any one person could spend volunteering). Including volunteer labour as an election expense thus inappropriately treats it as a financial resource, rather than a personal one that rests with the individual.

"We meet in each others' homes, in our living rooms, and we do it all for free… It's a completely inappropriate law for a group like us."

The frustration caused by these perverse impacts of the rules is reflected in the comment of a participant from an informal citizens' group:

> *We meet in each others' homes, in our living rooms, and we do it all for free… I really think that these kinds of rules, it's good to have them…for big corporations, for unions. …But, it shouldn't be about us small groups that are volunteer based that are doing things out of our living rooms for goodness sakes. You know, we're not even a non-profit, we're not even registered as a society…It's a completely inappropriate law for a group like us.*

The notion that the rules are misdirected is also reflected in participants' responses to the survey question asking whether the zero-dollar registration threshold is appropriate, somewhat intrusive or very intrusive—90 per cent of participants said it is somewhat (13 per cent) or very (77 per cent) intrusive.

SECTION 5

Chill Effect

BY FAR THE MOST SERIOUS FINDING to emerge from this research is that a significant number of organizations self-censored in order to comply with the new election advertising rules. Table 6 shows that 40 per cent (24) of participants in this research answered "yes" to the survey question "Did your organization alter its normal or previously planned activities or public statements in any way as a result of BC's new third party advertising rules?" Of them, the majority (18) were registered as advertising sponsors.

The "chill effect" produced by the new rules extended well beyond activities that could be considered "advertising" even under a very broad definition, and cast a shadow on quintessential forms of democratic participation and free speech.

Table 6: Organizations that altered activities

Q: Did your organization alter its normal or previously planned activities or public statements in any way as a result of BC's new third party advertising rules?	TOTAL (n = 60)		Registered as a third party advertising sponsor?	
			Yes	No
	#	%	% of reg'd	% of did not reg
Yes	24	40	58	21
No	36	60	42	79

Participants were also asked to detail what kinds of activities they altered during the campaign period. What is particularly striking about the responses (see Table 7) is that most of these activities have nothing to do with commercial advertising. For example, of the groups that altered their activities, one in three did not post new materials on their organization's website, four removed previously posted material from their websites, and six refrained from endorsing or signing on to a campaign coordinated by another group. Perhaps most troubling is that five groups refrained entirely from public commentary in the mainstream media, an activity that is explicitly exempt. Thus the "chill effect" produced by the new rules extended well beyond activities that could be considered "advertising" even under a very broad definition, and cast a shadow on quintessential forms of democratic participation and free speech.

Table 7: Which activities were altered			
Q: Please indicate how your organization changed its normal activities or public statements.	Altered activities (n = 24)	Registered as a third party advertising sponsor?	
		Yes (n = 18)	No (n = 6)
	#	#	#
Removed previously posted material from our organization's website	4	3	1
Did not post new material on our organization's website	9	6	3
Temporarily halted an existing campaign or project	5	5	0
Did not launch a previously planned campaign or project	4	4	0
Refrained from endorsing or signing on to a campaign coordinated by another group	7	4	3
Refrained from issuing or endorsing a call for changes to government policy or legislation	4	2	2
Refrained from public commentary in the mainstream media	5	3	2
Refrained from using online social networking sites such as Facebook or Twitter	3	3	0
Decided not to organize or sponsor a public event, forum or conference	4	4	0
Did not publish a report, briefing paper, study or book	0	0	0
Did not publish a brochure, leaflet or poster	7	6	1
Did not post a video or interactive tool online	0	0	0
Other	14	9	5

Beyond the altered activities listed in Table 7, participants reported a range of changes to their normal work under "other." These included:

- Changed content or tone of communication (4 groups reported);
- Diverted resources from normal activities in order to respond to the rules (4);
- Refrained from or reduced paid media advertising (3);
- Restrained in overall public communication (2);
- Changed timing of planned public communication (2); and,
- Focused on activities exempted from definition of election advertising (2).

Once again, what is striking about the above list is that it includes very few instances of groups restricting commercial advertising.

DOLLAR LIMITS EXPLAIN A MINORITY OF SELF-CENSORSHIP DECISIONS

It is not surprising that some organizations would reduce their public communication activities during the election campaign—the dollar limits require third parties to cease "advertising" once they have spent $3,000 in a single constituency and/or $150,000 province-wide. However, while the dollar limits clearly explain the actions of some participants, they are only part of the story.

We did not conduct interviews with all 18 registered participants that altered their activities; however, based on the advertising expenditures listed in their disclosure reports (filed with Elections BC), their survey responses, and selective interviews and follow-up queries, at least 10 and as many as 14 altered their activities for reasons *other than* the dollar limits.[35] As Table 8 shows, five spent less than $500, and two others spent less than $2,000 (well under the limit for a single constituency). Combined with the six non-registered groups, therefore, between 16 and 20 participants altered for reasons other than the dollar limits—or 27 to 33 per cent of all participants in this study.

Table 8: Registered groups that altered their normal activities, by amount spent

Amount spent during campaign period	Registered groups that altered their activities (#)
<$500	5
500 – 1,999	2
2k – 9,999	4
10k – 24,999	4
25k – 99,999	0
100k – 150,000	3
Total	18

"Our mandate is to get people focused… and mobilized…By deliberately not being as proactive as we normally would have been… we're sitting on our own mandate during an election period. It's kind of outrageous."

Whether one supports third party election advertising limits or not, the above findings raise two concerns. First, the overly broad definition of advertising means that groups spending near the limits restricted a wide range of speech activities that went well beyond "commercial" advertising (for example, not posting information on websites, not making use of social networking tools, and not endorsing campaigns organized by other groups). Second, the third party advertising rules led to self-censorship by a significant number of "small spenders," in particular small organizations (including some small unions), non-profits and charities, the reasons for which are discussed below.

35 Of the 18 registered groups that altered their activities, we know that four managed their "advertising" activities as a direct result of the spending limits. To be conservative, we also add four groups that spent more than $3,000 during the campaign period but that did not indicate a reason for the decision to alter their activities (i.e., it may have been related to hitting the limit for a single constituency). The remaining groups either indicated explicitly that they self-censored for reasons other than the limits themselves (such as confusion about the rules or a desire to err on the side of caution) and/or spent well under the limit for even a single constituency.

REPUTATIONAL AND CHARITY CONCERNS LED TO SELF-CENSORSHIP

Six of the 24 groups that altered their activities as a result of the third party advertising rules did so explicitly to avoid having to register. Five of these groups are non-profits, one is a coalition, and four are registered charities. Table 7 (on page 34) lists the specific activities these participants altered (see column for non-registered groups). None are commercial advertising activities. These groups altered their activities primarily because they did not want to be labeled as "registered election advertising sponsors" or be publicly listed as such on the Elections BC website. For them, the label carried an implication of partisanship that would be harmful to their reputations or charitable status.

"I felt like I really had to err on the side of caution for accountability. Accountability both to my board of directors, our funders and our individual donors."

One of these groups is a small coalition with two staff members that works with non-profits, charities and public service agencies on issues related to a vulnerable segment of the BC population. Navigating the third party advertising rules and deciding whether to register took up a significant amount of time. The group wanted to be cautious, having carefully developed its reputation as a non-partisan coalition that brings together a diverse range of partners, some of which are already cautious about publicly critiquing the provincial government's policies because they rely on provincial funding. The group's executive director felt his hands were tied, noting:

> *Our mandate is to get people focused… and mobilized…By deliberately not being as proactive as we normally would have been…we're sitting on our own mandate during an election period. It's kind of outrageous.*

The group was much less active than usual during the campaign period and refrained from commenting in the mainstream media, an activity that is exempt from the definition of advertising. When asked why, the group's director replied:

> *Normally…we would be trying to get noticed, get our stances on issues noticed during an election period…and finding ourselves [this time] going "ahh, maybe we'll … kind of keep our heads down." So it was all about not drawing attention.*

CONFUSION AND CAUTION LED TO SELF-CENSORSHIP

The extensive difficulty participants experienced interpreting BC's new third party advertising rules resulted in self-censorship among both registered and non-registered groups. As discussed in Section 3, participants reported varied and often conflicting interpretations, anxiety, and second-guessing decisions.

One of the groups, a small non-profit with one staff member, registered as an advertising sponsor and was fairly active during the campaign period. The group's executive director spent a great deal of time of the phone with Elections BC (whom he described as very responsive overall) to clarify what specific activities and messages would "count" as advertising. Nevertheless, the director reported that "I didn't use my Facebook sites because I didn't know how much cash value they [Elections BC] would ascribe to them, and they wouldn't say." The group also refrained from endorsing or signing on to a campaign coordinated by another group and decided not to organize or sponsor a public event. According to this

participant, despite having registered as an advertising sponsor, it was still important to act with caution. He noted:

> *I felt like I really had to err on the side of caution for accountability. Accountability both to my board of directors, our funders and our individual donors.*

The desire to act "with an abundance of caution," as another participant put it, was a common refrain. For example:

> *All this angst about, you know, am I putting my organization in jeopardy?*

And:

> *In terms of the website, we took things down that we felt were a little risky. [Because they were critical government policy.]*

Other groups were so nervous they would inadvertently break the rules that they effectively sat out the election campaign period. One participant described it this way:

> *We did limit what we did because we were scared of the rules and screwing it up… People just got so overwhelmed by it they didn't do anything. We kind of did that.*

Another participant from a group that did not register because it didn't think the rules applied to its work stated:

> *I think it's really made us do a double-take…It's a chilling law. It chills people and makes them nervous.*

CHILL CLIMATE REINFORCED SELF-CENSORSHIP DECISIONS

Several features of BC's new third party advertising rules and the public debate that surrounded their introduction contributed to a "chill climate" during the 2009 provincial election. This chill climate increased the anxiety groups experienced and reinforced their decisions to self-censor. In addition to the broad definition of advertising and the zero-dollar registration threshold, the very long pre-campaign period of 120 days that was initially proposed led to concerns that the rules would effectively shut down public debate for five months before election day. The subsequent media reaction and court challenge framed Bill 42 as a "gag law."[36]

"It's not really even about advertising. It's about saying anything that's critical of the government within that [election] timeframe."

Bill 42 was interpreted by many participants as having the intention to reduce public debate and dampen criticism of the provincial government's policies. Comments to this effect were a frequent response to the open-ended survey question, "What, if any, concerns do you have about BC's new third party advertising rules?" For example:

> *It's not really even about advertising. It's about saying anything that's critical of the government within that [election] timeframe.*

Another participant stated:

> *The term "election advertising" is a misnomer; it's actually "speaking out legislation."*

36 See, for example: Pablo, "Liberal gag law linked to 2005 vote"; CBC News, "CBC News – British Columbia – B.C.'s election gag law takes effect amid criticism"; BC Federation of Labour, "BC unions file Charter challenge against election gag law."

Others interpreted the rules as an attempt to "keep tabs" on small organizations and non-profits. For example, one participant argued:

> *This is ridiculously broad and labels all advocacy that has any success in getting political attention as political advertising requiring monitoring by government. The fact that you are supposed to register even if you are not spending any or much money makes it clear that it's not just about limiting spending that could be interpreted as "buying" influence.*

Two participants felt that the third party advertising rules compounded an existing chill climate among groups that depend on provincial government funding. One noted:

> *Frankly, a lot of non-profits don't [speak out] because of the funding, the scare of losing the funding, and we do tend to speak out quite a bit, but it's also a consideration…So it's hard enough to do it anyway, and then you've got this additional muzzle on you.*

"For groups to be scared to speak up about the government…or scared to know what they could and could not do, is really bad. It was not a good feeling. We felt quite powerless and depressed actually."

The other participant, talking about the series of cuts to community service agencies announced during the fall of 2009, felt the chill effect would be worse during the next election, stating:

> *Everybody is being told "don't criticize" [by the government]. Some of the groups we work with wouldn't even go meet with their MLA to discuss some of the issues of concern.*

For those who self-censored during the election, the experience was deeply unpleasant. One participant with a charity that took a particularly cautious approach noted:

> *For groups to be scared to speak up about the government…or scared to know what they could and could not do, is really bad. It was not a good feeling. We felt quite powerless and depressed actually.*

This participant felt his organization might have been overly cautious, but observed "Maybe that's what it was all about." Thus, whether or not it was the provincial government's desire to chill public debate in the lead-up to the 2009 election, that is nevertheless how many groups interpreted the intent of the law.

SECTION 6

Conclusion and Recommendations

THE EXPERIENCES OF SOCIAL MOVEMENT GROUPS in the lead-up to the 2009 provincial election suggest that BC's third party advertising limits, as currently structured, are at best confusing and arbitrary; at worst they are harmful to democracy.

The definition of election advertising introduced through Bill 42 is overbroad and, combined with the zero-dollar registration threshold, makes the rules unintelligible in practice. These two key features of the rules led to widespread confusion before and after the election, including for many groups that had the benefit of legal advice and/or were in contact with Elections BC. Confusion about the rules led to arbitrary results, including conflicting interpretations, unintentional violations, second-guessing of decisions and public statements, and outright self-censorship.

In rejecting the arguments put forward by the Attorney General regarding the workability of the 60-day pre-campaign period, Justice Cole stated in his BC Supreme Court decision:

> *To essentially require third parties to seek a discretionary opinion from the Chief Electoral Officer as a condition of the exercise of political expression is simply not a suitable response to the overbreadth of the definition [of election advertising].*[37]

Yet in practice, this is the precisely the outcome the third party advertising framework produced.

The rules as currently structured also impose a regulatory burden on the wrong groups: "small spenders," many of which are charities. Small organizations with modest budgets, including volunteer-run groups, are faced with a disproportionate administrative burden (figuring out and complying with confusing rules) and disproportionate risk (potentially serious penalties

The rules as currently structured impose a regulatory burden on the wrong groups: "small spenders," many of which are charities. Small organizations with modest budgets, including volunteer-run groups, are faced with a disproportionate administrative burden and disproportionate risk.

37 BC Supreme Court, *British Columbia Teachers' Federation v. British Columbia (Attorney General), 2009 BCSC 436*, 111.

and/or damage to the organization's reputation or financial stability). Charities, in particular, found themselves in a Catch-22 in which registering as a third party advertising sponsor created a perceived risk to charitable status. The rules also strained internal and external relationships for some participants, particularly in situations where groups worked together in formal or informal coalition settings.

The structure of the third party advertising rules thus means that BC's election laws are regulating groups that spend little or nothing on commercial advertising—and even under the very broad definition of election advertising introduced through Bill 42, are unlikely to exceed the spending limits (particularly the provincial limit of $150,000). These organizations are non-partisan, rely extensively on low- or no-cost public communication activities, and in some cases are entirely volunteer-run. If the government's stated aim was to prevent "the hijacking of the [election] process by wealthy participants,"[38] then imposing regulations on groups spending minimal amounts of money has no connection whatsoever with that aim.

"If the appeal holds up, it would make the government bolder next time around. We'd be more nervous."

Of greatest concern is that the third party advertising rules produced a significant chilling effect during the election campaign period. While any amount of self-censorship other than straightforward compliance with the dollar limits is cause for concern, the extent to which participants in this research curbed their normal, mandate-driven public communication activities seriously undermined the democratic process. Debate during the months leading to the 2009 BC provincial election did not benefit from the full range of perspectives historically made available to voters by local charities, non-profit organizations, coalitions, and other social movement organizations. These groups often represent the interests of those most marginalized in society and/or least likely to possess the financial resources needed to dominate election discourse through the purchase of advertising.

It is possible that the problem of confusion will lessen in future elections. Groups have more time to learn more about the rules and Elections BC will hopefully offer additional clarifications (though as one participant pointed out, with four years between elections, groups may simply be in the position of needing to re-learn the rules all over again). It is also possible that more and more groups will deregister (according to Elections BC, 60 had already done so as of January 2010) and will be less cautious about their public communication activities.[39] However, given that Elections BC's enforcement of the rules is complaint-driven, these groups do so at some risk. Further, it may take only one well-publicized complaint to revive fears about the rules.

Regardless of whether concern and confusion abate over time, certain features of the rules remain highly problematic in relation to the over-regulation of small spenders and charities, in particular the zero-dollar registration threshold and the inclusion of volunteer labour as an election advertising expense. The provincial government has also appealed the BC Supreme Court decision that struck down the 60-day pre-campaign period, which may reinforce the perception among social movement groups that the intention is to chill public debate and reduce criticisms of the government's policies. When asked what effect the appeal could have in future elections, one participant responded:

> *If the appeal holds up, it would make the government bolder next time around. We'd be more nervous.*

38 Justine Hunter, "Third parties loudly boo legislation to tone them down."
39 Nola Western, "Letter from Elections BC to authors," January 12, 2010.

ARE THE NEGATIVE EFFECTS OF THE RULES JUSTIFIED?

While the rights set out in the Charter of Rights and Freedoms are not absolute guarantees, the Supreme Court of Canada has established that infringements must meet a very high standard. This is particularly important in the case of laws that infringe on political speech, which is "the single most important and protected type of expression."[40]

A law that infringes on a Charter right must serve a valid, or "pressing and substantial," objective.[41] Harper v. Canada established that "the overarching objective of third party election advertising limits is electoral fairness" and that this goal is of sufficient importance to justify infringement on the speech rights of third parties.[42] Electoral fairness was echoed by the BC Attorney General as the rationale for the new rules set out in Bill 42, and was accepted by BC Supreme Court Justice Cole in his March 30, 2008 ruling that upheld all aspects of the rules except the use of spending limits during the 60-day pre-campaign period.

Justice Bastarache, writing for the majority in Harper v. Canada, identified three specific objectives of third party advertising limits. First, such rules aim "to promote equality in the political discourse,"[43] which gives less powerful voices a better chance of being heard and allows the public to be informed by a broad range of views. Second, they "protect the integrity of the financing regime applicable to candidates and parties,"[44] meaning they prevent third parties from gaining an unfair advantage over political parties and candidates, which are constrained by election expense limits. Third, they "ensure that voters have confidence in the electoral process."[45]

BC's rules over-regulate and chill small spenders and charitable organizations, many of which represent the interests of society's least powerful citizens. In doing so, they deprive the public of the opportunity to hear from the very voices the rules are meant to stop from being drowned out.

In contrast to the above objectives, BC's rules over-regulate and chill small spenders and charitable organizations, many of which represent the interests of society's least powerful citizens. In doing so, they deprive the public of the opportunity to hear from the very voices the rules are meant to stop from being drowned out. The rules also create an anti-egalitarian effect. They over-regulate the groups that are least likely to conduct expensive advertising campaigns (charities, non-profit societies, small coalition groups, social service agencies) and that are also least likely to contribute funds to political parties. In contrast, those most likely to conduct expensive advertising campaigns (business groups and unions) and that are also most likely to contribute to political parties are free to do so without limit in the absence of caps on provincial contributions. The anti-egalitarian effect is compounded by the inclusion of volunteer labour in the definition of a third party election advertising expense. Given these dynamics, and the view expressed by all of the participants interviewed that the rules chilled political speech, it is difficult to conclude that they can enhance confidence in the electoral system.

In addition to meeting a valid objective, a law that infringes on a Charter right must meet what is called the "proportionality test," which means the harm created by the infringement must be proportionate to the pressing and substantial objective it serves.[46] The proportionality test includes three components. First, the law in question must be effective in focus—there must

40 Supreme Court of Canada, *Harper v. Canada (Attorney General), 2004 SCC 33, [2004] 1 S.C.R. 827*, 17.
41 Supreme Court of Canada, *Harper v. Canada (Attorney General), 2004 SCC 33, [2004] 1 S.C.R. 827*.
42 Ibid., 60.
43 Ibid., 5.
44 Ibid.
45 Ibid.
46 Supreme Court of Canada, *Harper v. Canada (Attorney General), 2004 SCC 33, [2004] 1 S.C.R. 827*.

be a rational connection between the measures it employs and its objectives. Second, the law must use the least drastic means possible to achieve the objective—or minimally impair the right in question. Third, the law must not do more harm than good. BC's third party advertising rules are, at minimum, questionable when measured against these standards. Unfortunately, small organizations do not have the means to mount a constitutional challenge, whereas big spenders have been able to use the legal system to defend their rights. In other words, those who are the identified targets of the rules have been able to use the legal system to defend their rights, while those who are clearly not the source of the problem must depend on the legislators to protect their rights. So far, the legislators have not done a very good job.

RECOMMENDATIONS

Those who are the identified targets of the rules have been able to use the legal system to defend their rights, while those who are clearly not the source of the problem must depend on the legislators to protect their rights. So far, the legislators have not done a very good job.

The following recommendations would, provided they are implemented together, clarify BC's third party advertising rules and shift their focus away from small spenders. We are of the view, however, that if these recommendations are not implemented, Bill 42 should be repealed, as its harmful effects on the democratic process outweigh any benefits.

Fix the Third Party Advertising Rules Set Out in the BC Election Act

The provincial government bears primary responsibility for improving the design of BC's third party advertising limits. It should abandon its appeal of the BC Supreme Court ruling that struck down the 60-day pre-campaign period, and amend BC's Election Act to:

- Remove all references and requirements related to the pre-campaign period. For example, election advertising is defined in the Act as advertising that takes place beginning 60 days before the start of the election campaign. The BC Supreme Court did not strike down the definition of advertising—it only ruled that the spending *limits* could not be in force during the pre-campaign period. Thus, while the limits do not apply during that time, all other provisions of the Act relating to the pre-campaign period do. As a result, if a group sponsors election advertising during the 60-day pre-campaign period, it must still register with Elections BC and file a disclosure report.

- Revise the definition of election advertising so that it is easier to interpret and focuses more narrowly on commercial advertising activities, rather than the broad range of political speech activities currently encompassed. A revised definition of election advertising should also adequately deal with the realities of online communication. For example, communication tools like websites or Facebook pages can be created well outside of an election period, but will live on during and after an election. A law that requires people to either censor such communication or label it as advertising and attempt to determine its value is not an appropriate solution to the problem of third party influence during elections.

- Establish minimum spending thresholds below which third parties would not be required to register. These should be set at no less than $1,000 for advertising within a single constituency, and $5,000 for province-wide advertising.

- Third parties should be required to register only once they reach the threshold, as is the case in the Canada Election Act. Currently under BC's Election Act, third parties must register with Elections BC *before* they conduct *any* election advertising.

- Exempt charities from the third party advertising rules altogether, as they are already federally regulated and, in order to achieve registered charity status, have had to demonstrate a contribution to the public good.

- Index both the spending limits and the (proposed) minimum thresholds to inflation (federal spending limits are indexed).

- Exempt volunteer labour from the definition of an election advertising expense (as is the case federally, and as the BC Election Act does for political party and candidate expenses).

- Require third party advertising sponsors to report only those contributions received *for the purpose* of election advertising (as is the case federally) in the period beginning six months before the election is called, rather than requiring them to report *all* contributions received during that time. This change would still allow Elections BC to monitor indirect advertising by third parties and pooling (attempts to circumvent the limits), but would prevent social movement groups that receive funding from unions from having contributions delayed as a result of the rules.

Round Two? Changes to the Lobbyists Registration Act

Changes to BC's Lobbyists Registration Act that significantly expand its scope came into force on April 1, 2010. Well-crafted rules governing lobbyists are vital for fairness, transparency and accountability in the public policy process. However, the changes significantly expand the definition of lobbying such that social movement groups working on public policy issues may now be captured by the new rules. The CCPA is once again hearing anecdotal evidence that the lobbyist rules are causing confusion and concern for charities and other organizations engaged in education and advocacy work. With reporting requirements that create a much greater administrative burden than the third party advertising limits, the changes to the Lobbyists Registration Act may represent another layer of misdirected (or inappropriately directed) regulation of social movement groups, and a further diversion of their mandate-driven work to interpreting and complying with complicated rules whose objectives are not connected to the activities of such groups.

Improve Administration and Education About the Rules

The following recommendations are particularly important if the provincial government does not fix the third party advertising rules prior to the next election.

- The provincial government should provide additional funds to Elections BC to improve administration of the rules.
- Elections BC should develop case examples that explain more clearly and concretely how the rules apply, in particular with regard to what kinds of communication activities and messages are covered. This is especially important in relation to helping groups understand whether they need to register; clarifying whether and how the rules apply in coalition settings (both formal and informal); clarifying the definition of advertising (particularly as it relates to online communication); and providing guidelines for the valuation of expenses (especially volunteer labour).
- Elections BC should provide advance rulings to groups seeking clarity about how the rules work in relation to their specific communication activities.
- Elections BC should hold information sessions specifically geared to social movement groups in advance of the next provincial election.

Ultimately, third party advertising limits should not be legislated in a vacuum, but rather should be considered in the context of a broader examination of electoral reforms that can deepen democratic rights and increase participation in elections.

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Key Components of BC's Third Party Advertising Rules, Compared to Federal Rules

Requirement under the BC Election Act	Notable differences in the Canada Election Act
Definition of election advertising	
Section 228 states (variations from the federal definition are in italics): "election advertising" means the transmission to the public by any means, during the period *beginning 60 days before a campaign period* and ending at the end of the campaign period, of an advertising message that promotes or opposes, *directly or indirectly*, a registered political party or the election of a candidate, including an advertising message that takes a position on an issue with which a registered political party or candidate is associated, but does not include (a) *the publication without charge* of news, an editorial, an interview, a column, a letter, a debate, a speech or a commentary *in a bona fide periodical publication or a radio or television program*, (b) the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value, if the book was planned to be made available to the public regardless of whether there was to be an election, (c) the transmission of a document directly by a person or a group to their members, employees or shareholders, or (d) the transmission by an individual, on a non-commercial basis on the internet, or by telephone or text messaging, of his or her personal political views;	S. 319 states: "election advertising" means the transmission to the public by any means during an election period of an advertising message that promotes or opposes a registered party or the election of a candidate, including one that takes a position on an issue with which a registered party or candidate is associated. For greater certainty, it does not include (a) the transmission to the public of an editorial, a debate, a speech, an interview, a column, a letter, a commentary or news; (b) the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value, if the book was planned to be made available to the public regardless of whether there was to be an election; (c) the transmission of a document directly by a person or a group to their members, employees or shareholders, as the case may be; or (d) the transmission by an individual, on a non-commercial basis on what is commonly known as the Internet, of his or her personal political views.
Definition of an election advertising expense	
Section 228 defines and election advertising expense as: (a) the price paid for preparing and conducting the election advertising, or (b) the market value of preparing and conducting the election advertising, if no price is paid or if the price paid is lower than the market value.	S. 349 exempts "volunteer labour" from the definition of an election advertising expense.

Requirement under the BC Election Act	Notable differences in the Canada Election Act
Identification of sponsor	
S. 231 requires that election advertising must include an authorization statement (including the sponsor's name and contact information).	Same.
Third party advertising limits	
S. 235.1 states: (1) [Third parties] must not sponsor, directly or indirectly, election advertising during ~~the period beginning 60 days before~~ the campaign period and ending at the end of the campaign period (a) such that the total value of that election advertising is greater than (i) $3,000 in relation to a single electoral district, and (ii) $150,000 overall [or in combination with other individuals or groups]	S. 350 sets out the same dollar limits but indexes them to inflation.
Registration of sponsors	
Section 239 requires third parties to register before they are allowed to sponsor *any* election advertising.	S. 353 requires third parties to register only *after* they spend $500, and does not allow them to register before the start of the election period.
Filing of disclosure reports	
Sections 244 and 245 require sponsors that spend $500 or more to file a disclosure report with Elections BC within 90 days of voting day. The report must include: The value of election adverting sponsored, by class; and All financial contributions received by the sponsor, by class, during the six months before the campaign period through to the election. The names of contributors must also be listed for amounts over $250.	Section 359.4 requires only contributions received "for election advertising purposes" to be reported.
Penalties	
According to Section 235.2 a third party that exceeds a spending limit will not allowed to participate as an advertising sponsor in the next election, and must pay a fine 10 times the amount by which they exceed the limit. Violations of other parts of the third party advertising rules are liable to a fine of up to $10,000 and/or imprisonment for up to a year.	Sections 496 and 500.1, 500.5 and 500.6 set out fines of up to five times the amount by which a sponsor exceeds the spending limit, and punishments for other violations ranging from fines $1,000 to $2,000 and/or between three months and one year in jail.

Sources: BC Election Act (www.bclaws.ca/Recon/document/freeside/--%20e%20--/election%20act%20rsbc%201996%20c.%20106/00_act/96106_00.htm); Canada Elections Act (www.elections.ca/content.asp?section=loi&document=part00&dir=leg/fel/cea&lang=e&textonly=false)

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BC Transit's service will soon be unsustainable, CEO warns

BY JEFF LEE, VANCOUVER SUN SEPTEMBER 29, 2010

TransLink estimates it will need $300 million more a year to meet its 10-year transportation plan.
Photograph by: Arlen Redekop, Vancouver Sun Files, Vancouver Sun

BC Transit's service around the province will become unsustainable within five years unless it can drive up ridership or substantially cut costs, the Crown corporation says.

That dire warning was given to municipal politicians at the annual Union of B.C. Municipalities convention by transit officials who say they are scrambling to find new ways to provide cost-effective mass transportation.

They said the politicians hold the power to help BC Transit cope with the problems of unsustainable public transportation that affect every jurisdiction in North America.

"We've got to stop running transit as if it were a social service and start running it as a business," Manuel Achadinha, the president and CEO of BC Transit, said Monday. "We've got to start looking for ways to make transit sustainable."

Achadinha said BC Transit, which operates 81 systems in 58 B.C. communities outside Metro Vancouver, is hampered by restrictive legislation, limited revenues and increasing service demands from municipal partners. He wants to amalgamate a lot of service contracts, extend operating agreements for small systems and bring in smaller, less costly and more fuel-efficient buses.

Achadinha appealed to municipal partners to make changes that will help their communities improve transit, from smart land-use planning to pressuring the provincial government to allow BC Transit to enter into private business initiatives when ridership is low.

"As I have said before, there is no incentive to reduce costs, there is no incentive to increase revenue," he told the forum. "We can't keep going the way we are. Transit is very successful in British Columbia, but if you want it to be sustainable and not like the rest of North America and the provinces, we will have to look at doing it a different way."

This year, BC Transit is operating on a $252-million global budget, of which municipal governments pay $60.8 million and riders pay roughly the same.

But by 2014, BC Transit expects its budget to reach $396.7 million because of growing service demands. That would see the municipal share more than double to $139 million.

That level alarmed municipal politicians, who said at that rate they'd consider dropping BC Transit in favour of a locally operated service.

"When you take that into consideration, that 77 per cent is subsidized by taxpayers, that absolutely has to change," West Kelowna Coun. Rosalind Neis said. "In our municipality, if our share increased by that ratio you brought to us, I would strongly recommend our community look at taking over our own transit and not being involved with BC Transit. There is a fine line."

BC Transit makes up most of its budget through a provincial grant, contributions from municipalities with which it has service contracts, and fare revenue. TransLink, which is responsible for public transit as well as roads and bridges in Metro Vancouver, has a budget of just over $1.1 billion which is funded through a number of direct sources such as fuel and property taxes, as well as ridership revenues.

But TransLink estimates it will need $300 million more a year to meet its 10-year transportation plan.

"We are able to pay for the service levels we have now," said Ken Hardie, TransLink's manager of communications. "The question is, are they adequate for the region's future needs, and there is evidence that is not the case. For what TransLink offers, demand continues to exceed our ability to supply it."

Achadinha said he's glad he's not running TransLink, which he says is in a similar situation to that of many North American transit systems.

"What you're seeing is, there is demand for transit, but there is no funding for it," he said. "Here's the problem. North America doesn't have a good model. In Europe, they do. They look to get maximum ridership.

"When you're around Europe, the average taxpayer puts in 20 cents on the dollar. Here in B.C. they put in about 77 cents a dollar. Only 23 per cent comes from users. We need to change that.

"We want to reduce the burden on the taxpayers. The challenge here -- and you are hearing that even in Vancouver, where their biggest challenge is how to fund transit -- is that we can't continually go after the taxpayer. I don't want to go after the taxpayer. I want to look at how we fund transit so that it is sustainable and affordable and meets peoples' needs."

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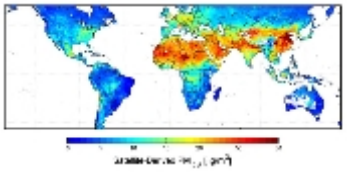
New Map Offers A Global View Of Health-Sapping Air Pollution

September 27, 2010



In many developing countries, the absence of surface-based air pollution sensors makes it difficult, and in some cases impossible, to get even a rough estimate of the abundance of a subcategory of airborne particles that epidemiologists suspect contributes to millions of premature deaths each year. The problematic particles, called fine particulate matter (PM2.5), are 2.5 micrometers or less in diameter, about a tenth the fraction of human hair. These small particles can get past the body's normal defenses and penetrate deep into the lungs.

To fill in these gaps in surface-based PM2.5 measurements, experts look toward satellites to provide a global perspective. Yet, satellite instruments have generally struggled to achieve accurate measurements of the particles in near-surface air. The problem: Most satellite instruments can't distinguish particles close to the ground from those high in the atmosphere. In addition, clouds tend to obscure the view. And bright land surfaces, such as snow, desert sand, and those found in certain urban areas can mar measurements.

However, the view got a bit clearer this summer with the publication of the first long-term global map of PM2.5 in a recent issue of Environmental Health Perspectives. Canadian researchers Aaron van Donkelaar and Randall Martin at Dalhousie University, Halifax, Nova Scotia, Canada, created the map by blending total-column aerosol amount measurements from two NASA satellite instruments with information about the vertical distribution of aerosols from a computer model.

Their map, which shows the average PM2.5 results between 2001 and 2006, offers the most comprehensive view of the health-sapping particles to date. Though the new blending technique has not necessarily produced more accurate pollution measurements over developed regions that have well-established surface-based monitoring networks, it has provided the first PM2.5 satellite estimates in a number of developing countries that have had no estimates of air pollution levels until now.

The map shows very high levels of PM2.5 in a broad swath stretching from the Saharan Desert in Northern Africa to Eastern Asia. When compared with maps of population density, it suggests more than 80 percent of the world's population breathe polluted air that exceeds the World Health Organization's recommended level of 10 micrograms per cubic meter. Levels of PM2.5 are comparatively low in the United States, though noticeable pockets are clearly visible over urban areas in the Midwest and East.

"We still have plenty of work to do to refine this map, but it's a real step forward," said Martin, one of the atmospheric scientists who created the map."We hope this data will be useful in areas that don't have access to robust ground-based measurements."

Piecing Together the Health Impacts of PM2.5

Take a deep breath. Even if the air looks clear, it's nearly certain you've inhaled millions of PM2.5 particles. Though often invisible to humans, such particles are present everywhere in Earth's atmosphere, and they come from both natural and human sources. Researchers are still working to quantify the precise percentage of natural versus human-generated PM2.5, but it's clear that both types contribute to the hotspots that show up in the new map.

Wind, for example, lifts large amounts of mineral dust aloft in the Arabian and Saharan deserts. In many heavily urbanized areas, such as eastern China and northern India, power plants and factories that burn coal lack filters and produce a steady stream of sulfate and soot particles. Motor vehicle exhaust also creates significant amounts of nitrates and other particles. Both agricultural burning and diesel engines yield dark sooty particles scientists call black carbon.

Human-generated particles often predominate in urban air -- what most people actually breathe -- and these particles trouble medical experts the most, explained Arden Pope, an epidemiologist at Brigham Young University, Provo, Utah and one of the world's leading experts on the health impacts of air pollution. That's because the smaller PM2.5 particles evade the body defenses—small hair-like structures in the respiratory tract called cilia and hairs in our noses—that do a reasonably good job of clearing or filtering out the larger particles.

Small particles can make their way deep into human lungs and some ultrafine particles can even enter the bloodstream. Once there, they can spark a whole range of diseases including asthma, cardiovascular disease, and bronchitis. The American Heart Association estimates that in the United States alone, PM2.5 air pollution spark some 60,000 deaths a year.

Though PM2.5 as a class of particle clearly poses health problems, researchers have had less success assigning blame to specific types of particles. "There are still big debates about which type of particle is the most toxic," said Pope. "We're not sure whether it's the sulfates, or the nitrates, or even fine dust that's the most problematic."

One of the big sticking points: PM2.5 particles frequently mix and create hybrid particles, making it difficult for both satellite and ground-based instruments to parse out the individual effects of the particles.

The Promise of Satellites and PM2.5

The new map, and research that builds upon it, will help guide researchers who attempt to address this and a number of other unresolved questions about PM2.5. The most basic: how much of a public health toll does air pollution take around the globe? "We can see clearly that a tremendous number of people are exposed to high levels of particulates," said Martin. "But, so

far, nobody has looked at what that means in terms of mortality and disease. Most of the epidemiology has focused on developed countries in North America and Europe."

Now, with this map and dataset in hand, epidemiologists can start to look more closely at how long term exposure to particulate matter in rarely studied parts of the world – such as Asia's fast-growing cities or areas in North Africa with quantities of dust in the air – affect human health. The new information could even be useful in parts of the United States or Western Europe where surface monitors, still the gold standard for measuring air quality, are sparse.

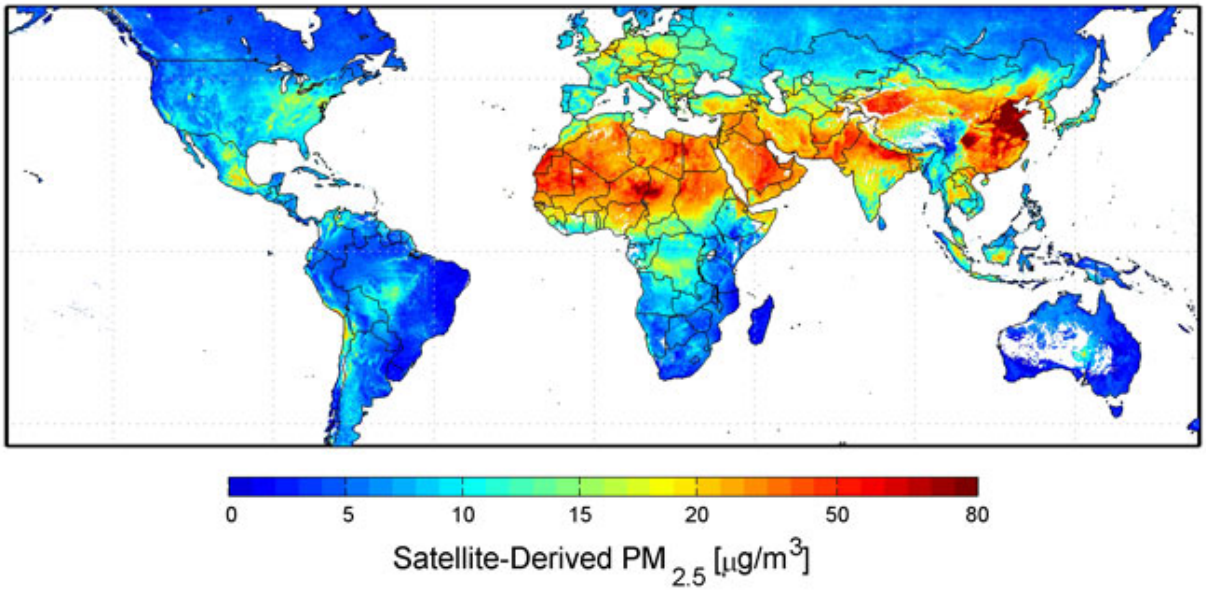
In addition to using satellite data from NASA's Multi-angle Imaging SpectroRadiometer (MISR) that flies on NASA's Terra satellite and the Moderate Resolution Imaging Spectroradiometer (MODIS) instrument that flies on both NASA's Aqua and Terra satellites, the researchers used output from a chemical transport model called GEOS-Chem to create the new map.

However, the map does not represent the final word on the global distribution of PM2.5, the researchers who made it emphasize. Although the data blending technique van Donkelaar applied provides a clearer global view of fine particulates, the abundance of PM2.5 could still be off by 25 percent or more in some areas due to remaining uncertainties, explained Ralph Kahn, an expert in remote sensing from NASA's Goddard Space Flight Center in Greenbelt, Md. and one of the coauthors of the paper.

To improve understanding of airborne particles, NASA scientists have plans to participate in numerous upcoming field campaigns and satellite missions. NASA Goddard, for example, operates a global network of ground-based particle sensors called AERONET that site managers are currently working to enhance and expand. And, later next year, scientists from Goddard's Institute for Space Studies (GISS) in New York will begin to analyze the first data from Glory, a satellite that carries an innovative type of instrument—a polarimeter—that will measure particle properties in new ways and complement existing instruments capable of measuring aerosols from space.

"We still have some work to do in order to realize the full potential of satellite measurements of air pollution," said Raymond Hoff, the director of the Goddard Earth Science and Technology Center at the University of Maryland-Baltimore County and the author of a comprehensive review article on the topic published recently in the Journal of the Air & Waste Management Association. "But this is an important step forward."

SOURCE: NASA/Goddard Space Flight Center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10
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Satellite-Derived PM 2.5 [μg/m3]

Table Matters…

a North Shore discussion about Food Security and Urban Agriculture

A dialogue, networking and information sharing event to engage North Shore government, community, non-profits and business in working towards sustainable agriculture and food security on the North Shore.

When: Friday, November 5, 2010 1:30—5:30pm.
Registration and displays open at 12:30pm.

Where: West Vancouver Community Centre
2121 Marine Drive, West Vancouver
Music Hall, basement level

Light refreshments will be provided

It's time for the North Shore to put local food on the table…

- Hear North Shore Mayors and Councillors share their vision for the community and share your vision for the future with them
- Generate creative strategies for food security and urban agriculture in our unique community
- Raise the profile of food issues and provision of healthy food as a public health issue
- Highlight the issue of the need for healthy food for vulnerable populations
- Draw local and regional experts to advise the NS on issues, actions and processes
- Discuss topics including: neighbourhood networks; municipal agriculture strategies; residential food production; food social enterprise…and many others.






Keynote Speaker: Mark Holland

co-editor of "Agricultural Urbanism: Handbook for Building Sustainable Food Systems in 21st Century Cities".

Mark is a sustainable development planner who holds professional degrees in both Landscape Architecture and Community and Regional Planning.

Space is limited to 100 participants and registration is required for this FREE event
Please RSVP by Oct 8 at: http://tablematters.eventbrite.com

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Reconsidering the Cul-de-sac

BY MICHAEL SOUTHWORTH AND ERAN BEN-JOSEPH

FOR OVER FIVE DECADES developers, homebuyers, and traffic engineers have favored the cul-de-sac, a basic building block of the American suburb. Despite its popular success, the "loops and lollipops" street pattern has been repeatedly criticized by many leading architects and planners, particularly New Urbanists, who strongly advocate the interconnected gridiron pattern. The cul-de-sac has come to symbolize all the problems of suburbia—an isolated, insular enclave, set in a formless sprawl of similar enclaves, separated socially and physically from the larger world, and dependent upon the automobile for its survival. Nevertheless, much can be said in favor of the cul-de-sac street as a pattern for neighborhood space.

THE CUL-DE-SAC PATTERN

A French term, *cul de sac* literally means "bottom of the sack." It commonly refers to a dead-end street. *The Oxford English Dictionary* defines it as "a street, lane, or passage closed at one end, a blind alley; a place having no outlet except by the entrance."

Since its early use in 1928 as part of the hierarchical circulation system in the design of Radburn, New Jersey, the cul-de-sac has been the preferred instrument for controlling through traffic. The town's structure exemplified the ideal subdivision layout. As Geddes Smith stated in 1929 in Clarence Stein's book, *Toward New Towns for America*, Radburn was: "A town built to *live* in—today and tomorrow. A town 'for the motor age.' A town turned outside-in—without any back doors. A town where roads and parks fit together like the fingers of your right and left hands. A town in which children need never dodge motor-trucks on their way to school."

The first suburban cul-de-sacs were short, straight streets with just a few houses. They were intended to provide a public realm for the residents while allowing safe, slow car movement to and from dwellings. Today, with increased auto ownership, the cul-de-sac has grown wider and much longer with more dwellings along it. A circular space terminates it, large enough for service and emergency vehicles to turn around (often more

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Radburn, New Jersey

than a hundred feet in diameter). In its pure form, all the houses in a subdivision are situated on cul-de-sacs, and as few as possible are placed on the busier and noisier collector streets.

A close cousin of the cul-de-sac is the loop street, which is similar in that it discourages through traffic, going nowhere other than to the homes along it. However, it has two access points, and is usually longer than the cul-de-sac. Both loops and cul-de-sacs are often found in the same development.

The cul-de-sac pattern has been strongly encouraged by traffic engineering and subdivision standards. Ever since one of the first engineering studies on residential street safety was done in Los Angeles between 1951 and 1956, the Institute of Transportation Engineers has recommended hierarchical discontinuous street systems for residential neighborhoods. The study showed that the number of accidents was substantially higher in grid-based subdivisions, so ITE established engineering standards using cul-de-sacs. The standards incorporated limited access to the perimeter highway, discontinuous local streets that discourage through traffic, curvilinear design patterns, cul-de-sacs, short streets, elbow turns, T-intersections, and a clear distinction between access streets and neighborhood collectors.

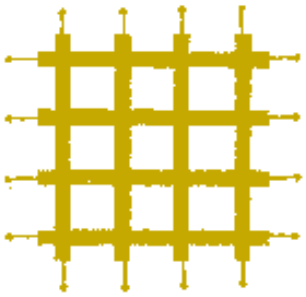
The cul-de-sac has come to symbolize all the problems of suburbia—separated from the larger world, dependent on the automobile

Problems with the Cul-de-sac

The loops and lollipops pattern has been criticized on several grounds. Obviously, it lacks the interconnectedness of development patterns like the gridiron. One must always leave the cul-de-sac via a collector street to go anywhere. Route choices are minimal, so one is stuck using the same path day after day. Also, since so much of the street infrastructure is devoted to semiprivate dead-end roads, a heavy load of connecting and through traffic is forced onto a relatively small collector and arterial system, contributing to suburban gridlock during peak periods of travel.

For the pedestrian, walks can be long and boring, with inefficient connections to nearby destinations. One lacks the sense of being in a neighborhood or town with a civic identity. Main streets and tree-lined corridors that connect places and communicate the character and structure of a community are absent, and what's left is a string of dead-ends on faceless connectors that lead nowhere. The pattern as it has evolved is difficult for a visitor to comprehend because there is little apparent structure, no unifying elements, no clear describable pattern. Moreover, it is usually tiresome in its repetitiveness. Grid pattern developments, of course, can suffer from monotony as well, but they are easier to visualize and navigate because they form a clear, logical pattern. ➢

Street patterns



Traditional grid pattern

Cul-de-sac pattern

Grid pattern converted to cul-de-sacs for vehicles but not pedestrians

Pedestrian-connected cul-de-sacs

Some advantages

The cul-de-sac model has several advantages that are worth considering. From the perspective of residents, the pattern usually offers quiet, safe streets where children can play with little fear of fast-moving traffic. A discontinuous short-street system, unlike the grid, may promote familiarity and neighboring. The cul-de-sac street pattern is also supported by the market: home buyers often pay premium prices for the most isolated cul-de-sac lots. The pattern is popular with developers not only because it sells well, but also because the infrastructure costs are significantly lower than for the traditional interconnected grid pattern, which can require up to fifty percent more road construction. Cul-de-sacs, being disconnected, adapt better to topography. Since they carry no through traffic, they often have reduced standards for street widths, sidewalks and curbs. In Radburn, for example, the introduction of cul-de-sacs reduced street area and the length of utilities, such as water and sewer lines, by 25 percent as compared to a typical gridiron street plan. According to Stein, the cost savings on roads and utilities paid for the construction of open spaces and parks.

The pattern is not limited to low-density suburban development, but can support row houses and low-rise apartments as well. Radburn and London's Hampstead Garden Suburb, for example, have relatively high densities by American standards (9.4 and 8 to 12 dwelling units per acre, respectively). Even higher densities can be found in historic urban patterns such as the residential courts of Boston's Beacon Hill.

At sites of sensitive ecological character, the cul-de-sac pattern has distinct values. Unlike the grid pattern which can be very invasive, blanketing a neighborhood with infrastructure, the cul-de-sac pattern can work around areas of high ecological or historical value. Lawrence Halprin's 1964 plan for The Sea Ranch on California's North Coast employed a disconnected pattern of "reaches" and "closes" to keep vehicular traffic away from the ocean bluffs and to protect the meadows of the original sheep ranch. The site design for Village Homes in Davis, California, utilizes the pattern to protect a natural drainage system that serves as a community green space and pedestrian/bicycle connector. A more recent plan for Mayo Woodlands in Rochester, Minnesota, uses a similar pattern to preserve the meadows and woodlands of the former Mayo estate while allowing residential development.

Analysis of automobile accident data supports the notion that cul-de-sac and loop patterns are safer than other kinds of streets. Furthermore, hierarchical, discontinuous street systems have lower burglary rates than easily traveled street layouts; criminals will avoid street patterns where they might

get trapped. For example, the troubled Five Oaks district of Dayton, Ohio, was restructured to create several small neighborhoods by converting many local streets to cul-de-sacs by means of barriers. Within a short time traffic declined 67 percent and traffic accidents fell 40 percent. Overall crime decreased 26 percent, and violent crime fell by half. At the same time, home sales and values increased.

A comparative study of street patterns indicates significant homebuyer preference for the cul-de-sac and loop patterns. We examined nine California neighborhoods in terms of safety performance and residents' perception of their street's livability. The neighborhoods were matched demographically but represented three different street layouts—grid, loop, and cul-de-sac. The findings suggest that cul-de-sac streets, and especially the lots at the end, perform better than grid or loop patterns in terms of traffic safety, privacy, and safety for play.

Residents also preferred the cul-de-sac as a place to live, even if they actually lived on a through or loop street. People said they felt cul-de-sac streets were safer and quieter because there was no through traffic and what traffic there was moved slowly. They also felt they were more likely to know their neighbors. One resident's comment was typical: "Our pets and kids are safer when there is a no-outlet street; you feel kidnapping is less likely—there is more of a sense of neighborhood." Thus, the study generally corroborated earlier transportation research on the values of a hierarchical discontinuous street pattern. It also supported claims that cul-de-sacs are more frequently and more safely used by children.

However, residents thought neighborhoods composed mainly of cul-de-sacs were confusing and lacked a coherent structure and uniqueness. Social interaction and neighborhood sense were not necessarily stronger on the cul-de-sacs, despite perceptions to the contrary. At the neighborhood scale, problems associated with cul-de-sacs may stem more from land use patterns than the street pattern itself. The single-use zoning of most cul-de-sac neighborhoods puts schools, jobs, and recreation and commercial centers at a distance from homes. Separation is further exacerbated by the lack of a well-connected pedestrian/bicycle network. Only rarely is there an interconnected pedestrian pathway system linking cul-de-sacs with adjacent streets, open spaces, and other neighborhoods.

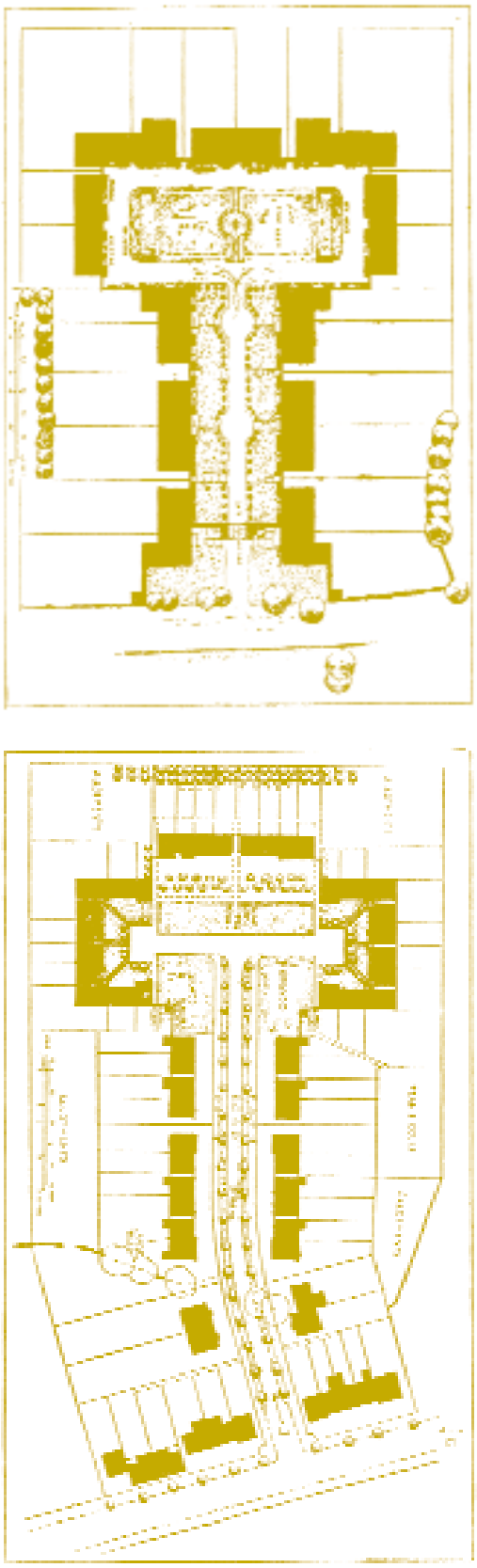
People felt cul-de-sac streets were safer and quieter, and they were more likely to know their neighbors

Creative cul-de-sacs

The cul-de-sac pattern presents a dilemma for the designer committed to a more structured and conceptually clear design like the geometric grid. Might it be possible to satisfy both sets of criteria: privacy, safety, quiet, and lower construction costs, as well as connectedness, identity, and structure? The cul-de-sac certainly need not be an undefined street terminated by an amorphous blob. The benefits of the cul-de-sac could be achieved with more architecturally defined and ordered patterns. A review of historic urban patterns in Europe, the Middle East, and early American towns reveals a frequent use of such patterns. For example, courts, closes, and quadrangles are found in English, French, and German towns of the Middle Ages. The residential court is also found in many early American towns, from Philadelphia to Boston. Today such spaces are usually prized locations for their sense of privacy, their intimate scale, and their charm.

A century ago, Raymond Unwin and Barry Parker consciously emulated such patterns in their designs for Hampstead Garden Suburb in London. "For residential purposes, particularly since the development of the motor-car, the cul-de-sac roads, far from being undesirable, are especially to be desired for those who like quiet for their dwellings," declared Unwin. An act of Parliament was required to allow the use of cul-de-sacs in new development, since prior cul-de-sacs were associated with unplanned medieval cities and unhealthful living conditions. It was the first time a planned development systematically used the cul-de-sac and open court throughout.

In Hampstead's court and close arrangements, two- to three-story blocks of row houses or apartments border a central green space and are usually accessed by a narrow service road. This arrangement creates a relatively quiet, pedestrian-oriented environment removed from the public street. The cul-de-sacs achieve similar residential neighborhood values. Unlike amorphous American postwar cul-de-sacs, those in Hampstead are short and narrow, with no circular turn-around at the end, and the architecture defines the street space. Midblock pedestrian walks typically connect the end of the cul-de-sac to another street or cul-de-sac beyond, creating an engaging path network for pedestrians. Roads are designed to discourage through traffic; they vary in both layout and cross-section design according to function. Sidewalks are always present. Trees and shrubs, as well as ➢



Hampstead Garden Suburb cul-de-sacs

architectural details such as walls, fences, and gates, make each street a unique pedestrian throughway. Hampstead Garden Suburb became an influential prototype for residential subdivision street design and road planning in Britain and North America. Sadly, however, the urban design qualities of the original have been lost in its offspring.

An ideal suburban residential environment might be based on similar courts and closes, each a defined space with its own special character, with limited automobile access, situated within an overall structure of treed boulevards and public spaces that create a sense of community. Automobile movement would be limited to collector and arterial streets, but pedestrians and bicyclists could enjoy the easy interconnectedness of a classic gridiron. The pedestrian network can parallel the vehicular routes, but can also connect cul-de-sacs and loops with each other, as well as with destinations such as parks, schools, and shops. A hammerhead or formal square configuration eliminates irregularly shaped lots and creates a well-defined relationship between buildings, street, and the open space at the end of the street.

The scheme used in Radburn, designed by Clarence Stein and Henry Wright, is a variant of this ideal. Houses are clustered around automobile-accessible cul-de-sacs. The pedestrian path system expands into greenways and parks, with paths connecting each home, as well as the school. Pedestrians can go almost anywhere with minimal interference from the automobile. Although the open spaces of Radburn are rather lavish, the same values could be achieved with much less open space if builders focused primarily on the pedestrian pathway system.

Today there is a surge of interest in traffic-calming measures across the country, and many communities are taking steps to make streets more pedestrian- and bicycle-friendly. Some traditional neighborhoods based on the grid pattern found in most older American towns and cities built before the 1920s are being retrofit to achieve some of the values of the cul-de-sac. These neighborhoods possess the connectedness, structure, walkability, and accessible land use patterns that many planners seek today in new residential developments. They are, however, subject to invasion by the automobile and often suffer from the noise and hazards that come with excessive traffic on local residential streets. Berkeley, California, is one community that has attempted to deal with the problem. Its grid system has been converted into cul-de-sacs and loops by placing bollards, large concrete planters, or planted islands as traffic barriers across some intersections. Pedestrians and bicyclists can easily get

Berkeley, California

through and continue to enjoy the interconnected grid. Originally an experiment, the scheme was strongly advocated by residents of some neighborhoods, although disliked by others. Nevertheless, support was broad enough to make it a permanent program.

Retrofitting an existing suburban cul-de-sac development to provide pedestrian connectedness would be more difficult. New pathways could be designed to interconnect cul-de-sacs, but in most cases they would have to be built on private rights-of-way along lot lines. To acquire such easements would probably be difficult, since residents are unlikely to give up a portion of their land and privacy. Moreover, most suburban developments of this type are single-use subdivisions so there is very little to connect besides houses.

Are walkable suburbs possible today? It is necessary to challenge the established street design standards and regulations that have emphasized vehicular access at the expense of pedestrian connectedness and community form. Traffic engineers and public officials need to review existing standards and establish new frameworks that support the pedestrian and bicyclist while taming and confining the automobile. However, rather than tossing out the cul-de-sac as an urban pattern, it is worth reconsidering its values and possibilities in creative ways. It has a long history of use in a variety of geographic and cultural contexts, and could provide options that offer safe and quiet streets as well as pedestrian and bicycle access in a new spatial framework that avoids the problems of the open grid. ◆

Acknowledgments: We are grateful for assistance with the illustrations from Dipti Garg, Raymond Isaacs, Mike Larkin, Sungjin Park, and Swapneel Patil.

FURTHER READING

Eran Ben-Joseph, *Livability and Safety of Suburban Street Patterns: A Comparative Study* (Berkeley, CA: Institute of Urban and Regional Development, University of California, Working Paper 641, 1995).

Oscar Newman, "Defensible Space—A New Physical Planning Tool for Urban Revitalization," *Journal of the American Planning Association*, vol. 61, no. 2, Spring 1995, pages 149–155.

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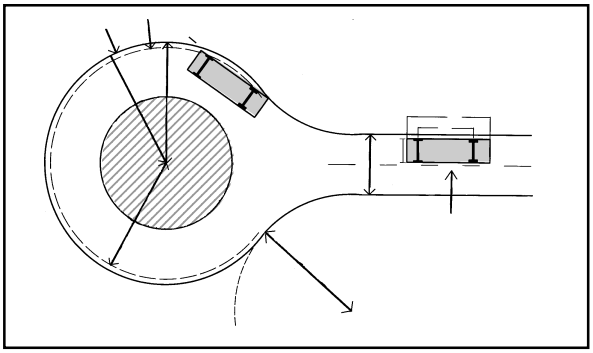
Cul-de-Sac Design



Description

Careful cul-de-sac design can greatly reduce the amount of impervious surface in subdivisions. To do this, cul-de-sacs (also called turnarounds or dead-ends) should use the smallest practical radius. A 40-foot turning radius will accommodate turning of most emergency, service, and maintenance vehicles, while a 30-foot radius will require the largest of these vehicles to make one backing movement in order to turn around.

Simply changing the radius from 40 feet to 30 feet can reduce the impervious coverage by about 50 percent (Schueler, 1995).

Additionally, a landscaped island can be created in the center of the cul-de-sac, where driving does not occur. This island can be designed as a depression to accept stormwater runoff from the surrounding pavement, thus furthering infiltration. A flat apron curb will stabilize roadway pavement and allow for runoff to flow into the cul-de-sac's open center.

A T-shaped (or hammerhead) turnaround reduces impervious surface even further—yielding a paved area less than half that of a 30-foot radius turnaround. Since vehicles need to make a three-point turn to drive out, T-shaped turnarounds are most appropriate on streets with ten or fewer homes.

Advantages

- Cul-de-sac designs like those suggested here result in less stormwater runoff requiring management and less impact on downstream water bodies.
- Planted cul-de-sac islands are attractive amenities
- Less paving can lower development costs

Purpose

Water Quantity

Flow attenuation ◧

Runoff volume reduction ■

Water Quality

Pollution prevention

Soil erosion □

Sediment control ◧

Nutrient loading ◧

■ Primary design benefit

◧ Secondary design benefit

□ Little or no design benefit

Cul-de Sac Design

- Reducing pavement lessens the urban heat island effect—the increase in air temperature that can occur when highly developed areas are exposed to the sun.
- Reducing pavement can help reduce the increased runoff temperature commonly associated with impervious cover.

Limitations

- City ordinances may not accommodate small radii cul-de-sacs, due to accommodations for emergency vehicles. (Some older vehicles require very large turning radii.)
- Hammerhead turnarounds require vehicles to make a three-point-turn to drive out.
- In first two to three years, planted islands require more maintenance than paving.

Design

- If traffic volume is low (10 or fewer homes), consider a T-shaped turnaround. A dimension of 20 by 60 feet will accommodate most vehicles. (See Fig. 4)
- Design circular cul-de-sacs with a radius of 30 feet or less whenever possible. (See Fig. 2)
- Include an unpaved, depressed island, using whatever radius will allow a 20-foot-wide road. (See Fig. 3)
- To make turning easier, the pavement at rear of center island may be wider. (See Fig. 2)
- In the island, plant attractive, low-maintenance perennials or shrubs appropriate for the soil and moisture conditions.

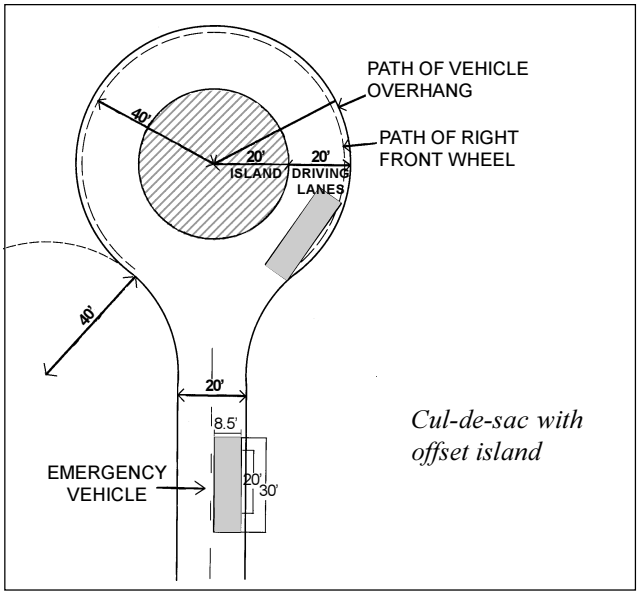
Construction

- During paving, care should be taken to avoid compacting soil in center island. Should compaction occur, it may be necessary to rip or till soils to a depth of 2 feet.
- Choose plants that will thrive when rainfall is high, as well as during droughts without watering. See On-Lot Infiltration BMP for plant list.

Maintenance

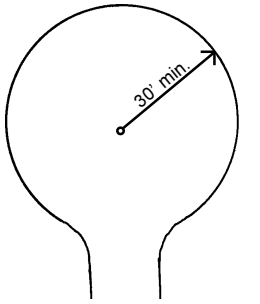
- Cul-de-sac island planting areas must be weeded monthly during the first two to three years. After that, weeding once or twice a growing season may suffice.

Cul-de-Sac Design

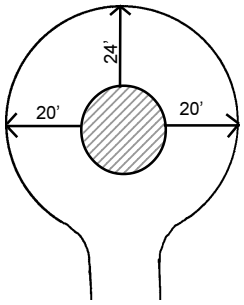


Cul-de-sac with offset island

Figure 1

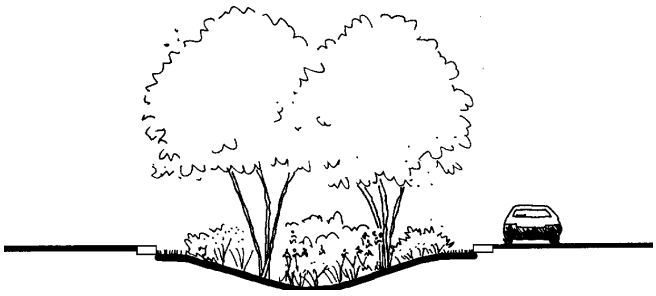


A 30' radius will accommodate most vehicles and reduce pavement



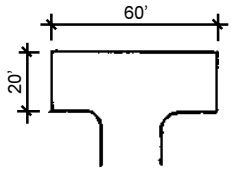
An island can be placed to allow wider lanes in rear, making turning easier.

Figure 2



Cul-de-sac infiltration island accepts stormwater from surrounding pavement. Note flat curb.

Figure 3



T-shaped turnaround

Figure 4

Sources: Adapted from Schueler, 1995, and ASCE, 1990.

Cul-de Sac Design

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1. American Society of Civil Engineers, National Association of Home Builders and Urban Land Institute. 1990. *Residential Streets.* Washington, D.C.
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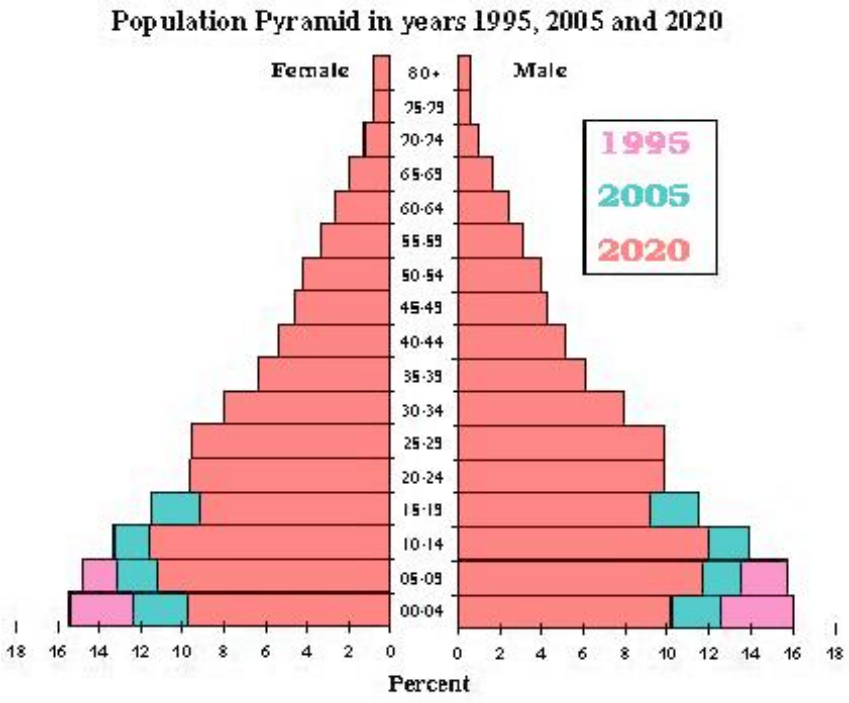
Age-sex Pyramid (Population Pyramid) [1]

Example: Population of Laos by Age and Sex, 1995, 2005 and 2020.



Source: **www.nsc.gov.la** (accessed 20 June 2007).

There are many different ways to graphically present population data. The most important demographic characteristic of a population is its age-sex structure, and the use of an age-sex pyramid, also known as a population pyramid, is considered the best way to graphically illustrate the age and sex distribution of a given population.

An age-sex pyramid consists of two horizontal histograms joined together. It displays the percentage or actual amount of a population broken down by gender and age. The five-year age increments on the y-axis allow the pyramid to vividly reflect both long-term trends in the birth and death rates, and shorter-term baby-booms, wars, and epidemics.

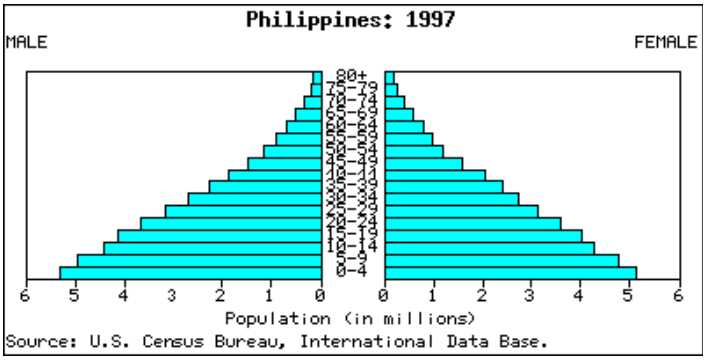
The fertility rate of a population is the single most important influence on the shape of a population pyramid. The more children per parent, the broader will be the base of the pyramid. The median age of the population will also be younger. While mortality will also have an influence on the shape, it will be far

less important an influence than fertility, but somewhat more complex. One would assume that lower mortality rates in a population would result in an older age distribution. However, just the opposite is true: a population with lower mortality rates will display a slightly younger age distribution. This is due to the fact that any disparities in the mortality rates of a population are more likely a result of variations within the younger age groups, usually infants and children.

There are generally three types of population pyramids created from age-sex distributions: expansive, constrictive and stationary. Examples of these three types of population pyramids appear at the end of this report. Definitions of the three types follow.

1. *Expansive* population pyramids show larger numbers or percentages of the population in the younger age groups, usually with each age group smaller in size or proportion than the one born before it. These types of pyramids are usually found in populations with very large fertility rates and lower than average life expectancies. The age-sex distributions of Latin American and many Third World countries would probably display expansive population pyramids.

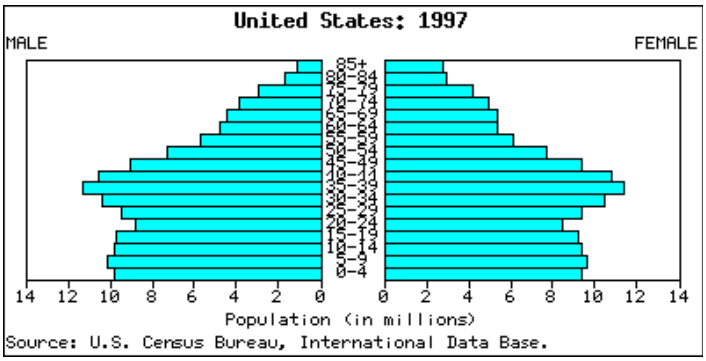
   The following figure is an example of such an age-sex pyramid. This pyramid of the Philippines shows a triangle-shaped pyramid and reflects a high growth rate of about 2.1 percent annually.



*Source: **http://z.about.com/** (December 27 2006).*

2. *Constrictive* population pyramids display lower numbers or percentages of younger people. The age-sex distributions of the United States fall into this type of pyramid.

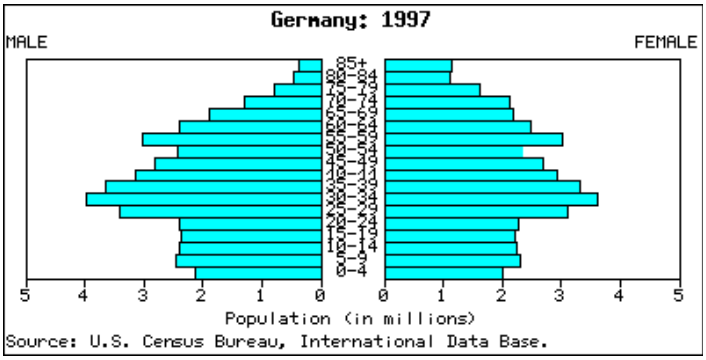
   In the United States, the population is growing at a rate of about 1.7 percent annually. This growth rate is reflected in the more square-like structure of the pyramid. Note the lump in the pyramid between the ages of about 35 to 50. This large segment of the population is the post-World War II baby boom. As this population ages and climbs up the pyramid, there will be a much greater demand for medical and other geriatric services.



*Source: **http://z.about.com/** (December 27 2006).*

3. *Stationary* or near-stationary population pyramids display somewhat equal numbers or percentages for almost all age groups. Of course, smaller figures are still to be expected at the oldest age groups. The age-sex distributions of some European countries, especially Scandinavian ones, will tend to fall into this category.

Germany is experiencing a period of negative growth (-0.1%). As negative growth in a country continues, the population is reduced. A population can shrink due to a low birth rate and a stable death rate. Increased emigration may also contribute to a declining population.



*Source: **http://z.about.com/** (December 27 2006).*

Population projections, or percentages of population growth or decline over periods of time, can also be plotted and displayed on a pyramid along with the current or historical population figures, thus allowing for easy comparison of future or historical trends. This type of pyramid is especially dramatic when large, consistent increases or decreases occur.

As an example, in the figure given at the beginning of this encyclopedia entry, the age-sex distribution of the population of Laos (Lao People's Democratic Republic) is given for 1995, 2005, and 2020 (the last being a demographic projection). The changes indicate that the population pyramid is becoming less expansive over time.

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1. This definition is based on **http://geography.about.com/library/weekly/aa071497.htm** and **www.health.state.pa.us/hpa/stats/techassist/pyramids.htm**.

Councils upset at sewage plant costs

Three North Shore municipalities facing a bill of almost $400M

BY NIAMH SCALLAN, NORTH SHORE NEWS SEPTEMBER 22, 2010

District of North Vancouver councillors are fuming after hearing at a Monday workshop that a new Metro Vancouver liquid waste management plan could cost district households up to $3,830 each.

"This is a shitty proposition and it's not of our making," Coun. Doug MacKay-Dunn said of the potential cost of Metro Vancouver's proposal to overhaul its wastewater treatment facilities.

Metro Vancouver sent a request to municipalities last week seeking support for the municipal actions included in the proposed Integrated Liquid Wastewater Management Plan. The municipal actions include significant upgrades to the region's facilities, including the North Shore's 49-year-old Lions Gate Wastewater Treatment Plant in the next 10 years.

According to utilities department manager Lorn Carter, the primary treatment plant -- as well as more than 1,000 facilities across Canada -- must be upgraded to comply with new federal environmental regulations.

Without federal or provincial funding, the district could be expected to pay up to $134 million. The Lions Gate upgrades could cost all three North Shore municipalities a total of $400 million.

A Metro Vancouver report released in May 2010 stated that the North Shore's sewage treatment plant was contravening federal regulations. Both the Lions Gate facility and the Iona Island Wastewater Treatment Plant in Richmond, B.C. must incorporate secondary treatment facilities, where more toxins are removed from wastewater than during primary treatment, to comply with federal regulations.

For Mayor Richard Walton, a lack of commitment from the federal and provincial governments to a cost-sharing agreement with North Shore municipalities is presenting an enormous financial challenge for the region.

"The regulations that indicate this is necessary comes from two ministries of the environment -- federal and provincial," Walton said. "Both of them have put the district and all the other communities in this situation and neither of them pledged a nickel."

"This community, out of the local tax base, cannot afford that," he added. "This is the most classic downloading case that I have ever, ever seen."

Over the next several years, Metro Vancouver plans to move the North Shore's primary wastewater treatment from its current location on Squamish First Nation land under the Lions Gate Bridge to a new site at McKeen Avenue and West First Street in the District of North Vancouver -- the location of the old BC Rail station.

According to Monday night's presentation to district council, the relocation of sewage piping and primary treatment technology to the old BC Rail site -- where a secondary treatment facility will be built -- will add to the Lions Gate Wastewater Treatment upgrade cost, already estimated at $400 million.

District councillors also discussed concerns that North Shore communities are more heavily burdened by the costs of Metro Vancouver's liquid waste management plan than other municipalities in the region.

"When you get to the secondary (treatment) upgrade, the costs fall far more on the local community than building a building a primary plant," Walton said. "We're in a situation where we're in a small (sewerage) district with a major plant upgrade and . . . 70 per cent of the cost falls on us."

"This could pit us against our Metro neighbours," he added.

According to Walton, councillors across the North Shore continue to advocate to local MPs John Weston and Andrew Saxton to press for a cost-sharing agreement with the provincial and federal governments.

"As Metro Vancouver goes through with this liquid waste plan, which they have to do as a requirement with the Ministry of the Environment, there's no assurance at all that (the District of North Vancouver is) getting off the hook with this $134 million," he said. "This is being strongly advocated by our two representatives, Mayor (Pam) Goldsmith-Jones and Mayor (Darrell) Mussatto, on the waste committee."

District council plans to hold a public meeting on the waste management issue in the near future.

At a City of North Vancouver council meeting the same night, councillors also voiced many of their district counterparts' concerns.

Coun. Guy Heywood described the potential costs to ratepayers as "truly frightening."

In his written report to council, deputy city engineer Douglas Pope wrote that a typical North Shore household currently pays $181 in regional sewerage levies, over and above municipal charges. This figure will climb to $565 by 2030 even if the province and the federal government come to the table.

If they don't, the levy will skyrocket to $1,391 by 2030.

Said Mayor Darrell Mussatto: "I think Metro Vancouver is united and the North Shore mayors are united. We cannot pay for Lions Gate on our own. We need that one-third-one-third-one-third."

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