Federation of North Vancouver Community Associations

FONVCA AGENDA

THURSDAY October 20th 2011

Place: DNV Hall 355 W. Queens Rd V7N 2K6
Time: 7:00-9:00pm
Chair: Dianna Belhouse – Delbrook C.A. & S.O.S.
Tel: 604-987-1656
Regrets:

1. Order/content of Agenda(*short)

Early agenda Item submissions (especially those including electronic support material) - by members who plan to attend - would be appreciated.

2. Adoption of Minutes of Sep 15th

http://www.fonvca.org/agendas/oct2011/minutes-sep2011.pdf

3. Old Business

3.1 Council Agenda Distribution - continued
-Report on meeting with Stuart

4. Correspondence Issues

4.1 Business arising from 1 regular emails:

4.2 Non-Posted letters – 0 this period

4.3 Roundtable on "Current Affairs"

A period of roughly 30 minutes for association members to exchange information of common concerns.

a) **Smart Meters** – real & virtual concerns/benefits – Corrie
http://www.bclocalnews.com/news/131531573.html
b) **Develop with Care** – Ministry guidelines for setbacks from busy roads (150-750m) – Corrie Kost
http://www.fonvca.org/agendas/oct2011/4.3-b.pdf
c) **Sharing information on DNV Municipal Candidates**
See also 6.2(e)
d) **Strong Towns** – CGA
http://www.strongtowns.org/journal/category/cost-of-development
e) **Building a Better Community** – CGA
http://www.youtube.com/watch?feature=player_embedded&v=xnhlZn9zE1M#
f) Municipal Election Questions
Responses to Q8 – CGA, Hunter, Ellis, Platts, Adams
http://www.fonvca.org/agendas/oct2011/CGA-7oct2011.pdf
http://www.fonvca.org/agendas/oct2011/CGA-10oct2011.pdf
http://www.fonvca.org/agendas/oct2011/John_Hunter_q8.pdf
http://www.fonvca.org/agendas/oct2011/John_Hunter_10oct2011.pdf
http://www.fonvca.org/agendas/oct2011/Dan_Ellis_9oct2011.pdf
http://www.fonvca.org/agendas/oct2011/Brian_Platts_9oct2011.pdf

5. New Business
Council and other District issues.

5.1 Safety of Wi-Fi Revisited(re: 4.3a)

http://www.hc-sc.gc.ca/hl-vs/iyh-vsv/prod/wifi-eng.php
http://www.oahpp.ca/resources/documents/Wireless%20technology%20and%20health%20outcomes.pdf
http://www.nsnews.com/technology/Residents+deserve+smart+meter+installation/5165297/story.html

5.3 Steps to Improve Community Associations

http://www.vcn.bc.ca/citizens-handbook/1_07_keeppeople.html

6. Any Other Business

6.1 Legal Issues

*a) DNV can enter land/buildings for bylaw enforcement without a warrant:
http://www.oboa.on.ca/training/caselaw/pdf/6%20R.%20v.%20Bichel.pdf

*b) Neighbour Law – BC Branch of Canadian Bar Association
http://www.cba.org/bc/public_media/housing/400.aspx

*c) Municipal Liability for Highway Safety
http://www.vancouversun.com/health/Municipality+pursued+accident+highway/5475617/story.html

*d) Occupiers Liability Act
http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96337_01
http://www.marymacgregor.ca/article05.htm
http://stason.org/articles/life/justice/cycling/Occupiers-Cyclists-And-One-Eyed-Jacks-The-Wild-Game-Of-Occupiers-Liability.html

*e) BC Supreme Court Dismisses Defamation Lawsuit
http://www.fonvca.org/agendas/oct2011/Judge%20rules%20Marley%20not%20defamed%20at%20election%20meeting.pdf

*f) Judge Awards Costs in baseless (SLAPP) lawsuit
Follow-up of FONVCA June2011 agenda item 6.1(a)
http://www.vancouversun.com/news/opinion/5543117/story.html

6.2 Any Other Issues (2 min each)

*a) Transit trips to work take twice as long as driving
http://www.statcan.gc.ca/pub/11-008-x/2011002/article/11531-eng.pdf

***b) For more issues see**
http://www.fonvca.org/agendas/sep2011/extras.pdf
http://www.fonvca.org/agendas/oct2011/newsclips/

c) Pesticides- Dinosaur Views
http://www.nsnews.com/health/Dinosaur+view+needs+wiping/5375615/story.html

d) Amalgamation

e) All candidates meetings information
http://www.dnv.org/article.asp?a=5164&c=764

***f)** The economic impacts of climate change for Canada
http://**nrtee-trnee.ca**/climate/climate-prosperity/the-economic-impacts-of-climate-change-for-canada/paying-the-price
http://www.vancouversun.com/news/Vancouver+faces+greatest+flood+risk/5482186/story.html

*g) Effect of Immigration – Limits to demographics change
http://sociology.uwo.ca/popstudies/dp/dp03-03.pdf
http://www.immigrationwatchcanada.org/background/research/immigration/immigration-and-canadian-demographics-summary/

7. Chair & Date of next meeting.

Thursday November 17th 2011
Val Moller ? – Lions Gate C.A.

ATTACHMENTS -List of Recent Emails to FONVCA
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

12 September 2011 → 16 October 2011

LINK	SUBJECT
http://www.fonvca.org/letters/2011/12sep-to/Douglas_Curran_12sep2011.pdf	Building a Better Community Sep 21/Oct26/Nov/30
http://www.fonvca.org/letters/2011/12sep-to/Corrie_Kost_17sep2011.pdf	New sites best set away from busy roads
http://www.fonvca.org/letters/2011/12sep-to/Wendy_Qureshi_18sep2011.pdf	Honest debate first casualty of "silly season"
http://www.fonvca.org/letters/2011/12sep-to/Wendy_Qureshi_28sep2011.pdf	Do you think government workers in B.C. are overpaid ?
http://www.fonvca.org/letters/2011/12sep-to/Douglas_Curran_5oct2011.pdf	Cost of development
http://www.fonvca.org/letters/2011/12sep-to/Douglas_Curran_5oct2011b.pdf	Building a Healthy Community
http://www.fonvca.org/letters/2011/12sep-to/Douglas_Curran_7oct2011.pdf	Q8
http://www.fonvca.org/letters/2011/12sep-to/Douglas_Curran_8oct2011.pdf	Q8
http://www.fonvca.org/letters/2011/12sep-to/Douglas_Curran_9oct2011.pdf	Q8
http://www.fonvca.org/letters/2011/12sep-to/Douglas_Curran_9oct2011b.pdf	Q8
http://www.fonvca.org/letters/2011/12sep-to/Dan_Ellis_9oct2011.pdf	Q8
http://www.fonvca.org/letters/2011/12sep-to/John_Hunter_9oct2011a.pdf	Q8
http://www.fonvca.org/letters/2011/12sep-to/Brian_Platts_9oct2011.pdf	Q8
http://www.fonvca.org/letters/2011/12sep-to/Douglas_Curran_9oct2011b.pdf	Q8
http://www.fonvca.org/letters/2011/12sep-to/John_Hunter_9oct2011b.pdf	Q8
http://www.fonvca.org/letters/2011/12sep-to/John_Hunter_9oct2011c.pdf	Q8
http://www.fonvca.org/letters/2011/12sep-to/Douglas_Curran_10oct2011.pdf	Q8
http://www.fonvca.org/letters/2011/12sep-to/John_Hunter_10oct2011.pdf	Q8
http://www.fonvca.org/letters/2011/12sep-to/Doug_Curran_12oct2011.pdf	Comments on building a healthy community
http://www.fonvca.org/letters/2011/12sep-to/John_Hunter_13oct2011.pdf	Affordability and subsidies
http://www.fonvca.org/letters/2011/12sep-to/Cathy_Adams_14oct2011.pdf	Q8
http://www.fonvca.org/letters/2011/12sep-to/Corrie_Kost_15oct2011.pdf	FONVCA 10 questions to Candidates
http://www.fonvca.org/letters/2011/12sep-to/Douglas_Curran_16oct2011.pdf	Q8
http://www.fonvca.org/letters/2011/12sep-to/Monica_Craver_16oct2011.pdf	On "greenscaping" our neighborhoods, towns and cities..

	Past Chair of FONVCA (Jan 2009-present)		**Notetaker**
Oct 2011	Diana Belhouse	Delbrook C.A. & SOS	Paul Tubb
Sep 2011	John Hunter	Seymour C.A.	Dan Ellis
Jul 2011	Cathy Adams	Lions Gate C.A.	John Hunter
Jun 2011	Eric Andersen	Blueridge C.A.	Cathy Adams
May 2011	Dan Ellis	Lynn Valley C.A.	Brian Platts/Corrie Kost
Apr 2011	Brian Platts	Edgemont & Upper Capilano C.A.	Diana Belhouse
Mar 2011	Val Moller	Lions Gate C.A.	Eric Andersen
Feb 2011	Paul Tubb	Pemberton Heights ← Special focus on 2011-2015 Financial Plan	
Jan 2011	Diana Belhouse	S.O.S.	Brenda Barrick
Dec 2010	John Hunter	Seymour C.A. ← Meeting with DNV Staff on Draft#1 OCP	None
Nov 2010	Cathy Adams	Lions Gate C.A.	John Hunter
Oct 2010	Eric Andersen	Blueridge C.A.	Paul Tubb
Sep 2010	K'nud Hille	Norgate Park C.A.	Eric Andersen
Jun 2010	Dan Ellis	Lynn Valley C.A.	Cathy Adams
May 2010	Val Moller	Lions Gate C.A.	Cathy Adams
Apr 2010	Paul Tubb	Pemberton Heights	Dan Ellis
Mar 2010	Brian Platts	Edgemont C.A.	Diana Belhouse
Feb 2010	Special		
Jan 2010	Dianna Belhouse	S.O.S	K'nud Hille
Nov 2009	K'nud Hill	Norgate Park C.A.	Eric Andersen
Oct 2009	Dan Ellis	Lynn Valley C.A.	Cathy Adams
Sep 2009	Brian Platts	Edgemont C.A.	Dan Ellis
Jul 2009	Val Moller	Lions Gate N.A.	Diana Belhouse
Jun 2009	Eric Andersen	Blueridge C.A.	Diana Belhouse
May 2009	Diana Belhouse	S.O.S	Eric Andersen
Apr 2009	Lyle Craver	Mt. Fromme R.A.	Cathy Adams
Mar 2009	Del Kristalovich	Seymour C.A.	Dan Ellis
Feb 2009	Paul Tubb	Pemberton Heights C.A.	Cathy Adams
Jan 2009	K'nud Hille	Norgate Park C.A.	Eric Andersen

FONVCA
Minutes Sep 15th 2011

Place: **DNV Hall 355 W. Queens Rd V7N 2K6**
Time: **7:00-9:00pm**

Attendees

John Hunter (chair)	Seymour C.A.
Brian Platts	EUCCA
Cathy Adams	Lions Gate N.A.
Corrie Kost	EUCCA
Dan Ellis (notes)	Lynn Valley C.A.
Diana Belhouse	Delbrook C.A. & NV Save Our Shores Society
Doug Curran	Capilano Gateway Ass.
Eric Andersen	Blueridge C.A.
John Miller	Lower Cap. Comm. R.A.
Paul Tubb	Pemberton Heights C.A.
Val Moller	Lions Gate N.A.

Regrets: Katherine Fagerlund, Deep Cove R.A.

The meeting was called to order at 7:05 PM.
Attendees agreed that henceforth FONVCA meetings will begin promptly at 7 PM.

1. ORDER / CONTENT OF AGENDA
Item 5.2 Municipal Election Questions was agreed to be discussed after Old Business.

2. ADOPTION OF July 21st 2011 MINUTES
Moved (Dan), seconded (John Miller) to adopt the July/2011 minutes as circulated.
Carried unanimously.

3. OLD BUSINESS

3.1 Council Agenda Distribution
Corrie advised that the upper limit of cost to publish Council agendas in the North Shore News is 25¢ per year per resident, or approximately $20,000 / yr. After extensive discussion, attendees agreed on ACTION: Corrie, Diana and either Dan or John Hunter will meet with David Stuart to learn his understandings about this issue. FONVCA will evaluate the issue based on that information.

5. NEW BUSINESS

5.2 Municipal Election Questions
After extensive discussion of the 19 questions proposed in the agenda, the following were agreed on, subject to final wordsmithing:

1. What practical experience and accomplishments qualify you for local governance?
2. What three major issues are you most concerned about in the DNV, and how can they be addressed?
3. How would you encourage greater civic involvement by the public?
4. What role should community associations play? (*If our intent is not to link Q4 to Q3., then Q4 should be re-numbered - Dan*)
5. What can be done to reduce the three largest municipal costs: policing, the fire department and NS Recreation Commission?
6. Will you commit to the removal, during the next term of Council, of all encroachments which block access to widely-used public lands such as the waterfront?
7. Aside from mandatory legislated requirements, do you believe DNV should undertake "green" initiatives which are uneconomic in a commercial sense? Why?
8. Under what circumstances do you believe ratepayers should subsidize those who realistically cannot afford to live in the DNV?
9. Will you push for and support doing a published review of DNV salaries, wages and especially benefits as compared to the private sector?
10. Which of the complex DNV by-laws and regulations governing our lives do you commit to simplifying or eliminating within the next term of Council?

FONVCA members should comment by e-mail ASAP so that Corrie can send the questions to candidates when nominations close October 14th.

4. CORRESPONDENCE ISSUES

4.1 Business arising from 26 regular e-mails
No discussion.

4.2 Non-posted letters – 0 this period.

4.3 Roundtable on "Current Affairs"

a) DNV Hwy 1 Interchange Design Working Group – invited Community Associations have until October 7th to nominate a member. Dan mentioned a new Advisory Groups Policy was adopted at the Aug 29th Council meeting. Most groups will now report to Staff.
b) Tree By-law – John Hunter advised the new By-law is very complex. After 3rd reading, it is apparently now on hold pending resolution of issues between Council and Staff.
c) Smart Meters – deferred to next meeting
d) Garbage / Bear Rules – discussion of fines for early/late placing of garbage, yard waste and recycling at the curb.

5. NEW BUSINESS
Council and other District Issues

5.1 Safety of Wi-Fi Revisited – deferred.

http://www.hc-sc.gc.ca/hl-vs/iyh-vsv/prod/wifi-eng.php
http://www.oahpp.ca/resources/documents/Wireless%20technology%20and%20health%20outcomes.pdf
http://www.nsnews.com/technology/Residents+deserve+smart+meter+installation/5165297/story.html

5.3 Steps to Improve Community Associations – -
- item deferred to next meeting.

http://www.vcn.bc.ca/citizens-handbook/1_07_keeppeople.html

6. ANY OTHER BUSINESS

6.1 Legal Issues – items deferred.
*a) DNV can enter land/buildings for bylaw enforcement without a warrant:
http://www.oboa.on.ca/training/caselaw/pdf/6%20R.%20v.%20Bichel.pdf

*b) Neighbour Law – BC Branch of Canadian Bar Association
http://www.cba.org/bc/public_media/housing/400.aspx

6.2 Any Other Issues (2 min each)

– items deferred to next meeting.

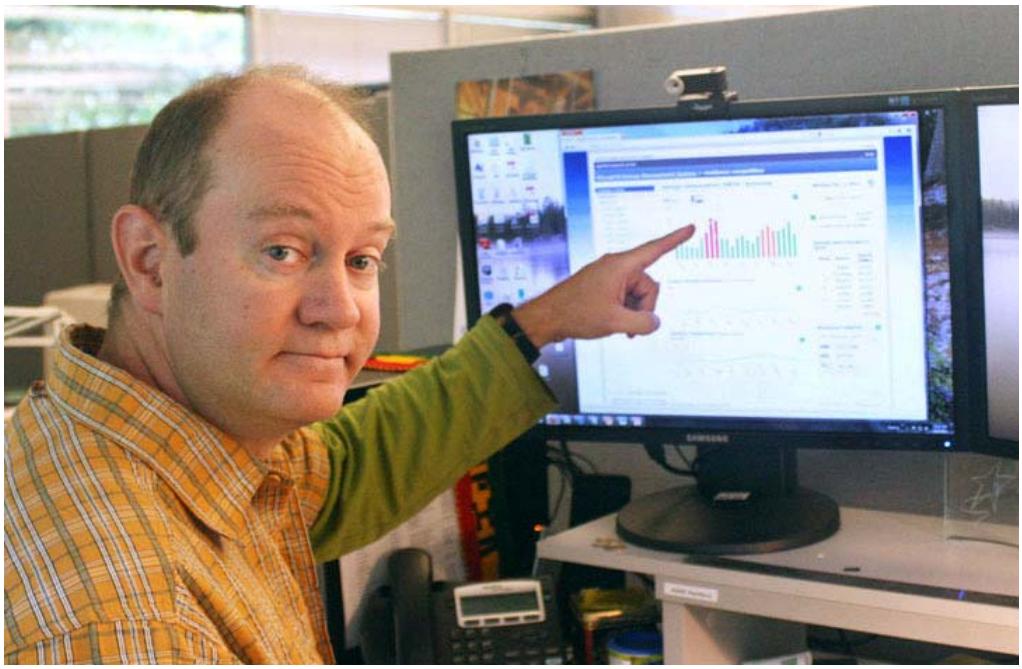
*a) Transit trips to work take twice as long as driving
http://www.statcan.gc.ca/pub/11-008-x/2011002/article/11531-eng.pdf
***b) For more issues see**
http://www.fonvca.org/agendas/sep2011/extras.pdf
***c) Pesticides -** Sep 9 NSN - 'Dinosaur' view needs wiping out
***d) Amalgamation**

7. CHAIR AND DATE OF NEXT MEETING

Thursday October 20th 2011
Chair: Diana Belhouse – Delbrook C.A.
Notes: Paul Tubb – Pemberton Heights C.A.

Meeting adjourned 9:05 PM.

Will smart meters be a smart move?



BCIT researcher Clay Howey uses an Internet portal called the Microgrid Energy Management System to monitor power consumption at on-campus apartments. Similar Internet portals will be available to BC Hydro customers who wish to keep track of their own energy usage when smart meters go active next year.

Tyler Orton/NewsLeader

By Tyler Orton - New Westminster News Leader
Published: **October 11, 2011 10:00 AM**
Updated: **October 11, 2011 10:35 AM**

Two years ago, Clay Howey struck on a fun way to inspire students in residence at BCIT to save energy.
He installed smart meters in each building and gave them a challenge: the house that reduced energy consumption most over a two-week period would win what many students crave—pizza and beer.

So students could track their progress, Howey, research head of BCIT's mobile applications development team, created a web portal that showed hourly usage.

Instead of using electric dryers, some students dried their clothes on racks. And some realized that you can cool down a room by turning down the heat instead of just opening the windows.

The houses managed to get an average energy savings of 22 per cent by the end of the competition, while the winners chalked up an impressive 31 per cent energy savings.

The question now, as smart meters are installed in houses, condos and apartment buildings across the province, is whether those same impressive results can be replicated on a grand scale.

And will the investment of almost $1 billion to create the infrastructure be worth it?

Opposition strong

These digital devices are gradually replacing the current analog meters responsible for measuring customers' energy consumption levels. Over 134,000 are already hooked up to homes.

The smart meters' wireless capability will allow people to hop online and monitor their household energy consumption hour-by-hour instead of waiting for a monthly bill.

BC Hydro says it expects a net benefit of $520 million over the next 20 years through reduced electricity theft, energy savings and increased operating efficiency, with $70 million in savings coming over the next three years alone.

Installing the devices in every household by 2012 will cost $930 million.

Similar systems have gone live in Italy, Australia and the United States, but the rollout of the new meters hasn't come without controversy here in B.C.

Groups such as the Coalition to Stop "Smart" Meters have rallied against the implementation of the devices, citing health risks, privacy concerns and democratic infringement.

Coalition director Sharon Noble is going so far as to tell people to cover up their analog meters with signs telling technicians not to install the new devices. And she said she knows of a man who even went as far as to tie a canoe to his old meter to prevent it from being replaced.

This anti-smart meter group includes founding members such as Green Party leader Elizabeth May and former B.C. politician Rafe Mair.

But not all environmentally minded people are against the smart meters. Earlier this year the Environmental Defense Fund, an American green organization, threw its support behind the technology as it rolled out in San Francisco.

New Westminster Environmental Partners, a non-partisan community group that promotes environmental sustainability, has not adopted a position on smart meters, but NWEP director Matthew Laird says he personally supports the devices.

"A smart grid is an efficient grid," Laird says. "If you can better manage your power grid, you can find leakage, you can find where the high usage is."

As for the health risks that the Coalition to Stop "Smart" Meters cites, Laird says he's not too concerned.

"We've been using RF (radio frequency) transmitters for over 100 years. The amount transmitted by these devices is so miniscule compared to the blanket of radiation from cell phones, I don't think you could actually quantify any risk from smart meters."

The new devices will send usage info to BC Hydro four to six times a day, transmitting data wirelessly for less than a minute throughout the day. Laird says if BC Hydro committed to time-of-use pricing, money could be saved on building new power infrastructure. With time-of-use pricing, you pay less to use power during times of low demand. It would cost less to run a dishwasher or watch TV late at night as opposed to when most people get home from work.

"You don't have to build more production facilities, you don't have to impose on the environment to generate more electricity. That's a very good thing. That's what smart meters can help us do by managing our power grid more efficiently," Laird says.

"If you know what you're using, if you can actually see how you're using the power rather than just a monthly statement, which is a very verbose way of reporting usage, then you really do have the opportunity to use less power and therefore save on the need to generate more power."

Hard to change people's behaviour

Burnaby Mayor Derek Corrigan says smart meters fall way down on his list when it comes to balancing the environment with economic sustainability.

"The problem with our environmental groups that happens so often is they don't care how much it costs. They have no sense of the economics," Corrigan says.

"The question is always 'What's necessary and what's unnecessary?' And in the present economic times the last place Hydro should be putting their money into is smart meters."

Instead, the mayor says he'd rather see dollars invested in educating people about energy reduction.

He cited BC Hydro programs like Power Smart that teaches people to install energy-efficient furnaces or better insulate their homes.

Corrigan says reduced power consumption—one of the benefits BC Hydro touts—is unlikely.

“I don’t think the evidence supports that there is a significant change in behaviours in utilization of energy.

You still have to wash your clothes, you still have to turn on your lights. There’s certainly an increased awareness that develops as a result of this, but I don’t think it makes a significant difference in what you need to be able to operate your home,” he says.

As for the BCIT students and their 31 per cent energy savings, Howey admits prizes were a strong incentive.

“You can affect short-term behaviour change, but we were kind of interested in after the fact. Afterwards we got about a 10 per cent energy savings. Just by monitoring what your consumption is in real time, you just build awareness and it’s on their mind.”

newsroom@newwestnewsleader.com

Find this article at:
http://www.bclocalnews.com/news/131531573.html

Check the box to include the list of links referenced in the article.

FONVCA Agenda Item 4.3(b)

Subject: Rethink where density should go???
From: Corrie Kost <corrie@kost.ca>
Date: 17/09/2011 9:31 AM
To: Mayor and Council - DNV <Council@dnv.org>
CC: 'FONVCA' <fonvca@fonvca.org>

Your Worship & Members of Council,

Recent news articles brought to light past ministry reports on "Develop With Care" which may lead to a rethink about putting density near major transportation routes. Please see attachments.

Yours truly,

Corrie Kost

Attachments:

Richmond Review - Truck route pollution setbacks 'ridiculous'.pdf	131 KB
New sites best set away from busy roads.pdf	30.8 KB

http://www.vancouversun.com/health/sites+best+away+from+busy+roads/5418683/story.html see
http://www.env.gov.bc.ca/wld/documents/bmp/devwithcare2006/develop_with_care_intro.html

New sites best set away from busy roads

Ministry says healthier to have 150 metre gap

BY KELLY SINOSKI, VANCOUVER SUN SEPTEMBER 17, 2011

B.C.'s environment ministry is calling for Metro Vancouver to consider setting new developments 150 metres back from busy roads, truck routes and freeways, to prevent increased health risks for everything from asthma to heart disease.

But the regional district questions whether the ministry's Develop With Care guidelines are achievable under Metro Vancouver's regional growth strategy because it would effectively prevent any development in such an urbanized zone.

The recommendations, which aren't binding, call for a setback of 150 metres for homes, longterm care facilities, schools and hospitals along roads that carry more than 15,000 vehicles a day and a setback of 750 metres for those along truck routes.

"Every local government is open to failure,"said Surrey Coun. Linda Hepner, chairwoman of Metro's environment and energy committee. "I don't think any truck route fits into the parameter of this guideline."

Metro directors asked staff for an analysis of the guidelines, noting the new rules don't take into account the work Metro Vancouver has done in terms of reducing diesel particulate, and warned it wouldn't allow any Port Metro development if the rules were to be applied.

"We need to put a big red flag on this," Belcarra Mayor Ralph Drew said, noting Burnaby is criss-crossed with truck routes. "According to a Metro staff report, higher levels of air contaminants from motor vehicles are concentrated within 150 metres of freeways and busy roadways, and levels decrease with distance from the roadside.

The report cites a "growing body of scientific literature" that shows people living near freeways and major roads have a higher risk of developing health problems such as asthma, chronic bronchitis, emphysema, pneumonia and heart disease.

The ministry guidelines were drafted in 2006, following input from developers, local government staff, and community groups.

ksinoski@vancouversun.com

Truck route pollution setbacks 'ridiculous'

Trucks roll regularly past homes on River Road in North Delta.

Surrey Leader file photo

Buy Richmond Review Photos Online

By Jeff Nagel - BC Local News
Published: **September 14, 2011 4:00 PM**
Updated: **September 14, 2011 4:53 PM**

Metro Vancouver politicians are dismissing provincial guidelines that call for new housing developments to be set far back from busy roads to protect residents from air pollution.

The environment ministry's Develop With Care guidelines urge cities to ensure a minimum 150-metre setback when homes, long-term care facilities, schools and hospitals are built along busy roads that carry more than 15,000 vehicles a day.

Richmond / South Delta
- Dump truck rolls over at SFPR construction site
- Truck torched in Ladner

It says there should be even deeper setbacks on major truck routes, noting higher concentrations of air contaminants are detectable up to 750 metres away.

"It's totally impractical," said Belcarra Mayor Ralph Drew, who sits on Metro's environment and energy committee. "It really doesn't mean anything. It was frankly ridiculous."

He said a 750-metre setback from all truck routes would render much of Metro Vancouver undevelopable, particularly cities like Burnaby that are crisscrossed with such routes.

Surrey Coun. Linda Hepner, the committee's vice-chair, said the province should redraw its guidelines to reflect reality.

"In an urban environment, where is this even possible?" she asked.

"It just doesn't make any sense. Maybe the environment ministry isn't talking to the transportation ministry, but something has to be amiss."

The committee asked staff to analyze how such a system of setbacks would mesh with Metro's new regional growth strategy.

The guidelines aren't binding or enforceable – it's up to each city to decide their local utility and how far to go in implementing them.

"If the setbacks can be accommodated, health risks will be reduced for residents," a Metro staff report said, citing a growing body of scientific evidence of higher disease risks for people who spend much time near freeways and busy roads.

"Exposure to this pollution has also been bound to hamper children's ability to learn," the report said. "Pregnant women, children and older adults, especially those with pre-existing cardiac disease, are at increased risk for health impacts of traffic-related pollution."

It also notes setbacks don't need to be bare land, but merely uses that expose fewer people to high pollution levels.

In cases where setbacks won't work, the guidelines suggest developers be forced to install specialized air filters or place air intakes away from traffic.

The Develop With Care guidelines aren't exactly new – they were drawn up in 2006 with input from developers, cities and other groups.

They were only drawn to Metro's attention this summer when a delegation of Surrey residents calling themselves the 32 Avenue Alliance pressed for the elimination of the truck route designation along 32 Avenue from Highway 99 to the Campbell Heights industrial park.

Opponents of the South Fraser Perimeter Road have also argued the truck freeway now under construction will increase health risks for residents near the route and children who attend nearby schools.

PROVIDE SETBACKS FROM MAJOR TRANSPORTATION ROUTES

Higher levels of air pollutants are found near freeways and busy traffic corridors. This can add to the health concerns of people who have asthma or cardio-vascular conditions. There are also specific concerns about locating buildings where people spend large amounts of time, and buildings that house vulnerable populations (e.g., children, elderly, pregnant women, and those who are ill) near busy traffic corridors.

- ☑ Provide a minimum 150 m setback from busy roads for buildings such as schools, hospitals, long-term care facilities, and residences. A 'busy road' is defined as a road with more than 15,000 vehicles/day based on annual daily average traffic counts.
- ☑ Allow additional setbacks for buildings located along major truck routes. Elevated air pollutant concentrations are measurable as far as 750 m from truck routes. Heavy-duty trucks generally emit larger quantities of air pollutants, including diesel exhaust particulate, a probable human carcinogen.
- ☒ Avoid creating street canyons (see box) which can trap air pollution. This can be achieved by staggering buildings that are perpendicular to predominant wind direction or allowing high-rise buildings only on one side of the street.
- ☑ For supporting information on setbacks, see the Ministry of Environment Air Protection website.

Promote clean transportation options.
PHOTO: STEVE SAKIYAMA

2.7.2 Greenhouse Gas Emissions

Global temperatures are rising, and most of the warming in the past 50 years has been due to human activities that release greenhouse gases (such as carbon dioxide and methane) into the atmosphere. This warming is resulting in changes to freshwater, marine, and terrestrial ecosystems.

The effects of greenhouse gas emissions can be reduced by minimizing energy use and increasing carbon sequestration (uptake of carbon) by maintaining and increasing vegetation cover. See the B.C. Greenhouse Gas Action Guide for additional suggestions on ways to reduce

STREET CANYON

A street canyon is defined by calculating the ratio of the height (H) of the buildings and the width (D) of the street. The following table is used to define a street canyon:

H/D Ratio	Type of Roadway
<0.3	Wide Street
0.3 to 0.7	Canyon street **without** risk of pollution accumulation
>0.7	Canyon street **with** risk of pollution accumulation

Health Canada Santé Canada

Your health and safety… our priority. *Votre santé et votre sécurité… notre priorité.*

Safety of Wi-Fi Equipment

Updated:

October 2011

IT'S YOUR HEALTH

Safety of Wi-Fi Equipment

THE ISSUE

Wi-Fi equipment is being installed in many public places across Canada including schools, offices, libraries, shopping venues and coffee shops. Some people are concerned that radiation from Wi-Fi equipment could cause health problems and that children may be at particular risk in school environments.

WI-FI EQUIPMENT

Wi-Fi is a technology that allows devices such as home and portable computers, digital audio players and video game consoles to communicate data wirelessly. It is often used to link home computers to the internet. Wi-Fi is the second most common form of wireless technology, next to cell phones. Like other commonly used household products (cordless phones, Bluetooth devices, and remote controls for garage door openers), Wi-Fi equipment emits radiofrequency (RF) energy.

The RF energy given off by Wi-Fi is a type of non-ionizing radiation. Unlike ionizing radiation (as emitted by X-ray machines), RF energy from Wi-Fi equipment and other wireless devices cannot break chemical bonds. While some of the RF energy emitted by Wi-Fi is absorbed in your body, the amount largely depends on how close your body is to a Wi-Fi enabled device and the strength of the signal. Unlike cellular phones where the transmitter is in close proximity to the head and much of the RF energy that is absorbed is deposited in a highly localized area, RF energy from Wi-Fi devices is typically transmitted at a much greater distance from the human body. This results in very low average RF energy absorption levels in all parts of the body, much like exposure to AM/FM radio signals.

HEALTH RISKS OF WI-FI

In 2011, the International Agency for Research on Cancer (IARC) classified RF energy as "possibly carcinogenic to humans". The IARC classification of RF energy reflects the fact that some limited evidence exists that RF energy might be a risk factor for cancer. However, the vast majority of scientific research to date does not support a link between RF energy exposure and human cancers. At present, the evidence of a possible link between RF energy exposure and cancer risk is far from conclusive and more research is needed to clarify this "possible" link. Health Canada is in agreement with both the World Health Organization and IARC that additional research in this area is warranted.

As long as RF energy levels remain below Health Canada's RF safety guidelines, current scientific evidence supports the assertion that RF energy emissions from Wi-Fi devices are not harmful. Health Canada's conclusions are consistent with the findings of other international bodies

Canada

and regulators, including the World Health Organization, the International Commission on Non-Ionizing Radiation Protection, the Institute of Electrical and Electronics Engineers and the U.K. Health Protection Agency.

RF energy exposure from Wi-Fi equipment in all areas accessible to the general public are required to meet Health Canada's safety guidelines. The limits specified in the guidelines are far below the threshold for adverse health effects and are based on an ongoing review of thousands of published scientific studies on the health impacts of RF energy. The public exposure limits apply to everyone, including children, and allow for continuous, 24/7 exposure.

MINIMIZING YOUR RISK

Health Canada's position is that no precautionary measures are needed, since RF energy exposure levels from Wi-Fi are typically well below Canadian and international safety limits. As with any product, Wi-Fi devices should be operated in accordance with the manufacturer's instructions.

THE GOVERNMENT OF CANADA'S ROLE

Health Canada's role is to protect the health of Canadians, so it is the Department's responsibility to research and investigate any possible health effects associated with exposure to RF energy, such as that coming from Wi-Fi equipment. Health Canada has developed guidelines for safe human exposure to RF energy (*Safety Code 6*). It is one of a series of codes that specify the requirements for the safe use of radiation-emitting devices operating in the frequency range from 3 kilohertz (kHz) to 300 gigahertz (GHz). Wi-Fi operates in the 2.4 and 5.8 GHz frequency range.

Industry Canada, the federal regulator responsible for the approval of RF communications equipment and performing compliance assessments, has chosen Health Canada's RF guidelines as its exposure standard. As long as exposures respect these guidelines, Health Canada has determined that there is no scientific reason to consider Wi-Fi equipment dangerous to the public.

FOR MORE INFORMATION

- Health Canada Wi-Fi YouTube video: www.hc-sc.gc.ca/ahc-asc/media/video/wifi-eng.php
- Frequently Asked Questions About Wi-Fi: www.hc-sc.gc.ca/ewh-semt/radiation/cons/wifi/faq-eng.php
- Health Canada, Cell Phone Towers at: www.hc-sc.gc.ca/ewh-semt/radiation/cons/stations/index-eng.php
- *It's Your Health*, Safety of Cell Phones and Cell Phone Towers at: www.hc-sc.gc.ca/hl-vs/iyh-vsv/prod/cell-eng.php
- *It's Your Health*, Electric and Magnetic Fields at Extremely Low Frequencies at: www.hc-sc.gc.ca/hl-vs/iyh-vsv/environ/magnet-eng.php
- World Health Organization, Electromagnetic fields and public health: mobile phones at: www.who.int/mediacentre/factsheets/fs193/en/
- World Health Organization, Electromagnetic fields and public health: base stations and wireless technologies at : www.who.int/mediacentre/factsheets/fs193/en/
- International Agency for Research on Cancer electromagnetic fields news release at: www.iarc.fr/en/media-centre/pr/2011/pdfs/pr208_E.pdf

FOR INDUSTRY AND PROFESSIONALS

- Health Canada's Consumer and Clinical Radiation Protection Bureau at: www.hc-sc.gc.ca/ahc-asc/branch-dirgen/hecs-dgsesc/psp-psp/ccrpb-bpcrpcc-eng.php
- Health Canada's RF exposure guidelines (*Safety Code 6*) at: www.hc-sc.gc.ca/ewh-semt/pubs/radiation/radio_guide-lignes_direct-eng.php
- Industry Canada's Radio Standards Specification 102 at: www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf01904.html

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IT'S YOUR HEALTH

- Industry Canada's Client Procedures Circular CPC-2-0-03 at: www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08777.html
- Industry Canada, Consumer Trends Update – The Expansion of Cell Phone Services at: www.ic.gc.ca/eic/site/oca-bc.nsf/eng/ca02267.html
- Industry Canada's *Guidelines for the Protection of the General Public in Compliance with Safety Code 6* at: www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf05990.html
- World Health Organization, Electromagnetic Fields at: www.who.int/topics/electromagnetic_fields/en/

RELATED RESOURCES

- For safety information about food, health and consumer products, visit the Healthy Canadians website at: www.healthycanadians.gc.ca
- For more articles on health and safety issues go to the *It's Your Health* web section at: www.health.gc.ca/iyh

You can also call toll free at 1-866-225-0709 or TTY at 1-800-267-1245*

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Canada

Wireless Technology and Health Outcomes: Evidence and Review

Are there human health effects related to the use of wireless internet technology (Wi-Fi)?

Dr. Ray Copes, Director of Environmental and Occupational Health, **Ontario Agency for Health Protection and Promotion**

Dr. Lawrence Loh, community medicine resident, **Ontario Agency for Health Protection and Promotion**

Background

Wireless internet technology (also known by its trademark name Wi-Fi) initially was conceived in the mid 1980s but only came into widespread use in the mid-2000s, most notably as part of municipal free-internet projects[1] (e.g. Toronto Hydro OneZone[2].) Today, wireless internet is ubiquitous in homes, hotels, airports, and public institutions such as schools, libraries and long-term care homes.

Although Wi-Fi is a relatively new communication technology, use of the radiofrequency (RF) band for communications and other applications is not new and widespread public exposure to these frequencies has occurred for decades. In addition to Wi-Fi, numerous other technologies also employ the RF band, including cellular phones and their base tower infrastructure, conventional television and radio signals, home cordless phones, and microwave ovens.[3]

The RF band is a band of non-ionizing radiation that ranges from 3 kHz – 300,000 MHz[1, 4, 5]. The RF band is part of the electromagnetic spectrum, with frequencies below those associated with visible light and X-rays and higher than those frequencies associated with power lines. Unlike the much higher frequencies associated with X-rays and ultraviolet radiation, including sunlight, RF lacks sufficient energy to break chemical bonds.

Of these technologies, the bulk of research in RF has been on cellular phones. Cellular phones have been in use longer than Wi-Fi and are associated with higher field strengths. Thus, when considering total RF exposure in terms of power density, duration, distance (from source) and frequency of exposure [6], it is important to remember that Wi-Fi may represent only a small proportion of an individual's overall RF exposure [3].

In most countries exposure limits for RF are set at the national level. Industry Canada regulates RF in Canada[7]. For protection of human health from adverse effects of RF exposure, they have adopted Health

Canada's Safety Code 6 (revised 2009), which sets exposure limits[8] for controlled and uncontrolled environments.

Limits for RF are typically specified in two ways. The first is as a specific absorption rates (SARs), which are measured in power absorbed (Watts) per unit mass (kilograms), given as a whole-body average, or a localized measurement[8]. Secondly, limits are also set for power densities measured from the source in Watts per square meter[9].

SARs are based on non-human primate studies; the predominant health effect addressed is tissue heating, which occurs at 4 W/kg of exposure over whole body. Applying a safety factor of 10, Safety Code 6 sets exposure limits for controlled environments to whole body, head and trunk of 0.4 Watts per kilogram, 8 Watts per kilogram, and 20 Watts per kilogram respectively[8].

For uncontrolled environments to protect the general public, a safety margin of 50 is used to derive exposure limits to whole-body, head, and trunk of 0.08 Watts per kilogram, 1.6 Watts per kilogram and 4 Watts per kilogram respectively. The International Commission on Non-Ionizing Radiation Protection (ICNIRP) also sets limits on power-density emissions from sources of 10 Watts per square metre[9].

The recent proliferation of Wi-Fi devices has increased concerns about potential effects of RF exposure on human health and raised questions as to whether exposure limits set on the basis of tissue heating are sufficiently protective. This document considers Wi-Fi exposures in context with other current sources of RF exposure and recent reviews of health outcomes research on RF exposures.

Methods

This report represents a review of the scientific literature on radio frequency energy and effects on health. It is based on a review of the most up to date published reviews, supplemented by a review of primary literature published after the last review available.

Various reports, regulations and reviews from the World Health Organization, government, commissions, and health agencies, as well as other interest groups (example Council on Man and Radiation (COMAR) or the BioInitiatives Working Group) were sought out and reviewed, and references from these publications also considered for inclusion.

A primary literature review for new publications was then carried out using PubMed. Searches were conducted using MeSH terms "Radio Waves", "Microwaves" and "Electromagnetic Fields" combined with "adverse effects" and "public health". Free text searches were also carried out using search terms "radiofrequency and health", "wi-fi and health", and "cellular phones health".

Title review identified reviews and key large studies, whose abstracts were then reviewed for relevance. Articles were then selected for review if they had been published in reputable peer-reviewed journals, published within the last two years, or had significant public interest or impact. Reference lists of selected articles were then further hand searched for relevant articles and reports.

Exposure research

Exposure research addresses source intensity and power density, frequency and duration of exposure, and distance from the source, in measuring potential exposures and health effects [6].

Modeling of RF exposure has been undertaken by researchers at the United Kingdom National Radiological Protection Board. In studies on mobile phone exposures, they found that head and neck exposures to RF with maximum handset use (resembling a controlled exposure of 100% RF absorbed by tissue) was 3.09-4.61 W/kg[10].

By comparison, for Wi-Fi, the same researchers found that for a child typically using a laptop within good signal range of a wireless router, RF exposure to the head was 0.0057 W/kg. This represents less than 1% of the SAR calculated for a typical mobile phone exposure and well below the 1.6 W/kg limit to head for uncontrolled exposures [3].

With regards to source power densities, Foster and others demonstrated that maximum and median Wi- Fi exposures were significantly below the exposure limit set by the ICNIRP (see Table 1[6]). Another study found cellular base antenna power densities to be 0.05 W/m^2 [11].

Table 1 – Comparison of measured RF fields with Wi-Fi (adapted from Foster)

RF activity being measured or calculated	Maximum time-averaged power density (W/m^2)	Median time-averaged power density (W/m^2)
Laptop not communicating with Wi-Fi, measured directly next to Wi-Fi access point	0.007	0.000012
Laptop uploading/downloading file, measured 1 metre away from laptop Wi-Fi card	0.001	0.000016
Laptop uploading/downloading file, average of measurements taken at different distances from laptop	0.04	0.00006

Outcomes research

As Wi-Fi is a more recent application of RF and generally results in much lower levels of exposure to RF, much of the available scientific literature on potential health effects of RF is based on studies of cell phones.

Multiple biologic outcomes have been explored, including cancer, infertility in animals, behavioural changes, and “electromagnetic hypersensitivity” (EHS), defined as a set of non-specific symptoms such as nausea, headache, and dizziness[12].

Reviews by regulatory and standard setting organizations

The Health Protection Agency in the United Kingdom has done extensive work researching the potential effects of Wi-Fi. Their review[13] concluded there is no consistent evidence that Wi-Fi has adverse human health effects; it also concludes by stating there is no reason why schools and other public facilities should not use Wi-Fi equipment.

Health Canada has issued statements reaffirming Safety Code 6:

"Safety Code 6 offers the best protection for Canadian workers and the general public, for several reasons: it is based on [...] evidence [...] from hundreds of peer-reviewed RF studies; has been reviewed and recommended by independent third parties such as the Royal Society of Canada; and [has limits] among the most stringent in the world."[14]

A recent Health Canada statement released on Aug. 18, 2010, has highlighted that all Wi-Fi devices must meet Safety Code 6 and that "radiofrequency energy emitted from Wi-Fi equipment are typically well below these safety limits."[15]

The World Health Organization has published extensively about the risks of low-level RF exposure. In a background document about electromagnetic fields, the WHO states:

"No obvious adverse effect of exposure to low level radiofrequency fields has been discovered [...] further research aims to determine whether any less obvious effects might occur at very low exposure levels."[16]

Published reviews

The Bio-Initiatives Working Group is an ad-hoc group of scientists and public policy analysts who produced "The BioInitiative Report: A Rationale for a Biologically-based Public Exposure Standard for Electromagnetic Fields."

This report reached different conclusions and recommendations as compared to the international health and standard setting organizations[17]. The authors review a number of selected papers and draw the conclusion that the evidence clearly supports health effects related to RF exposure and dramatically stated that "it is not unreasonable to question the safety of RF at any level".

The report goes on to suggest a precautionary level for human exposure to electromagnetic fields that is approximately 10,000 times lower than existing regulatory limits.

This conclusion was reviewed and challenged in a publication by the Committee on Man and Radiation (COMAR) [18]. This 46 member expert group raised a number of criticisms of the BioInitiatives Report, such as selectiveness in papers reviewed, inconsistencies in the review process, and questions as to the impartiality of the reviewers on the panel.

Moreover, the COMAR report also points out that BioInitiatives suggested RF limits of human exposure would affect the use of public safety RF devices, including airport radar installations, and police and emergency communication systems.

The Royal Society of Canada commissioned a panel in 1999 to review the adequacy of Safety Code 6 and possible revisions in view of potential non-thermal biologic effects; the panel report[19] "found no evidence of documented health effects in animals or humans exposed to non-thermal levels of radiofrequency fields" although calling for additional research.

An update by the same panel in 2003[20] repeated the same conclusion, and again noted the need for additional research.

Finally, a third update by many of the original authors was published in 2009[21]. As this is the most recent comprehensive review of the literature on the effects of RF exposure, its conclusions are summarized below.

This most recent review summarizes outcomes from cellular and animal studies as follows:

"Effects of RF fields on various biological systems were investigated in some depth. Although the majority of studies provided no evidence of genotoxic effects, there are a few positive findings that warrant follow up. Some cellular studies provided evidence that gene expression is affected at RF field exposure levels close to current safety limits. If these studies are replicated and confirmed, they will be of importance in understanding how RF fields may interact with biological tissues. It is possible that small temperature elevations may have accounted for some of the observations in cell culture studies. Accordingly, the importance of non-RF heat studies is stressed. Overall, there is little evidence of cellular effects of RF fields of health significance below current safety limits. In the future, it would be of interest to investigate the complex modulation patterns and intensity variations corresponding to the RF fields produced by actual mobile phones."

The review of human clinical studies including those on electromagnetic hypersensitivity is summarized as:

"Various subjective symptoms, including dermatological symptoms (redness, tingling and burning sensations) as well as neurasthenic and vegetative symptoms (fatigue, tiredness, concentration difficulties, dizziness, nausea, heart palpitation, and digestive disturbances and other unpleasing feelings such as a burning sentient or a faint pain), were suggested as being triggered by exposure to RF fields. However, the limited number of studies conducted to date found no evidence for an association between these reported symptoms of EHS and exposure to electromagnetic fields. Small changes in electrical activity and neurotransmitter biochemistry were observed in some studies, although no evidence of impaired cognitive functioning was attributed to these observations. Scientific evidence to date has found no consistent evidence of altered cardiovascular system or auditory parameters following RF field exposures. A recent study suggested that exposure to RF fields from mobile phones may be associated with sperm quality; this finding warrants follow-up."

The final group of studies reviewed, epidemiological studies, is summarized as:

"At present, the results from epidemiologic studies do not provide sufficient evidence to support a clear association between mobile phone use and an increased risk of head and neck benign tumours. However, there have been reports of a higher risk of brain tumour and acoustic neuroma in some studies.

Exposure assessment in these studies was based largely on self-reports of past mobile phone use. Additional investigations of the possible association between mobile phone use and cancer risk, particularly among chronic heavy users of mobile phones, are needed to clarify this issue."

Recent studies

Since the publication of the review by Habash et al, additional research has been published. While none of the recent research invalidates or overturns the previously accumulated weight of evidence, some of the recently published studies do provide additional insights.

As indicated by the Habash et al review, numerous case-control studies [22,23,24,25] using cancer as an outcome conducted in different countries around the world have not supported a clear association between cancer and cellular phone use. The most recent study is the INTERPHONE study, whose results were published in June 2010.

In a meta-analysis of several studies of cellphone use and its association with tumours carried out by Hardell et al. there was no demonstrable increase in risk for most tumours considered. However, there was an indication of an increased risk for glioma, acoustic neuroma, and meningioma with ipsilateral cellphone use of greater than 10 years[26].

A review by Kundi and Hutter described studies conducted in France, Spain and Austria, where participants estimated their distance from a cellular base station. They then rated a list of 18 symptoms (e.g. fatigue, headaches, and sleeping problems) and how frequently they experienced them. None of the studies showed any statistically significant relationship between symptoms and proximity to a base station[27].

A review on base stations by Khurana and others reviewed 10 studies, eight of which were positive for neuro-behavioural changes or cancer; however, the reviewers did state that the studies reviewed involved low numbers of participants and were of poor methodological quality which limits the reliability of any conclusions [28]. The authors indicated that further research into these outcomes is urgently required.

A review of 46 blind or double-blind studies with exposure to active or sham electromagnetic fields concluded that despite the conviction of sufferers from electromagnetic hypersensitivity that their symptoms are triggered by exposure to electromagnetic fields, repeated experiments have been unable to replicate this phenomenon under controlled conditions. For this reason, clinicians and policymakers are cautioned that a narrow focus on bio-electromagnetic mechanisms is unlikely to help these patients in the long-term. [29]

Three recent publications have looked at the effects of RF exposures or cellphone use in young people. Abramson et al[30] studied 317 7th graders. Self reported cellphone use was associated with more rapid but less accurate responses on a computerized cognitive test battery.

As the findings were similar for use of text messaging the authors' opinion was that the behaviours may have been learned through frequent use and were unlikely due to RF exposure. Heinrich et al[31] studied 3022 Bavarian children and adolescents. Half the children and nearly every adolescent owned a mobile phone.

Measured RF exposure was well below ICNIRP reference levels. No statistically significant association was found between measured exposure and chronic symptoms. While concluding that their cross-sectional study did not indicate any association between exposure to RF and chronic well-being in children and adolescents, they called for additional prospective studies to confirm their results. The same group also published a study[32] looking at behavioural problems in the children and adolescents.

The adolescents, but not the children, with the high RF exposures (associated with greater cellphone use) had more overall behavioural problems as assessed by a questionnaire. There was an association between conduct problems and RF exposure for both adolescents and children.

Conclusions

Research on potential health effects from exposure to RF energy is an active field of investigation. Not surprisingly there is inconsistency and in some cases conflict between the results of individual studies.

Given this inconsistency, it is possible to select the results of individual research studies in support of a variety of opinions; which may range from no risk of health effects on the one hand, to a clear need to reduce current exposure limits on the other.

For this reason, up-to-date reviews of literature which follow a weight of evidence approach are far more useful for informing debate and sound policymaking than reliance on individual studies.

The Royal Society of Canada performed a highly credible review in 1999. Updates to this review have been published; the most recent in 2009. While the most recent review continues to call for additional research to follow up on new findings, after a decade of additional research, there is still no conclusive evidence of adverse effects on health at exposure levels below current Canadian guidelines.

While far from conclusive, there is emerging evidence that long-term frequent use of cellphones may be associated with an increased risk of tumours on the side of the head where the cellphone is used. This is an active area of research and additional studies may confirm or refute this association.

The degree of 'precaution' that should be incorporated into exposure limits for the public is always a subject for debate. There is general agreement that the exposure limits in Health Canada's Safety Code 6 are protective against effects produced through tissue heating. Consistent evidence on the level at which this occurs is available and exposure limits can be set on the basis of this well-established effect and use of safety factors selected by the standard setting organization.

Recently published research demonstrates that Wi-Fi exposure are not only well within recommended limits, but are only a small fraction (less than 1%) of what is received during typical use of cellphones[3].

For this reason much of the research on possible effects of RF energy has been focused, and will likely continue to focus, on exposures from cellphones rather than the lower exposures associated with RF uses such as Wi-Fi. RF exposures to the public, including school children, from Wi-Fi are far lower than occur with cellphone use and to date there is no plausible evidence that would indicate current public exposures to Wi-Fi are causing adverse effects on health.

Given the experience with other sources of non-ionizing radiation (e.g. power lines) that have been in use much longer than cellphones or Wi-Fi, it is unlikely that all controversies related to potential RF effects will be resolved even after decades of additional research.

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FONVCA AGENDA Item 4.3(f)

Subject: 10 Questions from FONVCA to DNV Municipal Candidates
From: Corrie Kost <corrie@kost.ca>
Date: 15/10/2011 11:29 AM
CC: 'FONVCA' <fonvca@fonvca.org>
BCC: austinpark@hotmail.com, howard_dahl@telus.net

Dear Candidate,

Attached is the formal request from FONVCA (Federation of North Vancouver Community Associations). It is in both PDF and DOC formats. In case you have any difficulties using either please reply to me at corrie@kost.ca Tel: 604-988-6615

Below follows a text/html version of the request.

Yours truly,
Corrie Kost

Oct 14/2011

To: All Candidates running for Mayor/Council in the District of North Vancouver

From: FONVCA (Federation of North Vancouver Community Associations)

Dear Candidate,

As you may be aware, a number of community associations in the District of North Vancouver regularly meet to discuss common concerns and communicate information with each other. At our FONVCA meeting of September 15/2011 a list of 10 questions was drafted by members of community associations for prospective members of Council, including the Mayor, to which we kindly request a written reply. We ask that these replies be **emailed to fonvca@fonvca.org**

All replies will be collated and subsequently:

- § redistributed to FONVCA members
- § displayed at subsequent all-candidates meetings
- § placed on our web site www.fonvca.org

Knowing your position on these important ISSUES & PRINCIPLES will enable our communities to make

more informed decisions at the polls on November 19th.

We ask that you return your answers as soon as possible but **no later than Friday Oct 28/2011**.

When appropriate, please feel free to keep your responses brief!

The 10 questions...

1. What practical experience and accomplishments qualify you for local governance?

2. What three major issues are you most concerned about in the DNV, and how can they be addressed?

3. How would you encourage greater civic involvement by the public?

4. What role should community associations play?

5. What can be done to reduce the three largest municipal costs: policing, the fire department and NS Recreation Commission?

6. Will you commit to the removal, during the next term of Council, of all encroachments which block

   access to widely-used public lands such as the waterfront?

7. Aside from mandatory legislated requirements, do you believe DNV should undertake “green” initiatives which are uneconomic in a commercial sense? Why?

8. Under what circumstances do you believe ratepayers should subsidize those who realistically cannot afford to live in the DNV?

9. Will you push for and support doing a published review of DNV salaries, wages and especially

benefits as compared to the private sector?

10. Which of the complex DNV by-laws and regulations governing our lives do you commit to simplifying or eliminating within the next term of Council?

Yours truly,

John Hunter (FONVCA Chair pro-tem)

Attachments:

letter-2011.pdf	15.4 KB
letter-2011.doc	32.5 KB

Oct 14/2011

To: All Candidates running for Mayor/Council in the District of North Vancouver

From: **FONVCA** (Federation of North Vancouver Community Associations)

Dear Candidate,

As you may be aware, a number of community associations in the District of North Vancouver regularly meet to discuss common concerns and communicate information with each other. At our FONVCA meeting of September 15/2011 a list of 10 questions was drafted by members of community associations for prospective members of Council, including the Mayor, to which we kindly request a written reply. We ask that these replies be **emailed to fonvca@fonvca.org**

All replies will be collated and subsequently:

- redistributed to FONVCA members
- displayed at subsequent all-candidates meetings
- placed on our web site www.fonvca.org

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The 10 questions...

1. What practical experience and accomplishments qualify you for local governance?
2. What three major issues are you most concerned about in the DNV, and how can they be addressed?
3. How would you encourage greater civic involvement by the public?
4. What role should community associations play?
5. What can be done to reduce the three largest municipal costs: policing, the fire department and NS Recreation Commission?
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7. Aside from mandatory legislated requirements, do you believe DNV should undertake “green” initiatives which are uneconomic in a commercial sense? Why?
8. Under what circumstances do you believe ratepayers should subsidize those who realistically cannot afford to live in the DNV?
9. Will you push for and support doing a published review of DNV salaries, wages and especially benefits as compared to the private sector?
10. Which of the complex DNV by-laws and regulations governing our lives do you commit to simplifying or eliminating within the next term of Council?

Residents deserve say on smart meter installation

BY SALLY DE LA RUE BROWNE, NORTH SHORE NEWS JULY 27, 2011

BC Hydro is beginning its roll-out of digital Smart Meters to replace current disk-style hydro meters. Many residents on the North Shore are unaware of the safety concerns and health risks associated with so-called Smart Meters. These wireless devices will use radio frequency waves to monitor use and transmit information about each household's consumption. They are being enthusiastically promoted by government and industry as a "green initiative," supposedly enabling Hydro to efficiently monitor consumption during peak and "down" times, and encourage wise use of energy and resources.

However, the information-carrying radio waves, transmitting 24-7, will effectively blanket homes and neighbourhoods with radiation that could adversely affect not just humans but all living systems. As of May 31, the World Health Organization has reclassified emissions from all microwave wireless devices as a possible human carcinogen in the same category as DDT, car exhaust, lead, etc. The insurance industry does not insure against personal injury liability claims from exposure to wireless devices.

To learn more about what can be done, visit www. citizensforsafetechnology.org.

Whether residents believe the information or not, all of us should have a say regarding the installation of these meters into our homes and businesses without these meters being forced upon us.

Sally de la Rue Browne, North Shore representative Citizens for Safe Technology

FONVCA Agenda Item 5.3

http://www.vcn.bc.ca/citizens-handbook/1_07_keeppeople.html

Keeping People

People join community groups to meet people, to have fun, to learn new skills, to pursue an interest, and to link their lives to some higher purpose. They leave if they don't find what they are looking for. Citizens groups need to ask themselves more often: What benefits do we provide? At what cost to members? How can we increase the benefits and decrease the costs? Here are a some ideas on where to begin.

Stay in touch with one another.
Regular contact is vital. Face to face is best. If you have to meet, getting together in someone's house is better than meeting in a hall.

Welcome newcomers.
Introduce them to members of your group. Consider appointing greeters for large meetings and events. Call new contacts to invite them to events, or to pass on information.
Help people find a place in the organization. The most appealing approach is to say, "Tell us the things you like to do and do well and we will find a way to use those talents." The next most appealing is to say: "Here are the jobs we have, but how you get them done is up to you."
Invite newcomers to assume leadership roles. If the same people run everything, newcomers feel excluded.

Pay attention to group process
Most volunteer groups do not give adequate attention to how they work together. Decision-making methods are not determined explicitly nor are roles, or healthy behaviours. Some groups make process a topic of discussion by appointing a process watcher.

Discuss the group contract
Set aside occasions when members describe what they expect of the group and what the group can expect of them in terms of time and responsibilities. This information should become part of your membership lists.

Act more, meet less
The great majority of people detest meetings; too many are the Black Death of community groups. By comparison, activities like tree-planting draw large numbers of people of all ages.

Keep time demands modest
Most people lead busy lives. Don't ask them to come to meetings if they don't need to

be there. Keep expanding the number of active members to ensure everyone does a little, and no one does too much. Work out realistic time commitments for projects.

Do it in twos

Following a practice from Holland, we suggest working in pairs. It improves the quality of communication, makes work less lonely, and ensures tasks get done. Ethnically mixed pairs (such as English and Chinese) can maintain links to different cultures. Gender mixed pairs can take advantage of different ways men and women relate to one another.

Provide social time and activities

Endless work drives people away. Schedule social time at the beginning and end of meetings. Turn routine tasks into social events; for example, stuff envelopes while sharing pizza. Some groups form a social committee to plan parties, dinners, and trips.

Provide skills training

Many people step out of private life in order to learn something. Providing training, or weaving training into acting, is one of the best ways to get and keep people.

Court of Appeal for British Columbia

R. v. Bichel

Date: 19860620

The judgment of the court was delivered by r.

MACFARLANE J.A.:—The appellant submits that a zoning by-law is inconsistent with s. 8 of the *Canadian Charter of Rights and Freedoms* and, therefore, is of no force and effect under s. 52(1) of the *Constitution Act, 1982,* because it permits a warrantless search of residential premises.

The by-law authorizes a building inspector to enter at all reasonable times upon any property or premises to ascertain whether the regulations and provisions of the by-law are being, or have been, complied with. It is unlawful under the by-law for any person to prevent or obstruct or seek, or attempt to prevent or obstruct, the entry of the building inspector.

A Provincial Court judge held that the provisions of the by-law were of no force and effect. After hearing argument on a stated case, Mr. Justice Dohm held that the Provincial Court judge had erred. This appeal is from that decision which was pronounced on June 26, 1985.

The stated case does not reveal the facts which are necessary for the determination of this appeal. But the argument before the Provincial Court judge, the Supreme Court judge, and before us proceeded on the basis of these facts:

1. The appellant was at all material times the owner and occupant of a private residence which an inspector of the District of North Vancouver sought to inspect.

2. The inspector was attempting to ascertain whether the premises contained a suite which was not in compliance with the zoning by-law.

3. The building inspector went to the premises on three separate days, namely, March 26, April 5, and June 1, 1984. He asked for permission to enter the premises for the purpose of ascertaining whether the zoning by-law was being complied with, and the appellant refused to permit him to enter. The ground of refusal was that the inspector did not have a search warrant.

4. On July 17, 1984, an information was sworn charging the appellant with three counts of unlawfully preventing a District of North Vancouver building inspector from entering the premises. The charge was laid pursuant to Part II, s. 1102(2) of the District of North Vancouver Zoning By-law 3210.

5. Notice having been served upon the Attorney-General of British Columbia and upon the Attorney-General of Canada pursuant to the *Constitutional Question Act, R.S.B.C.* 1979, *c.* 63, s. 8, the matter came before a Provincial Court judge on November 21, 1984. No plea was entered and no evidence was heard. After argument, the Provincial Court judge held that ss. 1101 and 1102(2) of the by-law were inconsistent with s. 8 of the *Canadian Charter of Rights and Freedoms* and, therefore, of no force and effect. The provincial Attorney-General asked that a case be stated.

The question which was posed in the stated case was:

> Did I err in law in determining that s. 1101 and s. 1102(2) of the District of North Vancouver Zoning By-Law are inconsistent with s. 8 of the Canadian Charter of Rights and Freedoms and of no force and effect pursuant to s. 52(1) of the *Constitution Act, 1982?*

The relevant provisions of the District of North Vancouver Zoning By-law were set out in the stated case as follows:

PART II ENFORCEMENT

1101 *Inspection*

The Chief Building Inspector, or any Building Inspector employed by the Municipality, is hereby authorised to enter at all reasonable times upon any property or premises to ascertain whether the regulations and provisions herein contained are being or have been complied with.

1102 *Violations*

(1) It is unlawful for any person to cause, suffer or permit any building or structure to be constructed, reconstructed, altered, moved, extended or used or land to be used in contravention of this By-law or otherwise to contravene or fail to comply with this By-law.

(2) It is unlawful for any person to prevent, or obstruct, or seek or attempt to prevent or obstruct the entry of any Building Inspector, authorised under Section 1101.

1103 *Remedial Powers*

The Council may, in accordance with the provisions of the Municipal Act, authorise the demolition, removal, or the bringing up to a standard specified in this By-law of any building, structure or thing, in whole or part,

1104 *Penalties*

> Any person convicted of an offence against this By-law shall be liable to a maximum penalty of five hundred dollars and costs, or imprisonment for a period not exceeding sixty days, and every day such offence continues shall be deemed to constitute a separate offence.

Section 8 of the Charter provides:

> 8. Everyone has the right to be secure against unreasonable search or seizure.

The Provincial Court judge held that ss. 1101 and 1102(2) did not meet the minimum standards nor provide any of the safeguards considered necessary and appropriate by the Supreme Court of Canada in *Hunter et al. v. Southam Iue.* 1984 CanLII 33 (S.C.C.), (1984), 14 C.C.C. (3d) 97, 11 D.L.R. (4th) 641, [1984] 2 S.C.R. 145, and, therefore, infringed s. 8 of the Charter. Mr. Justice Dohm held that *Hunter v. Southam Inc.* did not have any application in these circumstances and that, given the purposes of the by-law and the provision that entry was limited to "all reasonable times", there was no infringement of s. 8. He held that if there was an infringement of s. 8 that it would be justified under s. 1 of the Charter. He did not think that the by-law was inconsistent with the Charter because it did not provide for pre-authorization by an impartial arbiter having the duty to balance the individual right to privacy against the rights of the municipality to enforce its bylaws.

The appellant, while conceding that the enforcement of zoning by-laws is a valid governmental objective, and that inspections are a necessary part of enforcement procedures, submits that an assessment of the constitutionality of such a provision must focus on its reasonable or unreasonable impact on the subject of the search or seizure. It is not enough to focus only on the governmental objective. The appellant submits that in respect to his dwelling-house, an individual has a right to a reasonable expectation of privacy. The appellant relies upon what was said in *Hunter v. Southam,* at p. 109 C.C.C., p. 653 D.L.R., p. 160 S.C.R., by Dickson J. (now C.J.C.), namely, that the purpose of s. 8 is to:

> ... protect individuals from unjustified State intrusions upon their privacy. That purpose requires a means of *preventing* unjustified searches before they happen, not simply of determining, after the fact, whether they ought to have occurred in the first place. This ... can only be accomplished by a system of *prior authorization,* not one of subsequent validation.

The appellant submits that the by-law is invalid because it does not provide for prior authorization of an inspection by an impartial arbiter. It is submitted that entry into a private residence ought not to be authorized in the absence of proof that there is a sufficient reason for the particular inspection, and that, on balance, that reason is sufficiently important to the municipality in the enforcement of its by-laws to justify the intrusion upon the right of the individual owner and/or occupant to privacy.

The appellant relies upon *R. v. Sheppard* reflex, (1984), 11 C.C.C. (3d) 276, 46 Nfld. & P.E.I.R. 189, 11 C.R.R. 10 (Nfld. C.A.). In that case, a person was charged with a breach of the *Wild Life Act,* R.S.N. 1970, c. 400, in that he had unlawfully in his possession big game, to wit: moose, in violation of s. 52(3) of the *Wild Life Act* regulations. A wildlife officer had seized moose meat from the home of the accused without having first obtained a search warrant. A question arose as to the admissibility of that evidence, it being contended that the search and seizure was an infringement of s. 8 of the *Canadian Charter of Rights and Freedoms.*

The seizure was made pursuant to power contained in s. 10(2) of the *Wild Life Act* which provides:

> 10(2) Any wild life officer who has reasonable cause to suspect that there is in or upon any house, shop, store, building, wharf, premises, or place, vehicle, speeder, caboose, or railway car, aircraft, vessel, boat, or raft, wild life taken, killed, or dealt with contrary to any of the provisions of this Act or of the regulations may, without warrant, therein or thereon enter and search and for such purpose may stop any such vehicle, speeder, caboose, railway car, aircraft, vessel, boat, or raft.

The trial judge held that s. 8 was not infringed and admitted the evidence. The accused was convicted and he appealed his conviction. The Court of Appeal held that there had been an unreasonable search and seizure and an infringement of s. 8 of the Charter. In reaching that conclusion, the court said, at p. 281:

> It is common ground that a peace officer and other public officials, armed with a judicially authorized search warrant, may search a dwelling-house within the confines of his warrant and such a search would not be unreasonable within the meaning of s. 8 of the Charter. But would the search of a dwelling-house without a warrant, even though authorized by statute, be considered reasonable within the meaning of s. 8 of the Charter? The answer can only be in the affirmative if it can be said that such a search "can be demonstrably justified in a free and democratic society". (s. 1 of the Charter.) In our view, it cannot be said that a search of a dwelling-house, without a warrant, for wildlife illegally obtained can be so justified and must be construed as a violation of one's right to be secure against unreasonable search and seizure, guaranteed by s. 8 of the Charter.

The Ontario Court of Appeal has held that administrative searches without a warrant do not violate s. 8 and has distinguished searches in the course of criminal investigations from inspections or audits under a regulatory process. The cases, however, deal with business premises and not with residential premises. In *Re Belgoma Transportation Ltd. and Director of Employment Standards* reflex, (1985), 20 D.L.R. (4th) 156, 51 O.R. (2d) 509, 85 C.L.L.C.

para. 14,033, the issue before the court was whether s. 45 of the *Employment Standards Act,* R.S.O. 1980, c. 137, under which section an employment standards officer may enter upon business premises and require the production of certain documents and remove them for copying, contravene s. 8 of the Canadian *Charter of Rights and Freedoms.* Section 45 of the *Employment Standards Act* provides in part as follows:

> 45(1) An employment standards officer may, for the purpose of ensuring that the provisions of this Act and the regulations are being complied with,
>
> > (a) subject to subsection (2), enter in or upon the lands or premises of a person at any reasonable time or times without a warrant for the purpose of carrying out an inspection, audit or examination;
>
> (2) No employment standards officer shall enter any room or place actually being used as a dwelling without the consent of the occupier except under the authority of a search warrant issued under section 142 of the *Provincial Offences Act.*

The Divisional Court had concluded that the person being investigated under the statute was in a position similar to a person served with a *subpoena daces tecum,* and that the section could not be categorized as providing for "search or seizure". The Court of Appeal declined to decide that question but said, at p. 158 D.L.R., p. 511 O.R.:

> Assuming, without deciding, that s. 45 does provide for search or seizure within the true meaning of those words, we are all of the view that for the purposes and under the circumstances of this Act the alleged search or seizure is not unreasonable.

MacKinnon A.C.J.O., speaking for the court, went on to say at p. 159 D.L.R., p. 512 O.R.:

> The Act and its regulations impose minimum requirements of employment conditions upon an employer in favour of an employee. The director and his officers are appointed to administer the Act. The headings of the various parts of the Act indicate its concerns: homeworkers; hours of work; minimum wages; overtime pay; public holidays; vacation with pay; equal pay for equal work; benefit plans; pregnancy leave; termination of employment, and administration. Section 45 (the section under consideration here) falls under the part of the Act dealing with administration. The last part of the Act covers offences and penalties.
>
> The standards to be applied to the reasonableness of a search or seizure and the necessity for a warrant with respect to criminal investigations cannot be the same as those to be applied to search or seizure within an administrative and regulatory context. Under the *Employment Standards Act,* there is no

> necessity that the officer have evidence that the Act has been breached. In the course of carrying out administrative duties under the Act, what is commonly called a "spot audit" may be carried out, which helps ensure that the provisions of the Act are being complied with. The limited powers given for this purpose as set out in the section are not unreasonable. The "search" or "seizure" in the instant case, if such it is, is not aimed at detecting criminal activity, but rather, as indicated, in ensuring and securing compliance with the regulatory provisions of the Act enacted for the purpose of protecting the public interest.
>
> So far as the citizen is concerned, there is protection afforded to him with regard to his dwelling under s. 45(2). As can be seen, this subsection prohibits an employment standards officer from entering a room or place used as a dwelling without the consent of the occupier, except under the authority of a search warrant. As stated, it does not appear to us to be unreasonable to permit such an officer to enter business premises and require production for inspection and copying of certain records, which request or demand can, of course, be refused without any search taking place or any documents or records being seized.

Re Belgoma was followed in *R.* v. *Quesnel* 1985 CanLII 165 (ON C.A.), (1985), 24 C.C.C. (3d) 78, 53 O.R. (2d) 338. In that case a person had been charged with failing, upon request of an inspector of a marketing board, to permit the inspector to enter the lands and premises of the accused for the purpose of ascertaining whether there had been compliance with the *Farm Products Marketing Act,* R.S.O. 1980, c. 158.

The legislation authorized the board to appoint persons to:

> (ii) enter on lands or premises used for the producing of any regulated product and measure the area of land used to produce the regulated product or perform a count of the regulated product;

There was no requirement for a search warrant and the inspector did not have one when he asked to enter the premises of the accused. The trial judge held that the inspection was not a search or seizure and that the inspection did not contravene the Charter. The Court of Appeal upheld that decision. At p. 83, Finlayson J.A. said:

> The distinction between criminal proceedings and provincial regulatory schemes is emphasized in *R.* v. Rao (1984), 46 O.R. (2(1) 80, 9 D.L.R. (4th) 542, 12 C.C.C. (3d) 97. Mr. Justice Martin, speaking for the Court, distinguishes between statutes conferring on designated officials the right to enter and inspect premises without a warrant, which are licensed or in which a business is being carried on that is subject to regulation by statute, on the one hand, and the position at common law, on the other hand, where there is no power to search premises without a warrant (or with a warrant except for stolen

goods) save as an incident to lawful arrest. At p. 96 O.R., p. 558 D.L.R., p. 112 C.C.C., he states:

> "In my view, however, a clear distinction must be drawn between a general power to enter private premises without a warrant to search for contraband or evidence of crime and a power conferred on designated officials to enter premises for inspection and audit purposes and to seize records, samples or products in relation to businesses and activities subject to government regulation."

It would appear from the above quoted authorities, that when acting under a statute which sets up a regulatory scheme, the distinction between an inspection and a search or seizure is academic except as to remedy. An inspector who is denied permission to enter premises cannot insist on doing so but must be content to lay a complaint under his authorizing statute: see *Belgoma, supra.*

In the case at bar, we are dealing with a regulated product and those who engage in the production of same. I would find on the basis of *Belgonna* that there was not here an unreasonable search and seizure within the meaning of the Charter and, therefore, this objection to the charge must fail. There was an "inspection" as contemplated by the legislation and it was permissible whether stigmatized as a "search or seizure" or not.

I agree that a distinction must be drawn between searches in the course of a criminal investigation, and inspections in the course of ensuring that there is compliance with building or zoning by-laws. In the former, a warrant procedure is appropriate, as was the case in *R. v. Sheppard.* In the latter, such a procedure is inappropriate as indicated in *Re Belgomna* and *R. v. Quesnel.*

The appellant has also relied upon American authorities, principally, *Camara v. Municipal Court of City and County of San Francisco, 18* L. Ed. 2d 930. The facts of that case are similar to those in the case at bar. Mr. Camara was charged with three counts of refusing to permit building inspectors to inspect his residence without a warrant under a municipal ordinance that provided that: "Authorized employees of the City departments or City agencies, so far as may be necessary for the performance of their duties, shall, upon presentation of proper credentials, have the right to enter, at reasonable times, any building, structure, or premises in the City to perform any duty imposed upon them by the Municipal Code."

The United States Supreme Court, in a 6-3 decision, held that the municipal ordinance was unconstitutional, and that administrative searches of the kind at issue were significant intrusions upon the interest protected by the Fourth Amendment of the United States Constitution, which provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The *Camara* case involved a reconsideration and the overruling of the earlier decision of the U.S. Supreme Court in *Frank v. Maryland,* 359 U. S. 360 (a 5-4 decision). But the court in *Frank v. Maryland,* and both the majority and minority in *Camara* agreed that constitutionality depended upon reasonableness, and that, generally, administrative inspections were reasonable.

The majority in *Camara* held that in the case of an administrative search it is unnecessary for an inspector to show that he or she has probable cause to believe that a particular dwelling contains violations of the minimum standards prescribed by the code being enforced *(Camara, p.* 938).

The majority in *Camara,* while agreeing that the only effective way to seek universal compliance with minimum health and safety standards is through routine periodic inspections of all structures, held that the reasonableness of a particular situation must be left to an independent judicial official to determine. In their view, a warrant procedure was necessary to satisfy the requirements of the Fourth Amendment.

The basis for that view was expressed in the majority judgment of Mr. Justice White (at p. 937, 18 L. Ed. 2d):

> Under the present system, when the inspector demands entry, the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization. These are questions which may be reviewed by a neutral magistrate without any reassessment of the basic agency decision to canvass an area. Yet, only by refusing entry and risking a criminal conviction can the occupant at present challenge the inspector's decision to search. And even if the occupant possesses sufficient fortitude to take this risk, as appellant did here, he may never learn any more about the reason for the inspection than that the law generally allows housing inspectors to gain entry. The practical effect of this system is to leave the occupant subject to the discretion of the official in the field. This is precisely the discretion to invade private property which we have consistently circumscribed by a requirement that a disinterested party warrant the need to search. See cases cited, p. 935, supra. We simply cannot say that the protections provided by the warrant procedure are not needed in this context; broad statutory safeguards are no substitute for individualized review, particularly when those safeguards may only be invoked at the risk of a criminal penalty.

Mr. Justice Clark, in a vigorous dissent, analyzed the majority view, and rejected it (pp. 952-3). He said.

> The Court then addresses itself to the propriety of warrantless area inspections. The basis of "probable cause" for area inspection warrants, the Court says, begins with the Fourth Amendment's reasonableness requirement; in determining whether an inspection is reasonable "the need for the inspection must be weighed in terms of these reasonable goals of code enforcement." It adds that there are "a number of persuasive factors" supporting "the reasonableness of area code-enforcement inspections." It is interesting to note that the factors the Court relies upon are the identical ones my Brother Frankfurter gave for excusing warrants in *Frank* v. *Maryland, supra.* They are: long acceptance historically; the great public interest in health and safety; and the impersonal nature of the inspection — not for evidence of crime — but for the public welfare. Upon this reasoning, the Court concludes that probable cause exists "if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling." These standards will vary, it says, according to the code program and the condition of the area with reference thereto rather than the condition of a particular dwelling. The majority seem to hold that warrants may be obtained after a refusal of initial entry; I can find no such constitutional distinction or command. These boxcar warrants will be identical as to every dwelling in the area, save the street number itself. I daresay they will be printed up in pads of a thousand or more — with space for the street number to be inserted — and issued by magistrates in broadcast fashion as a matter of course.
>
> I ask: Why go through such an exercise, such a pretense? As the same essentials are being followed under the present procedure, I ask: Why the ceremony, the delay, the expense, the abuse of the search warrant? In my view this will not only destroy its integrity but will degrade the magistrate issuing them and soon bring disrepute not only upon the practice but upon the judicial process. It will be very costly to the city in paperwork incident to the issuance of the paper warrants, in loss of time of inspectors and waste of the time of magistrates and will result in more annoyance to the public. It will also be more burdensome to the occupant of the premises to be inspected. Under a search warrant the inspector can enter any time he chooses. Under the existing procedures he can enter only at reasonable times and invariably the convenience of the occupant is considered.

I prefer the minority view in *Camara.*

I turn now to consider what was said by Dickson J. (now C.J.C.) in *Hunter v. Southam, supra,* at pp. 108-9 C.C.C., pp. 652-3 D.L.R., pp. 159-61 S.C.R.:

> The guarantee of security from *unreasonable* search and seizure only protects a *reasonable* expectation. This limitation on the right guaranteed by s. 8, whether it is expressed negatively as freedom from "unreasonable" search and seizure, or positively as an entitlement to a "reasonable" expectation of privacy, indicates

that an assessment must be made as to whether in a particular situation the public's interest in being left alone by government must give way to the government's interest in intruding on the individual's privacy in order to advance its goals, notably those of law enforcement.

The question that remains, and the one upon which the present appeal hinges, is how this assessment is to be made. When is it to be made, by whom and on what basis? Here again, I think the proper approach is a purposive one.

(A) *When is the balance of interests to be assessed?*

If the issue to be resolved in assessing the constitutionality of searches under s. 10 were whether *in fact* the governmental interest in carrying out a given search outweighed that of the individual in resisting the governmental intrusion upon his privacy, then it would be appropriate to determine the balance of the competing interests *after* the search had been conducted. Such a *post facto* analysis would, however, be seriously at odds with the purpose of s. 8. That purpose is, as I have said, to protect individuals from unjustified State intrusions upon their privacy. That purpose requires a means of *preventing* unjustified searches before they happen, not simply determining, after the fact, whether they ought to have occurred in the first place. This, in my view, can only be accomplished by a system of *prior authorization,* not one of subsequent validation.

A requirement of prior authorization, usually in the form of a valid warrant, has been a consistent prerequisite for a valid search and seizure both at common law and under most statutes. Such a requirement puts the onus on the State to demonstrate the superiority of its interests to that of the individual. As such it accords with the apparent intention of the Charter to prefer, where feasible, the right of the individual to be free from State interference to the interests of the State in advancing its purposes through such interference.

I recognize that it may not be reasonable in every instance to insist on prior authorization in order to validate governmental intrusions upon individuals' expectations of privacy. Nevertheless, where it is feasible to obtain prior authorization, I would hold that such authorization is a pre-condition for a valid search and seizure.

Section 8 protects two rights: the right to personal privacy, and the right to be protected from an overzealous use of official power in the search for evidence to support a criminal prosecution. The latter right involves an element of protection against self-incrimination. (An analysis of those related concerns is found in *Frank* v. *Maryland,* supra, at p. 381.) Greater care must be exercised when personal liberty is jeopardized, as is the case where entry is sought during a criminal investigation but, nevertheless, the right of an individual to personal privacy must be carefully protected.

Although it is desirable that a consistent standard be applied to identify the point at which the interests of the State prevail over those of the individual *(Hunter* v. *Southam,* p. 114 C.C.C. , p. 658 D.L.R., p. 167 S.C.R.), in the end the standard is one of reasonableness.

The standard proposed in *Hunter v. Southam* involves prior authorization by a judicial officer based upon proof of reasonable and probable grounds justifying intrusion. It is reasonable that such a standard be applied in a criminal investigation, or when a search is being made of the type contemplated by the *Combines Investigation Act.* That type of search involves intrusion without notice, whether it be convenient or inconvenient. It may involve a serious invasion of privacy, for instance a search through personal property. It may involve a deprivation of personal property. A police raid inevitably involves personal stigma. The search warrant procedure is needed and applies well in that type of situation.

Different considerations apply to administrative inspections. Under the North Vancouver Zoning By-law, the inspection is limited to "reasonable times." The householder may refuse entry if the inspector comes at an inconvenient time. In this case, the inspectors returned on three separate occasions, endeavouring to find a time which best suited the householder. The householder may demand that the inspector produce identification, and may ask why the inspection is being undertaken. The householder, if not satisfied, may ask the inspector to return another day, and may make appropriate inquiries of the municipality concerning the inspector, and the proposed inspection. I do not think any of those steps would be characterized as *preventing* or *obstructing* entry of a building inspector so as to constitute an offence under s. 1102(2) of the by-law. An inspection involves a minimal intrusion into the privacy of a person, if conducted at a reasonable time. It does not involve a search or a seizure of personal property. It involves looking at construction, wiring, plumbing and heating, and at things which may affect health or safety. There is no stigma attached to the inspection. It is something that may be reasonably expected by all members of the community, in whose interest it is to maintain health and safety standards. Once it is recognized that such inspections must proceed on a routine basis, area by area, without proof in advance of an infraction by any particular householder, then it would be an empty and futile gesture, in my opinion, to have an independent official hear the reasons why a search is to be made and give a prior authorization. The fact that an infraction may be discovered, and a penalty imposed, does not persuade me that a cumbersome and ineffective procedure should be put in place. It would not protect the individual violator from being discovered. Nor is it in the public interest that he should be so protected.

I agree with the minority in *Camara* that if such a system of inspection is reasonable, then it cannot be characterized as an unreasonable search and seizure. The majority in *Camara* appear to have concluded that the procedure was reasonable, but that the constitutional requirement that there be a warrant must prevail. We do not have any such rigid constitutional requirement in Canada.

Hunter v. Southam holds that prior authorization is a precondition for a valid search and seizure if it is feasible and reasonable to insist upon prior authorization. In my opinion, it would not be reasonable to insist upon prior authorization of administrative inspections, which could only be an expensive, routine measure incapable of providing any real protection to the householder.

I have concluded that the by-law is not inconsistent with s. 8, and would affirm the judgment of Mr. Justice Dohm.

I would dismiss the appeal.

Appeal dismissed.

FONVCA Agenda Item 6.1(b)

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Neighbour Law

Script 400 gives information only, not legal advice. If you have a legal problem or need legal advice, you should speak to a lawyer. For the name of a lawyer to consult, call Lawyer Referral at 604.687.3221 in the lower mainland or 1.800.663.1919 elsewhere in British Columbia.

Many of us have had occasional problems with neighbours involving noise, untidy premises, dogs, fences, trees and hedges, secondhand smoke, water damage, or trespass. This script describes the laws that deal with these types of problems. In most cases, you can try talking to the person causing the problem. They may not be aware of the effect they're having on their neighbours and talking to them may solve the problem. But if that doesn't work, you have other options, which this script describes.

Noise

We've all had our peace and quiet disturbed by squealing tires, loud stereos, barking dogs, or noisy equipment. What can you do to stop it? First, try talking to the person causing the noise. They may not realize how irritating it is.

If that doesn't work, call your city hall and ask if there is a noise bylaw. If there is one, talk to the person who enforces it. For example, in Vancouver, you would call the Environmental Health Officers. Each municipality's noise bylaw is different, but most are quite broad. In Vancouver and many other municipalities, the bylaw covers noise from animals and birds, heavy-duty equipment, lawnmowers, loud parties, stereos and many other things. Usually, the municipality's enforcement officer will try to solve the problem informally. If they can't, they may prosecute the person in court for violating the bylaw.

If the noise is on a weekend or at night, and city hall is closed, you can call the police. And if a person is screaming, shouting, swearing or singing to the point they are creating a nuisance, they may be causing a common disturbance – an offence under the *Criminal Code*. In all these cases, call the police and report it. The *Criminal Code* is available at http://laws-lois.justice.gc.ca.

Your can also sue the person causing the noise. You could sue for damages for nuisance or negligence, or ask the court to order the person to stop the noise.

Untidy premises

Most municipalities have bylaws to control things like garbage, junk, overgrown gardens, or abandoned vehicles. For example, in Vancouver, every property owner must keep their property in neat and tidy condition, in keeping with a reasonable standard of maintenance common in the neighbourhood. So, if talking to the neighbour doesn't help, your next step is the local government. Explain your situation to the person who enforces bylaws. They may investigate and if your complaint is valid, order the owner to clean up the property. If the owner doesn't, the municipality can clean it up and then bill the owner for the cost of the cleanup.

Dogs

If you own a dog, you should be familiar with your legal responsibilities. These are described in four places: local bylaws, provincial laws, the *Criminal Code*, and the common law, as explained below.

1. Local bylaws

Local bylaws cover licensing and may prohibit dogs from being in certain places. You can find a copy of local bylaws at your public library, courthouse library, or local government offices. Many local bylaws are

also available on the municipality's website.

Many local governments have passed bylaws to prohibit dogs running loose. In Vancouver, for example, dogs cannot be on the street or in a public place unless they're on a leash not more than 8 feet long (2.5 meters) – except in off-leash parks. As well, female dogs must be kept confined and housed when they're in heat.

The Vancouver animal control bylaw also requires "aggressive" dogs – dogs with a known tendency to attack or bite, or dogs that have bitten another domestic animal or person without provocation – to be muzzled or kept indoors or in a pen. The city may seize and impound (for up to 3 weeks) a dog that has bitten someone. A dog found running loose, or unlicensed, will be taken to the Pound and, if it isn't claimed within three days, it may be put up for sale or destroyed. The owner could also be charged fees for impounding the dog, keeping it at the Pound, and any veterinarian services it needs. The owner may get a ticket for violating the bylaw.

Health bylaws in Vancouver and elsewhere prohibit dogs in restaurants and other places where food is kept or handled. The bylaws don't apply to private homes or prohibit "seeing-eye" or other types of service dogs.

Vancouver has a "pooper-scooper" bylaw, and your municipality may have one too. It requires you to pick up your dog's excrement if it's on property that is not yours. If you don't, you can be fined up to $2000. This law does not apply to "seeing-eye" dogs or service dogs working with people with disabilities.

Vancouver's animal control bylaw also regulates the noise of barking or howling dogs. For example, if your neighbours complain that your dog's barking unreasonably disturbs the peace and quiet of the neighbourhood, you could be fined up to $2,000. Other local governments also regulate dog barking in their noise-control bylaws.

2. Provincial laws

The BC *Livestock Act* protects farm animals from attacks by dogs. For example, anyone can kill a dog on the spot if it's seen running at large and attacking or viciously chasing cattle, goats, horses, sheep, swine, or game.

Under section 49 of the BC *Community Charter*, local governments may seize and impound some dangerous dogs. The local government may apply to provincial court for an order to destroy the dog. The local government does not need a specific local bylaw to exercise these powers.

Both these BC laws are available at www.bclaws.ca.

3. The *Criminal Code*

It's against the *Criminal Code* to willfully cause unnecessary pain or suffering or injury to any animal or to willfully neglect or fail to provide suitable and adequate food, water, shelter and care for it. If you don't take reasonable care of your dog, you could face a fine or jail term and a criminal record. And if you don't take reasonable care to avoid harming others, and your dog attacks and injures someone, you could be charged with criminal negligence. The Criminal Code is available at http://laws-lois.justice.gc.ca.

4. If your dog injures someone – common law

If your dog injures someone, that person may sue you under the common law in civil court. If they succeed, you'll have to pay them for the injuries your dog caused them. You should check with your insurance agent to find out if your house insurance would cover you in this case. Better yet, if you have a dog that is likely to bite or attack a person, always keep it under control or get rid of it.

Fences

Fences make good neighbours: that's the common saying. But they can also cause problems. Local bylaws often control how high a fence can be, both natural fences, such as hedges, and fences that you build. If your neighbour builds a fence higher than the bylaw allows, you can talk to them about it. You can also call the city, which can order the person to obey the law. Unless you do these things, the city does not normally check every fence.

A fence on the property boundary belongs to both property owners. People often share the cost of a fence, but they don't have to. Both are responsible to keep it in good shape and they have to get permission from the other one to take it down. The section below called "Trespass" has more on fences.

Trees and hedges
If your neighbour's tree branches hang over your property, you can cut them, but only up to the property line. You cannot go onto your neighbor's property or destroy the tree. The reverse case is also true.

If your tree damages your neighbour's property, for example, a branch falls on their roof during a storm, are you responsible? No, not unless you caused the damage intentionally or through negligence. Negligence means you did not take reasonable care or you were warned or knew the tree was damaged or diseased and may fall. But if your tree roots go under their property and damage their pipes, lawn, or foundation, you may be responsible under the common law principle of "nuisance". It depends on the facts of the case, but normally, courts will not allow use of a property that causes substantial discomfort to others or damages their property.

Secondhand smoke
If your neighbour's smoke comes into your house, as in all these cases, you can talk to them. If that doesn't work, what to do depends on the situation. Does the smoke come from a tenant? If so, does the lease prohibit smoking? If not, you still have the right to "quiet enjoyment" of your property. And the smoke may violate that right or be a nuisance under the common law. You would need legal advice on this.

Water damage
Normally, a neighbor is not responsible for damage caused by the natural conditions of land. In other words, if rain runs from a neighbour's yard onto your property and makes it soggy, the neighbour is not responsible. But if a neighbour changes their property and that causes more rainwater to come run onto your property, they may be responsible. They have a duty to be reasonable. If they are careless, for example, leaving a sprinkler running too long, which in turn floods your property, they may have to pay you for the damage. Again, you would need legal advice on this.

Trespass
If a neighbour comes onto your property without your permission, they are trespassing. If they don't leave when you ask them to, you should call the police. If a neighbour builds a fence or other structure, such as a shed, that encroaches on (comes onto) your property, this is also a trespass. Often the encroachment is unintentional and you can solve the problem by getting a proper survey. If talking with your neighbour and getting a survey don't solve the problem, you can sue them for trespassing. Usually, a court will order the neighbour to remove and relocate the fence or structure so it's off your property.

What if no bylaw, provincial law, or the *Criminal Code* deals with your problem?
You may have a problem that these laws do not cover. For example, your neighbour's property may be producing a terrible smell. In this case, you could try alternative dispute resolution. It may be the best and most cost-effective way to resolve neighbour disputes, because the relationship between you and your neighbour continues and you don't want to harm or destroy it. For information on alternative dispute resolution, see the website of the Dispute Resolution Office of the Ministry of Attorney General at www.ag.gov.bc.ca/dro.

Or you may decide to sue your neighbour. In that case, you should talk to a lawyer immediately because the laws may set a time limit for starting a lawsuit.

[updated September 2010]

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- by phone, as recorded scripts, and
- by audio and text, on the CBA BC Branch website.

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Municipality pursued for accident on B.C. highway

Logan Lake named in a lawsuit after a 12-year-old girl was hit and injured by a truck on Highway 97D

BY KELLY SINOSKI, VANCOUVER SUN SEPTEMBER 29, 2011

When a 12-year-old girl was hit by a truck and seriously injured crossing a B.C. highway in Logan Lake three years ago, town officials never expected to be slapped with a lawsuit.

But that's what happened recently, when the Insurance Corp. of B.C. named the small Interior town as a third party in the suit, which was launched against the driver and ICBC by the girl's lawyer.

The move surprised Logan Lake officials, who question how they could be culpable in an accident on a provincial highway. Even though the road runs through their town, they have no control over pedestrian lighting, signage or crosswalks associated with it.

"It came out of the blue," Logan Lake chief administrative officer Wayne Vollrath said. "We had no idea until years later that we had any liability."

Now the town council is fighting back, leading a charge this week to have the Union of B.C. Municipalities petition the province to change its Negligence Act to prevent municipalities from being enjoined as third parties for legal claims on provincial highways. The resolution hasn't been heard at the convention.

"We want the provincial government to take the legal liability away from municipalities and save us from any claims that might come up," Coun. Allan Smith said. "We don't have control over that highway."

While provincial highways run through most B.C. towns and cities, municipal officials say they have no ability to improve safety on those routes. Yet local governments are potentially jointly liable for accidents that occur within their municipal boundaries - and it's not uncommon for local governments to be sued if accidents happen on a provincial road or bridge.

The Logan Lake girl was struck by a Ford Ranger as she crossed the main intersection of Highway 97D and Chartrand Street at a marked crosswalk in September 2008, on her way to school. There were no lights directing traffic and the crosswalk is not pedestriancontrolled.

Since then, the province has improved conditions along the highway.

"From a litigation perspective, if an accident occurs on a provincial highway and that highway is running through a municipality, more often than not a municipality is named [in the writ], whether rightly or wrongly," said Lindsay Nilsson, risk management coordinator of the Municipal Insurance Association.

The association is dealing with four claims regarding B.C. highways running through municipalities right now, Nilsson said.

But whether the municipalities will be found liable depends on the courts and the judge.

Nilsson wouldn't say Tuesday how much money such claims have cost the insurance company.

But she suggests municipalities protect themselves by negotiating a contract with the province to help deal with issues that occur on provincial highways within their boundaries. If a province declassifies a highway, for instance, municipalities should ensure they're not inheriting a "dangerous road," she said.

The situation is costly for municipalities. Logan Lake has already had to pay a $5,000 deductible to the Municipal Insurance Association to try to remove itself from the suit.

Attorney-General Shirley Bond said it was inappropriate to comment on the case as it's before the courts. But she noted in an email that the province is reviewing local government concerns about liability under the Negligence Act. A legal analysis is also being done to determine the implications of Logan Lake's resolution, she said.

But she said ICBC has the right to enjoin municipalities in lawsuits.

"Like any insurer, if the evidence supports it, ICBC may name other parties, such as a municipality, in a civil action," she said.

ICBC would not comment on the Logan Lake case, but agreed that it can sue a municipality if evidence shows signage, traffic controls or road design contributed to a crash.

The B.C. Transportation Ministry said in an email that it prioritizes safety improvements to provincial highways following discussions with local governments. This year it is investing more than $5 million in 50 projects across the province.

Meanwhile, Delta Mayor Lois Jackson introduced an emergency resolution Wednesday to change the province's Health Recovery Act, which allows the B.C. government to sue municipalities for health care costs stemming from negligence or wrongdoing of a third party.

The resolution, supported by UBCM delegates, calls for the province to withdraw all claims against municipal governments and provide a commitment to review the practice except in cases of gross negligence.

Delta has been named in at least three cases, including one in which the health care costs are estimated at about $200,000.

In one case, the province is trying to recover health care costs from Delta in connection with the beating of former National Hockey League player Garrett Burnett, who was beaten at North Delta's Cheers nightclub.

Burnett, who suffered a brain injury after being dragged outside the club and hit in the head with a bar stool, has sued Delta for negligence, claiming it failed to control the frequent violence at Cheers. Burnett initially sued the police as well, but has dropped them from the suit.

The Health Ministry has launched more than 8,000 cases under the Health Recovery Act, with 24 of those against municipalities.

"The provincial government, they're suing a lot of us," Jackson said. "They're merely transferring money from one government pocket to another while adding legal costs to both parties."

The Health Ministry defended the act, saying in an email that it ensures "that our right to recover the health care costs is preserved."

ksinoski@vancouversun.com

This Act is Current to September 7, 2011

OCCUPIERS LIABILITY ACT

[RSBC 1996] CHAPTER 337

Contents

Definitions

1 In this Act:

"occupier" means a person who

(a) is in physical possession of premises, or

(b) has responsibility for, and control over, the condition of premises, the activities conducted on those premises and the persons allowed to enter those premises,

and, for this Act, there may be more than one occupier of the same premises;

"premises" includes

(a) land and structures or either of them, excepting portable structures and equipment other than those described in paragraph (c),

(b) ships and vessels,

(c) trailers and portable structures designed or used for a residence, business or shelter, and

(d) railway locomotives, railway cars, vehicles and aircraft while not in operation;

"tenancy" includes a statutory tenancy, an implied tenancy and any contract conferring the right of occupation, and "landlord" must be construed accordingly.

Application of Act

2 Subject to section 3 (4), and sections 4 and 9, this Act determines the care that an occupier is required to show toward persons entering on the premises in respect of dangers to them, or to their property on the premises, or to the property on the premises of persons who have not themselves entered on the premises, that are due to the state of the premises, or to anything done or omitted to be done on the premises, and for which the occupier is responsible by law.

Occupiers' duty of care

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

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

(a) condition of the premises,

(b) activities on the premises, or

(c) conduct of third parties on the premises.

(3) Despite subsection (1), an occupier has no duty of care to a person in respect of risks willingly assumed by that person other than a duty not to

(a) create a danger with intent to do harm to the person or damage to the person's property, or

(b) act with reckless disregard to the safety of the person or the integrity of the person's property.

(3.1) A person who is trespassing on premises while committing, or with the intention of committing, a criminal act is deemed to have willingly assumed all risks and the occupier of those premises is subject only to the duty of care set out in subsection (3).

(3.2) A person who enters any of the categories of premises described in subsection (3.3) is deemed to have willingly assumed all risks and the occupier of those premises is subject only to the duty of care set out in subsection (3) if

(a) the person who enters is trespassing, or

(b) the entry is for the purpose of a recreational activity and

(i) the occupier receives no payment or other consideration for the entry or activity of the person, other than a payment or other consideration from a government or government agency or a non-profit recreational club or association, and

(ii) the occupier is not providing the person with living accommodation on those premises.

(3.3) The categories of premises referred to in subsection (3.2) are as follows:

(a) premises that the occupier uses primarily for agricultural purposes;

(b) rural premises that are

(i) used for forestry or range purposes,

(ii) vacant or undeveloped premises,

(iii) forested or wilderness premises, or

(iv) private roads reasonably marked as private roads;

(c) recreational trails reasonably marked as recreational trails;

(d) utility rights of way and corridors excluding structures located on them.

(4) Nothing in this section relieves an occupier of premises of a duty to exercise, in a particular case, a higher standard of care which, in that case, is incumbent on the person because of an enactment or rule of law imposing special standards of care on particular classes of person.

Contracting out

4 (1) Subject to subsections (2), (3) and (4), if an occupier is permitted by law to extend, restrict, modify or exclude the occupier's duty of care to any person by express agreement, or by express stipulation or notice, the occupier must take reasonable steps to bring that extension, restriction, modification or exclusion to the attention of that person.

(2) An occupier must not restrict, modify or exclude the occupier's duty of care under subsection (1) with respect to a person who is

(a) not privy to the express agreement, or

(b) empowered or permitted to enter or use the premises without the consent or permission of the occupier.

(3) If an occupier is bound by contract to permit persons who are not privy to the contract to enter or use the premises, the duty of care of the occupier to those persons must, despite anything to the contrary in that contract, not be restricted, modified or excluded by it.

(4) This section applies to all express contracts.

Independent contractors

5 (1) Despite section 3 (1), if damage is caused by the negligence of an independent contractor engaged by the occupier, the occupier is not on that account liable under this Act if, in all the circumstances,

(a) the occupier exercised reasonable care in the selection and supervision of the independent contractor, and

(b) it was reasonable that the work that the independent contractor was engaged to do should have been undertaken.

(2) Subsection (1) must not be construed as restricting or excluding the liability, imposed by any other Act, of an occupier for the negligence of the occupier's independent contractor.

(3) If there is damage under the circumstances set out in subsection (1), and there is more than one occupier of the premises, each occupier is entitled to rely on subsection (1).

Tenancy relationship

6 (1) If premises are occupied or used under a tenancy under which a landlord is responsible for the maintenance or repair of the premises, it is the duty of the landlord to

show toward any person who, or whose property, may be on the premises the same care in respect of risks arising from failure on the landlord's part in carrying out the landlord's responsibility, as is required by this Act to be shown by an occupier of premises toward persons entering on or using the premises.

(2) If premises are occupied under a subtenancy, subsection (1) applies to a landlord who is responsible for the maintenance or repair of the premises comprised in the subtenancy.

(3) For the purposes of this section

(a) a landlord is not in default of the landlord's duty under subsection (1) unless the default would be actionable at the suit of the occupier,

(b) nothing relieves a landlord of a duty the landlord may have apart from this section, and

(c) obligations imposed by an enactment in respect of a tenancy are deemed to be imposed by the tenancy.

(4) This section applies to all tenancies.

Application of *Negligence Act*

7 The *Negligence Act* applies to this Act.

Crown bound

8 (1) Except as otherwise provided in subsection (2), the Crown and its agencies are bound by this Act.

(2) Despite subsection (1), this Act does not apply to the government or to the Crown in right of Canada or to a municipality if the government, the Crown in right of Canada or the municipality is the occupier of

(a) a public highway, other than a recreational trail referred to in section 3 (3.3) (c),

(b) a public road,

(c) a road under the *Forest Act*,

(d) a private road as defined in section 2 (1) of the *Motor Vehicle Act*, other than a private road referred to in section 3 (3.3) (b) (iv) of this Act, or

(e) an industrial road as defined in the *Industrial Roads Act*.

Act not to affect certain relationships

9 This Act does not apply to or affect the liability of

(a) an employer in respect of the employer's duties to an employee,

(b) a person under a contract for the hire of, or for the carriage for reward of persons or property in, any vehicle, vessel, aircraft or other means of transport,

(c) a person under the *Hotel Keepers Act*, or

(d) a person under a contract of bailment.

Please read the **disclaimer** before perusing the following article.

Occupiers Liability Act Amended

by Mary MacGregor

written 1998, published in Beef in B.C. October 98

On May 13, 1998, changes to the Occupiers Liability Act came into effect.

In an article published in the November-December 1997 issue of *Beef in BC*, I wrote about the Occupiers Liability Act. That article discussed the lower duty of care that land owners and occupiers owe to people who willingly accept risks, or to people who are trespassing on land used primarily for agricultural purposes [Occupiers Liability Act section 3(3)].

The normal duty owed to someone entering land, is that the owner or occupier of lands and premises takes reasonable care to ensure that people and their property are reasonably safe in using the land and premises. That duty of care has at least three aspects: it applies in relation to the condition of the premises, activities on the premises, and conduct of third parties on the premises.

The Occupiers Liability Act before it was changed, provided for a lesser duty of care towards people who willingly accepted any risk, or relating to use of land used primarily for agricultural production.

In an attempt to reassure landowners still further, the government has repealed the section which described the reduced duty of care, and has replaced it with the following:

3(3)

Despite subsection (1), an occupier has no duty of care to a person in respect of risks willingly assumed by that person other than a duty not to

a. create a danger with intent to do harm to the person or damage to the person's property, or
b. act with reckless disregard to the safety of the person or the integrity of the person's property.

(3.1)

A person who is trespassing on premises while committing, or with the intention of committing, a criminal act is deemed to have willingly assumed all risks and the occupier of those premises is subject only to the duty of care set out in subsection (3).

(3.2)

A person who enters any of the categories of premises described in subsection (3.3) is deemed to have willingly assumed all risks and the occupier of those premises is subject only to the duty of care set out in subsection (3) if:

a. the person who enters is trespassing, or
b. the entry is for the purpose of a recreational activity and
    i. the occupier receives no payment or other consideration for the entry or activity of the person, other than a payment or other consideration from a government or government agency or a non-profit recreational club or association, and
    ii. the occupier is not providing the person with living accommodation on those premises.

(3.3)

The categories of premises referred to in subsection (3.2) are as follows:

a. premises that the occupier uses primarily for agricultural purposes;
b. rural premises that are:
    i. used for forestry or range purposes,
    ii. vacant or undeveloped premises,
    iii. forested or wilderness premises, or
    iv. private roads reasonably marked as private roads;
c. recreational trails reasonably marked as recreational trails;
d. utility rights of way and corridors excluding structures located on them.

So What Does That Mean?

Section 3(3)(a) is pretty self-evident. You can't go out and create a dangerous situation intending that people or their property will be harmed.

Section 3(3)(b) deals with the concept of "reckless disregard".

In order to be acting with reckless disregard, you must first be aware of the presence of people on your property, or you must be aware that their presence in the future is very probable. As well, you must do something, or fail to do something, that is likely to cause damage or injury, without caring whether that damage or injury results.

As an illustration, let's suppose that you have a private road, which is marked as such. You know that, despite your "no trespassing signs" people sneak down the road at night from time to time even though they are not supposed to. Then you decide to dig a deep trench across the road and you remove the material from the trench so that the trench is hard to see. You do not lock or block off the roadway nor do you take steps to warn of the danger. If someone then drives into the trench at night, injuring themselves and their vehicle, a judge is likely to think that you acted in "reckless disregard" for the safety of people that you knew might possibly make use of the area.

Categories of Land

The pre-amendment Act did not apply at all to Canada, British Columbia, or a municipality which is the occupier of a public highway, public road, road under the Forest Act, a private road as defined in section 2(1) of the Motor Vehicle Act or an industrial road as defined in the Highway (Industrial) Act.

The reduced duty of care is to exist on specific types of lands, which are listed in section 3(3.3) above. The Act does not include definitions for these categories of land—so how they will be interpreted by judges is unclear at this time. What is clear is that government wishes to broaden the types of land on which there is a reduced duty of care.

Categories of People

The reduced duty of care applies to certain people:

- people who willingly assume risks. Normally people who sign waivers or consent and release documents assume the risks inherent in the activities they are undertaking.
- people who are trespassing while committing or intending to commit a criminal act
- people who are trespassing
- people who enter for the purpose of a recreational activity and the landowner or occupier receives no payment or other consideration (value) other than payment or consideration from a government, government agency or non-profit recreational club or association and the occupier does not provide the person with living accommodation on those premises.

Note, however, that you do not have **no** duty of care. You still have a duty of care, it is just less than the duty of care that you would otherwise have.

And note also that if the person entering your property is paying for the privilege or you are giving them living accommodation, then the higher duty of care applies.

Why Change the Act?

The government wants to improve access to undeveloped private lands throughout BC. Their theory seems to be that the recreating public will have more opportunities to use deeded land for recreational purposes, if landowners are reassured that they have reduced liability for injury or property damage to members of the recreating public.

In discussion when the amendments were introduced, the government said that it wanted to make these changes to assist with development of the Trans Canada Trail, as well as to encourage landowners and occupiers to make more land available for recreation.

Occupiers, Cyclists, And One-Eyed Jacks: The Wild Game Of Occu Liability

Description

The following article was written by David W. Hay. David is a litigator whose preferred areas of practice include personal injury, commercial, entertainment and insurance litigation. He has extensive experience in cycling advocacy work and has advised cyclists and cycling advocacy groups for years.

David's preferred areas of practice are: Personal Injury, Commercial, Entertainment and Insurance Litigation.

Occupiers, Cyclists, And One-Eyed Jacks: The Wild Game Of Occupiers Liability

Introduction

The Vancouver North Shore Mountains have become a virtual international Mecca for mountain bikers. The magic of the North Shore trails is that they are free - unencumbered by rigid rules, regulations, contracts or commerce. After all, the last thing any cyclist wants to do at the start of a ride, at the point when he or she is brimming with energy and enthusiasm for what lies ahead, is sign a full release encompassing every conceivable catastrophe, including death, in favour of the landowner and the landowner's heirs, successors etc.

As a general sentiment, the freedom to roam is desirable. Arguably our law should espouse that sentiment as a reflection of a healthy, spirited society, in which recreation is valued.

Legislative Change

Clearly, this was the policy behind the Occupiers Liability Amendment Act, in 1998, which limited the duty of care owed by landowners to the uninvited public, including cyclists, using their land. Landowners could allow free access to cyclists, secure in the knowledge that the new statute would protect them against claims in negligence brought by cyclists injured on their lands.

Certainly, the creation of the Trans Canada Trail and negotiations with private landowners about public access to private lands must have been in the minds of the drafters of the amendments. This was a wrinkle occupying Trail system organizers in BC for some time. But statutes, such as the Occupiers Liability Amendment Act, are simply an articulation of society's rules, not society's principles, and accordingly they are seldom, if ever, broad enough to encompass all conceivable situations. Therefore, cases involving claims by injured parties against occupiers almost always involve a consideration of common law principles - in the perilous world of occupiers liability, the common law is a mess.

The Common Law Approach

Despite the development of the law of negligence, Canadian courts have generally attempted to preserve the traditional immunity of landowners. This has led to an immense and confusing dichotomy which in turn led legislatures to try to better define the various rights and obligations, not always successfully.

An occupier at law is the person who has immediate supervision and control over the premises. It is not necessary to own the land in order to be an occupier. At common law and under the Occupiers Liability Act an occupier is the person in possession or control of this premises.

We start with the 3 basic common law categories of entrants to land:

1. trespassers
2. licensees
3. invitees

Trespassers enter premises (not only land but buildings, boats, trains, and other movable structures) without the permission of the occupier. Occupiers have historically only been found liable to trespassers if they intentionally injured them or were in reckless disregard (intentional disregard) of their presence. However, the courts have struggled with the different varieties of entrants within the general rubric of trespassers. For example, is a child who wanders onto land treated the same as a burglar if the child falls into a river. A number of factors, collectively referred to as the common humanity test, were developed to allow courts to avoid the injustice associated with rigid definitions. They were:

1. the gravity and likelihood of probably injury
2. the character of the intrusion
3. the nature of the place where the trespass occurs
4. the knowledge which the Defendant has or ought to have the likelihood of the trespasser being present.

The second category is the licensee. Basically a visitor, there with permission and no business purpose. A classic example is the social quest. An occupier's duty to the licensee was traditionally to prevent damage from concealed dangers or traps of which the occupier has actual knowledge, with actual knowledge being imputed if the occupier had reason to know of its existence. It's important to note for our purposes that a voluntary assumption of risk by the licensee is not a full defence, ie, it doesn't get the occupier off the hook completely. The occupier could always get off the hook by warning the licensee of the danger, but only if the licencee had an opportunity to act on the warning.

The final category is the invitee, or business guest - the classic example being a customer of a store. The only difference between the duty owed to a licensee and that owed to an invitee seems to be that the occupier owes a duty of reasonable diligence to ascertain the existence of an unusual danger, whereas the occupier is only liable to a licensee if he or she has knowledge of the danger.

In addition to the three categories of entrants, there is the contractual entrant. That is someone who has contracted and paid for the right to enter. In that scenario, the applicable standard was either the standard in the contract or, if it is silent, the standard associated with the sale of goods, ie. are the premises reasonably fit for the purpose intended. That's a different standard than the one which applied in licensee and invitee cases. It is a contractual standard, thus it doesn't matter if the occupier is not personally negligent. The occupier must supervise and control the conduct of persons whose activities on the premises are likely to endanger him. Most organizations falling into this category require execution of a full release of liability as a condition to participate in the adventure activity. The law relating to the enforcement of releases is a whole other subject, but suffice it to say there is significant risk to a Plaintiff attempting to argue a release should not be enforced, particularly if the release is drafted by a sophisticated organization such a Whistler.

The Original Legislation

Following the enactment of the BC Legislation in 1974, the Courts moved away from the invitee/licensee distinction, in favour of a general statutory duty of care which incorporated common law principles of negligence. Unlike the Alberta Legislation, the Act established a general duty of care in relation to all entrants to the premises, including trespassers. The Act provided that an occupier has no duty of care to an entrant in respect of "risks willingly accepted by that person as his own risks". The Act is silent as to the effect of the warning. That would obviously be a factor in assessing the evidence as to voluntary acceptance of risks. It would also be a factor in assessing whether the occupier acted reasonably.

The Provincial Crown is bound by the Act, but public highways, public and private roads, and certain other roads occupied by the Crown are exempted. The Cypress Trails are on Provincial Park land and West Vancouver District lands. The Fromme Trails are on North Vancouver District land. The Seymour Trails are on a mix of North Vancouver District land, GVRD land and Provincial Park land. All these entities would be bound by the Act, and likely protected by the amendments.

The Effect of the Amendments

Now that I have given you that overview, I think it's important you know that under the amendments to the Act, and the one case in BC which has considered the amendments, cyclists who ride the North Shore Trails will likely be treated by the law as trespassers. Here is how it works:

Section 3 of the amended Occupiers Liability Act provides that a person who enters vacant or undeveloped rural premises or recreational trails for recreational purposes is deemed to have willingly accepted all risks. In these circumstances, the occupier's duty is limited to not:

(i) create a danger with intent to do harm to the person or damage to the person's property, or

(ii) act with reckless disregard to the safety of the person or the integrity of the person's property

Sound familiar? That's the common law duty of care to trespassers ie. there is no liability for negligent conduct. There is only liability for intentional conduct (recklessness at law is a form of intent) and there's no liability for someone else's negligence. An example would be a contractor hired by the occupier whose negligence causes an injury.

The First Post Amendment Case

Many of you will be familiar with a sad case out of Parksville stemming from a serious accident on rural land in 1999. Mr. and Mrs. Hindley set off on a ride with their two sons along the Top Bridge

Trail. That trail cut across a vacant and largely undeveloped parcel of land owned by Waterfront Properties Corporation and Pacific Canadian Investments. It was within the boundaries of Parksville and the Defendants allowed cyclists to use the trail without charge. Mr. Hindley rode into a completely obscured ditch and as a result was an incomplete quadriplegic.

Suddenly, these legal concepts become much less conceptual to the accident victim, who is searching to replace income, to recover attendant care costs, to renovate his home to accommodate his limitations, to pay for transportation, to protect his young family against an enormous personal and financial disaster. Mr. Hindley brought his case against the corporate landowners, which in the first instance argued unsuccessfully that they were not occupiers. Ultimately, the Defendants' applied to dismiss the case summarily, on the basis that their land fit the definition of "rural premises" and they effectively owed no duty of care in negligence. Because of the magnitude of the claim for damages, the case was deemed inappropriate for a summary trial, and so not decided. But in his consideration of the facts, Mr. Justice Groberman of the BC Supreme Court determined that the land in question was indeed rural and discussed the purpose of the Amendments to the Act. He said that a land use analysis should be applied to the question of whether the premise is "rural" under the Act, rather than examining what use the land has been put to in the past or what use it could be put to in the future. He didn't think the fact that the land was within municipal boundaries was at all important to its classification under the Act.

With respect to the purpose of the Amendments, he said "they were to encourage the opening up of rural lands to recreational use. Areas outside cities, particularly those where parcels of land are large and roads are some distance apart, appear to have been the main target of the legislation." He concluded that the area where the cyclist was injured "is of the very nature that the legislation appears to be aimed at."

His Lordship refused to confine his comments to the land in issue. He stated that land on the periphery of urban areas, such as the farmlands of Saanich, and Delta, and the mountains of North Vancouver would come within the term "rural premises" under the Occupiers Liability Act. Because the comment was incidental to and not part of his decision, it would be considered obiter dictum, as such it isn't binding on any future judge who might consider the issue. But it certainly might influence a future judge, particularly because it is such a specific comment.

In the Hindley case, his Lordship did not consider the two enumerated categories of premises, in addition to rural premises, to which the reduced duty of care applies. Section 3(3.3) (c) of the Act indicates that "recreational trails reasonably marked as recreational trails" would also enjoy the protection of the Act, insofar as the diminished duty of care goes.

This section seems to provide that even an occupier of developed non rural land would be immune, except in cases of intentional or malicious conduct, if the recreational trails were reasonably marked as such. But suppose a group of 8 year old children sets out on a ride - can it be an 8 year old grievously injured as a direct result of the negligence of the occupier would have no case if he/she couldn't show intention, simply on the basis that the trails were reasonably marked as recreational trails - suppose the 8 year old could not read or understand the signs - would there not in that circumstance need to be some resort to the common law, at least for a determination of whether the trail was, in all of the circumstances, "reasonably" marked. After all, what will constitute reasonably marked may vary, depending on the circumstances of each case. The section doesn't seem to connote any kind of requirement to warn of hazards, but simply to indicated the trails are identified as recreational trails, but it has not yet been judicially considered.

Deemed Assumption of Risk

Assuming the North Shore Mountains fall within an immune category, unless you can demonstrate you were intentionally harmed, a most unlikely thing in my view, you will be completely on your own, and that's fine, as long as you know that, and as long as you expect that before going in. There will be no recovery in negligence, no duty to warn of hazards. There is no general obligation based on foreseeability. If you are seriously injured there is no "system" to look after you or your family beyond the basic healthcare, GF Strong, and an extremely modest indexed CPP benefit.

This is the social choice at the heart of the amendments. In my view, they go far beyond simply returning the balance of power to occupiers in the courtroom; they preclude lawsuits from getting off the ground. Again, whether that's good or bad is beyond the scope of this discussion. The point is, this legislation leaves very little wiggle room in even the most catastrophic cases resulting from obvious negligence. This is certainly the case in Ontario, which has also amended its Act. The

Ontario Court of Justice dismissed an action by a catastrophically injured ATV rider, in circumstances where there was clear evidence of negligent road design, on the basis that the accident occurred on rural land, and the Plaintiff had entered those lands for the purpose of a recreational activity - this is the only other post amendment case in Canada. These kinds of decisions are certainly true to the purpose and spirit of the amendments, but other scenarios may not fit so clearly into the scope of the amendments, particularly those, where it would be inappropriate to expect the standard of the perfectly reasonable person. Those cases seem to invite a closer look, especially where it is obvious the occupier's negligence was the sole and direct cause of the loss. That would mean turning for help to the common law which seems contrary to the purpose of the legislation.

Now take the same group of 8 year old kids - they ride the same recreational trail everyday after school. At one point in the trail, they come around a blind corner and immediately onto a bridge which spans a creek. The occupier hires a contractor to effect repairs to the bridge and the contractor removes the first section completely. The lead cyclist plunges into the creek and is catastrophically injured.

On those facts, despite obvious negligence, and an obvious failure to warn, the legislation says no recovery, absent intent to harm or evidence that the occupier simply didn't care if harm occurred. One wonders if Judges might attempt to circumvent the legislation by some device such as reliance on a common humanity test.

Interestingly, the Occupiers Liability Act of Alberta specifically states that the liability of an occupier to a person using the premises for a recreational purpose shall be determined "as if the person was a trespasser." It has specific provisions relating to child trespassers which remove the legislative immunity and restore the traditional duty to take reasonable care to see that the child is reasonably safe from danger. The Alberta Act seems to import the common humanity test by making the age of the child, the ability of the child to appreciate the danger, and the burden on the occupier of eliminating the danger all relevant to the determination whether the duty has been discharged. The Ontario Act is similar to the BC Act in this regard.

Conclusion

The changes to the Occupiers Liability Act occurred in order to foster the increased use and enjoyment of the great outdoors - those changes represent an attempt to reduce the prospect of litigation against occupiers who let cyclists and other adventure minded individuals enjoy their lands, without charge. As such, the Courts will likely extend to those occupiers the protection offered by the Act whenever possible. But the legislation cannot embrace all circumstances, and inevitably some cases will need to be decided on their own facts. In those instances, the Act will be important but not necessarily determinative of the result, and resort to the always muddled common law of occupiers liability may be necessary.

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Judge rules Marley not defamed at election meeting

BY JANE SEYD, NORTH SHORE NEWS OCTOBER 5, 2011

FONVCA Agenda Item 6.2(f) -includes court judgement

A B.C. Supreme Court judge has rejected a West Vancouver man's claim that he was defamed by comments made during a 2009 provincial all-candidates forum.

No reasonable person who attended the forum would have had their views of David Marley lowered by comments made by businessman Peter Kains, particularly since Marley immediately responded and had the last word, Justice Elaine Adair concluded.

Marley, who ran as an independent candidate in the 2009 provincial election, sued Kains - a friend and political supporter of Liberal MLA Ralph Sultan - for telling the audience at the debate that Marley was under investigation by the police and attorney general for his conduct during the 2008 civic elections.

But the judge didn't agree that Marley was harmed by that, saying Marley had an immediate opportunity to respond to Kains and it was unlikely anyone's opinion of Marley was lowered as a result.

The judge added it's clear Kains' comments did nothing to change the outcome of the election, noting Marley got only seven percent of the popular vote, compared to Sultan's 66 per cent. "The evidence is quite clear that Mr. Marley was never any threat - much less a serious threat - to Mr. Sultan, the candidate Mr. Kains was supporting," wrote Adair, adding even Marley had acknowledged Sultan's seat was "the safest Liberal seat in the province."

"At worst, Mr. Marley may have lost a few votes."

The judge also agreed with Kain's lawyer, Rodney Sieg, that all-candidates' meetings are covered by qualified privilege - meaning that generally people should be freer to question and comment on those standing for elected office, without risk of being sued.

The judge wrote the whole point of an allcandidates' forum is for voters to ask questions - sometime uncomfortable questions - and see how candidates respond. The judge said it's clear Marley, who had been active in politics for almost 40 years, understood that.

"Moreover, the content of Mr. Kains' question was reasonably appropriate in the context of a question period at an all-candidates forum prior to an election and did not exceed the scope of privilege," wrote the judge.

Contacted at his West Vancouver home, Marley said Tuesday he was disappointed in the decision. "I would have wished it to go the other way," he said.

Marley said he's still mulling over the decision and hadn't ruled out an appeal.

jseyd@nsnews.com

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Marley v. Kains,* 2011 BCSC 1306

Date: 20111003
Docket: S096526
Registry: Vancouver

Between:

David O. Marley

Plaintiff

And

Peter M. Kains

Defendant

Before: The Honourable Madam Justice Adair

Reasons for Judgment

Counsel for the Plaintiff:	Don P. Baron
Counsel for Defendant:	Rodney Sieg and Lana Tsang
Place and Date of Trial:	Vancouver, B.C. September 12 to 16, 2011
Place and Date of Judgment:	Vancouver, B.C. October 3, 2011

Introduction

[1] In May 2009, the plaintiff, David Marley, was a candidate in the provincial election, running as an independent in the riding of West Vancouver-Capilano. On the evening of May 6, 2009, Mr. Marley attended an all-candidates forum at the Highlands United Church in North Vancouver. Mr. Marley estimated there were between 200 and 250 people in attendance. They included (in addition to the other candidates) Donna McMillan (Mr. Marley's wife), a number of Mr. Marley's friends and supporters and representatives of the local media. The moderator for the forum was Martin Millerchip, the editor of the North Shore News, a well-known community newspaper. The defendant, Peter Kains, was among the voters at the forum. Mr. Marley and Mr. Kains did not know one another personally.

[2] Mr. Kains lives and carries on business in the West Vancouver-Capilano riding. He intended to vote in the May 12, 2009 provincial election. He was the campaign fundraising chair for the Liberal candidate in West Vancouver-Capilano, Ralph Sultan, the incumbent. Mr. Kains had been involved in political fundraising for about 25 years. Since 2001, he had personally contributed thousands of dollars to the Liberal Party of British Columbia. Mr. Kains' habit over many years was to attend local candidates' meetings for every election at every level (municipal, provincial and federal) if he was able to do so. He explained that was why he attended the all-candidates forum on May 6, 2009. He also had a question he wanted to put to Mr. Marley, during the question period that was part of the forum.

[3] Prior to the all-candidates forum, Mr. Kains had picked up an envelope delivered to his place of business. The envelope, which was unaddressed, contained the first two pages of a letter dated January 20, 2009 and addressed to the attention of Sergeant Wright at the West Vancouver Police Department. The return address was on the top of the first page. However, parts of the text had been blacked-out or redacted. Mr. Kains did not know who had written the letter. But the text identified the author as someone who was a municipal councillor until November 2008 and then a candidate for mayor. As a result, Mr. Kains took it seriously. The letter indicated the author had a complaint against Mr. Marley in connection with the November 2008 municipal elections. The description of that complaint had not been redacted and mentioned an e-mail Mr. Marley had circulated on November 14, 2008.

[4] Mr. Kains took the pages he had received with him to the all-candidates forum. On the back of the first page, he sketched out some notes for the question he wanted to ask. He also made some notes on the second page. For the question period, names were drawn out of a hat. When his turn came, Mr. Kains stepped up to a microphone, pages in his hand, and said:

> Mr. Marley is being investigated at the direction of the Attorney General's office with respect to the November 08 civic elections in West Vancouver, which were an unseemly mess at best in

> terms of the revelations that came out afterwards, and don't you think, Mr. Marley, that it be incumbent on you to let the voters of West Van-Capilano be aware that you are under this serious investigation because there could be consequences if you are successful?

[5] Mr. Marley responded immediately, and said to those gathered at the forum:

> Well Mr. Kains, this comes as complete news to me. I would be very surprised if the Attorney General's ministry was investigating me with respect to the November 2008 election. I and the candidate that I supported, Mr. Michael Lewis, filed a complaint with the police in West Vancouver because of two groups, one of which is called West Vancouver Citizens for Good Government, and the another one, we don't know who he or it or they are, something called a Low Tax Low Growth organization, who were spending money to try to affect the outcome of that election without complying with the provisions of the Local Government Act. So the only investigation that I am aware of is the one that Councillor Lewis and I triggered. So I'm not aware of any investigation Mr. Kains and quite frankly I think that's quite underhanded of you to raise it at this public meeting without at least having raised it with me first.

[6] According to a DVD recording made at the meeting, the moderator then asked Mr. Marley:

> Moderator: (unclear) . . . I could go further David [Mr. Marley], if you want to ask him [Mr. Kains] what the basis for that question is, I can . . .
>
> Mr. Marley: No.
>
> Moderator: No. Okay. Three more questions.

The DVD recording shows Mr. Marley waving his hand dismissively as he said "no." Mr. Marley confirmed at trial that he waved away the opportunity offered to him by the moderator to explore the basis for Mr. Kains' question.

[7] Mr. Marley asserts that Mr. Kains' words were slanderous and defamed him, and that Mr. Kains said the words actuated by malice. Mr. Marley seeks substantial damages, including punitive damages, from Mr. Kains.

[8] In his defence, Mr. Kains denies that his words were defamatory. Mr. Kains says further that, if his words were defamatory, they were spoken on an occasion of qualified privilege, namely an all-candidates forum. In addition, Mr. Kains says that, if he is unable to make out the defence of qualified privilege, the court should recognize a new common law defence: responsible questioning. Mr. Kains denies any malice. Further, Mr. Kains denies that Mr. Marley has suffered any damages. He goes on to say that if Mr. Marley suffered any damages, it was a result of Mr. Marley's own actions after the all-candidates forum, including contacting the news media, and not as a result of anything said by Mr. Kains.

[9] Accordingly, I first must determine whether Mr. Kains is liable to Mr. Marley for defamation. If Mr. Kains is liable, then I must go on to address damages.

Background Facts

[10] Mr. Marley is now in his late fifties. He is trained as a lawyer, and he practiced for over twenty years as a litigator. Mr. Marley held a variety of unelected government positions in both Ottawa and Victoria, including director of legal services in Ottawa and an advisor to the former Attorney General Brian Smith. He was a principal in a public affairs consultancy, although, by May 2009, he had essentially retired from that work.

[11] Before the May 2009 election, Mr. Marley had about 38 years of political activity, starting in 1972. In early 2006, he co-founded a group called the "Interested Taxpayers Action Committee (or "ITAC"). Mr. Marley had gained a considerable public profile, at least locally, and was active in dealing with news media and local government. He appeared regularly before municipal council; he was quoted in local and community newspapers (particularly the North Shore News); and he had letters to the editor published.

[12] Mr. Kains was also active politically as a fundraiser and supporter of the provincial Liberal party, and its MLA in West Vancouver-Capilano, Mr. Sultan. He had never met Mr. Marley before the all-candidates forum on May 6, 2009. However, as a result of Mr. Marley's activities concerning local government matters, Mr. Kains knew of Mr. Marley. Mr. Kains testified that Mr. Marley was often mentioned in the North Shore News, often criticizing spending of the West Vancouver District council. Mr. Kains' perception of Mr. Marley was that he was a solid citizen who researched matters that he then brought to the public's attention.

[13] In the November 2008 municipal elections, one of ITAC's members, Michael Lewis, ran as a candidate for West Vancouver council. Mr. Marley supported Mr. Lewis' candidacy and served as Mr. Lewis' campaign manager. Mr. Lewis was successful in his bid for election to council. One of the mayoral candidates was Vivian Vaughan, who had been a councillor in West Vancouver between 2005 and 2008. Ms. Vaughan and Mr. Marley had become acquainted with one another, in part as a result of Mr. Marley's appearances before council.

[14] On November 14, 2008, the day before the municipal elections, Mr. Marley circulated a lengthy e-mail in support of Mr. Lewis, in which he said (among other things; *italics* and square brackets in original):

> Lastly, and most importantly, we need to elect people who have demonstrated integrity and who are prepared to stand up and speak out for the right things. If you want to know how someone will behave once elected, take a close look at how they act while seeking your vote. Against conventional wisdom [isn't that an oxymoron?] Michael Lewis refused to seek the endorsement of the *West Vancouver Citizens for Good Government*, an organization that for too long has seemingly held the keys to elected office in our community. He has spoke out loudly and repeatedly against attempts by a clandestine entity, the *Low Tax, Low Growth Association*, to influence the outcome of our election from the shadows. This group [or individual?] is spending a great deal of money to influence your vote and encourage a certain outcome in tomorrow's election. Who are these people? Or, perhaps, who is this person? What do they want in return for their anonymous spending on election advertising? Only Michael Lewis is asking. We need him on District council so he can keep asking the right questions and showing ethical leadership.

Mr. Marley urged the recipients of his e-mail to vote for Mr. Lewis and to forward his e-mail to "all you know resident in West Vancouver" with the request that they also vote for Mr. Lewis.

[15] Mr. Marley's e-mail contained a post-script that mentioned Ms. Vaughan. It states in part:

> On the matter of ethics, I was disappointed to read in today's *NS News* that Councillor Vivian Vaughan, candidate for mayor of West Vancouver, apparently sees nothing wrong with the *Low Tax, Low Growth Association* spending substantial monies in an anonymous attempt to influence the outcome of our election. Evidently, she is quite happy to see this activity continue so long as it appears to support her election bid. I suppose that I should not have been surprised by Councillor Vaughan's position given that, according to financial disclosure statements reported in the *NS News*, in 2005 she accepted $3,600 in campaign contributions from another clandestine organization, *Save Our Neighbourhoods*, which was attempting to influence the outcome of that election. . . .

[16] Mr. Marley's e-mail was forwarded to Ms. Vaughan by another individual, David Stephenson, who expressed concerns about the content of the post-script. In the evening on November 14, Ms. Vaughan sent an e-mail back to Mr. Marley, asserting that he had defamed her. Mr. Marley replied within a couple of hours, saying that he did not believe he had defamed Ms. Vaughan by mentioning the contribution from "Save Our Neighbourhoods." He said "I have expressed my opinion that this reflects poorly on your ethical sense. I believe that to be fair comment."

[17] Ms. Vaughan was not elected mayor.

[18] On November 17, 2008, Mr. Marley and Mr. Lewis formally lodged a complaint (the "Marley Complaint") with the West Vancouver Police Department concerning a possible breach of the ***Local Government Act***, R.S.B.C. 1996, c. 323, by "Low Tax, Low Growth" and "West Vancouver Citizens for Good Government." As Mr. Marley explained, there was initially some uncertainly about where the Marley Complaint should be directed. Should it be to the chief electoral officer? to the Ministry administering the ***Local Government Act***? Mr. Marley recalled being directed to the Attorney General's office, who in turn directed Mr. Lewis and him to the West Vancouver Police Department as the body handling investigation of such complaints.

[19] Mr. Marley and Mr. Lewis met with West Vancouver Police Constable Jarrett Chow. Mr. Marley left some documents from "Low Tax, Low Growth" and copies of some advertisements with Constable Chow. In turn, Constable Chow gave Mr. Marley a copy of his business card, on which the constable wrote a file number. Constable Chow forwarded the materials he received from Mr. Marley to West Vancouver Police Sergeant Wright, who then took over dealing with the Marley Complaint.

[20] Mr. Marley was concerned that the Marley Complaint be properly investigated. On December 1, 2009, Mr. Marley wrote to Mr. Sultan in his capacity as the MLA for West Vancouver-Capilano, confirming his previous advice to Mr. Sultan that he and Mr. Lewis had filed a

complaint. Mr. Marley wrote:

> As discussed, please forward this letter to BC Attorney-General Oppal, with your own covering note requesting that this matter be dealt with in a timely manner.

[21] On December 2, 2008, Mr. Marley had a letter hand-delivered to then Chief Constable Heed of the West Vancouver Police Department. In his letter, Mr. Marley stated that he had made a request through Constable Chow for a meeting with Chief Constable Heed to discuss the Marley Complaint, and repeated that request in a telephone conversation on November 19 with Sergeant Wright. Mr. Marley stated that he left a further request with Chief Constable Heed's assistant on November 28, and that, "[t]o date, neither Counsellor Lewis nor I have heard anything from your office in response to our request. To say that this is less than impressive is an understatement."

[22] Mr. Marley attached a copy of his letter to Mr. Sultan to his letter to Chief Constable Heed. He also mentioned that he and Mr. Lewis would be keeping a reporter with the Vancouver Sun up-to-date on the matter. Mr. Marley said further:

> In due course, we expect that Crown counsel, or perhaps a special prosecutor, will be appointed by the Attorney General to conduct a prosecution under the relevant provisions of the [***Local Government***] Act. At such time, we will be seeking a meeting with this individual so as to satisfy ourselves that this matter is going to be afforded the priority we believe it deserves.

[23] In early January 2009, Sergeant Wright contacted Ms. Vaughan. He told her that he was investigating the Marley Complaint. He contacted Ms. Vaughan because he understood that she had some involvement with the printing company who printed brochures for "Low Tax, Low Growth." Ms. Vaughan expressed doubts that a complaint such as the Marley Complaint was within the jurisdiction of the West Vancouver Police Department, but Sergeant Wright advised her that the Department had a legal opinion confirming it was the appropriate agency. Ms. Vaughan then indicated to Sergeant Wright that she had her own concerns about the November 2008 municipal elections and wanted an investigation into her complaints. They arranged to meet later in the month.

[24] Sergeant Wright and Ms. Vaughan met on January 22, 2009. Ms. Vaughan gave Sergeant Wright a letter addressed to him and dated January 20, 2009. This letter described the complaints about the November 2008 elections that she wished to have investigated. The first two pages of Ms. Vaughan's January 20, 2009 letter are, in fact, the two pages that Mr. Kains received, in redacted form, just before the all-candidates forum on May 6, 2009.

[25] Ms. Vaughan's letter begins:

> During your telephone call to me on Jan. 8th, you informed me that West Vancouver has obtained a legal opinion, allowing the police to investigate election complaints, even though these do not come under the criminal law. If I understand the situation correctly, the matter is now under the Attorney General's office, rather than the Community Development Ministry.

> REQUEST FOR INVESTIGATION
>
> I was a municipal councillor until November 2008, and was then a mayoralty candidate in the elections. I would appreciate it if the police could investigate my complaints, particularly with respect to the possible cumulative harm done to my campaign, and to the integrity of the municipal elections held on November 15th, 2008.

[26] On p. 1 of her letter, Ms. Vaughan then set out various parts of the "applicable legislation" she asserted were not complied with. None of the text on p. 1 was redacted in the copy of the letter Mr. Kains received.

[27] On p. 2 of her letter, Ms. Vaughan set out the details of her complaint against Mr. Marley under the heading "Complaint #2." None of this text was redacted on the copy of p. 2 received by Mr. Kains. This page also contains a description of her "Complaint #1" and the beginning of her description of "Complaint #3." All of the text concerning Complaints #1 and #3 was redacted on the copy of p. 2 received by Mr. Kains. In her complaint about Mr. Marley, Ms. Vaughan asserted that, by his November 14 e-mail, Mr. Marley became a "campaign organizer" and also defamed her, harming her reputation and campaign for mayor.

[28] As Sergeant Wright recalled at trial, he reviewed and discussed Ms. Vaughan's complaint about Mr. Marley with her. He did not believe that the complaint constituted an offence or that it was a matter for the police to investigate. However, he promised Ms. Vaughan to give the matter more attention to determine if there should be an investigation.

[29] In the following weeks, Ms. Vaughan sent additional correspondence to Sergeant Wright concerning her complaints about the November 2008 elections. In a letter dated January 28, 2009, Ms. Vaughan mentioned that:

> I was interested to hear your perspective on the intent of the new legislation, in selecting which complaints might be able to proceed. The North Shore News has already made the public aware of two complaints by Mr. Marley, and my letter listed another six.

[30] In a letter dated March 25, 2009, Ms. Vaughan added "supplementary allegations" to her complaint about Mr. Marley. At trial, Sergeant Wright could not recall whether or not he included this letter with the information he presented to the Crown, but he indicated that he would have considered it as part of his investigation.

[31] Until 2010, when a separate file was created for Ms. Vaughan's complaints, all of the material sent by Ms. Vaughan in connection with her complaints was kept by the West Vancouver Police Department in the same "key material envelope" or "KME" as the materials relating to the Marley Complaint.

[32] At trial, Sergeant Wright indicated that he submitted his report to Crown counsel around the end of April 2009. He recalled that he met with the Crown to discuss both the Marley

Complaint and Ms. Vaughan's complaints sometime after March 25, 2009 but before he completed his report to the Crown. Sergeant Wright recalled that he and the Crown discussed Ms. Vaughan's complaints and her views. His opinion in relation to Ms. Vaughan's complaints was that there had been no offence committed and no requirement for further investigation. That effectively concluded matters in connection with Ms. Vaughan's complaints, so far as the West Vancouver Police Department was concerned. Sergeant Wright's report to the Crown dealt only with the Marley Complaint.

[33] With respect to Ms. Vaughan's complaints, Sergeant Wright testified that he phoned Ms. Vaughan and left a voice-mail message for her concerning the handling of her complaints. However, Ms. Vaughan never received that message. As far as she was concerned, her complaints, including her complaint about Mr. Marley, were still being investigated, and she continued to send correspondence to Sergeant Wright, even after the provincial election on May 12, 2009. It was not until early December 2009 that Ms. Vaughan received confirmation from Sergeant Wright that, so far as he was concerned, matters in relation to her complaints had been concluded months before.

[34] Ms. Vaughan did not know Mr. Kains. She knew nothing about the redacted copy of pages 1 and 2 of her January 20, 2009 letter that Mr. Kains had received.

[35] Mr. Kains believed that he probably received the envelope containing the two pages of Ms. Vaughan's letter on May 6, 2009, the day of the all-candidates forum. He had been unable to attend other all-candidates meetings because he had been out of town. The envelope, unaddressed, had simply been left on the counter at his office. Mr. Kains did not know where the envelope came from.

[36] Mr. Kains testified that he had earlier met the Conservative candidate, who had been canvassing door to door. The two of them discussed that the Conservative candidate had been reprimanded by the Securities Commission. When he received the pages in the envelope, Mr. Kains thought that, since the Conservative candidate had revealed his problems, it was only fair that Mr. Marley do so too. Mr. Kains conceded that the only information he had about Mr. Marley was what was in the pages he had received. He conceded that he did not take any steps, after receiving the pages, to try and determine where they came from, or to contact the West Vancouver Police Department or Mr. Marley. However, he considered what was described in the pages to be a serious matter, and part of the purpose of the all-candidates forum was to provide voters with the opportunity to ask candidates questions. Mr. Kains recalled reading in the North Shore News about problems with the November 2008 elections, which, in Mr. Kains' memory, were most unseemly. Mr. Kains testified that, based on what he read in the pages he received, he believed there was an investigation of Mr. Marley, and, given Mr. Kains' involvement over many years with campaign fundraising, he considered the matter to be serious and shocking.

[37] Mr. Kains testified that he made the decision to attend the all-candidates forum on May 6 over dinner. He went to the Highlands United Church and sat in one of the pews, waiting for the meeting to start. Mr. Marley was the only candidate for whom Mr. Kains had a question, and Mr. Kains did not speak to anyone about his intention to pose a question. As I mentioned above, he wrote out some notes for his question on the pages from Ms. Vaughan's letter that he had received. In mentioning the Attorney General when asking his question, Mr. Kains was relying on what he had read in those pages.

[38] I have quoted above the words that Mr. Marley asserts are defamatory. Mr. Kains prefaced those words by stating:

> There are at least two other Liberal candidates who are under investigation, former cabinet ministers, and that is a matter of public record.

[39] Mr. Marley testified that he was surprised and shocked by Mr. Kains' question. He testified that the mention he was under investigation at the direction of the Attorney General came as a great shock to him. Nevertheless, Mr. Marley considered that he responded quite fully to Mr. Kains. The only investigation that Mr. Marley knew about concerned the Marley Complaint, and that was a full answer to Mr. Kains' question. Mr. Marley did not recall how much longer the meeting went on after Mr. Kains' question. In his evidence, Mr. Marley agreed that a person running for political office should expect to be asked some uncomfortable questions, and that it is proper to test the candidate's character. Mr. Marley also agreed that an all-candidates meeting is an important opportunity for voters to see what candidates have to say and also how a candidate answers questions. He agreed that voters would probably want to know if a candidate was under investigation.

[40] Ms. McMillan was present in the church when Mr. Kains asked his question. She testified that she was shocked, upset and "gob-smacked," and later she felt angry and embarrassed. Ms. McMillan recalled that, when Mr. Kains put his question, there was kind of an intake of breath throughout the church, and she gasped as well. She recalled later discussing with others what had happened, and that there was a general hubbub among Mr. Marley's supporters.

[41] However, Mr. Kains accepted Mr. Marley's response to his question, and that Mr. Marley did not know about any investigation other than of the Marley Complaint. Mr. Kains did not challenge Mr. Marley's response in any way. So far as any member of the public attending the forum was concerned, Mr. Marley had the last word.

[42] Moreover, the evidence is quite clear that Mr. Marley was never any threat – much less a serious threat – to Mr. Sultan, the candidate Mr. Kains was supporting. Mr. Marley frankly conceded this at trial. In his evidence, Mr. Marley described Mr. Sultan's seat as the safest Liberal seat in the province. In the election, Mr. Marley received less the 7% of the popular vote – as compared with over 66% for Mr. Sultan. Mr. Marley testified that Mr. Kains' remarks had no effect

on the outcome of the election. At worst, Mr. Marley may have lost a few votes. Mr. Marley accepted that Mr. Sultan had nothing to do with what Mr. Kains said at the all-candidates forum.

[43] On May 7, 2009, Mr. Baron, Mr. Marley's solicitor, wrote to Mr. Kains demanding publication of an apology and retraction in the May 10 edition of the North Shore News. That was not done.

[44] In a letter dated May 12, 2009, Mr. Kains wrote back to Mr. Baron, indicating that Mr. Kains would be able to provide Mr. Baron with documentation. The documentation Mr. Kains had in mind was the two pages he had received from Ms. Vaughan's January 20, 2009 letter. However, Mr. Kains never provided these documents to Mr. Baron.

[45] Instead, Mr. Kains asked a colleague, Mark Strongman, to follow up with a formal request to the West Vancouver Police Department for access to records under the ***Freedom of Information and Protection of Privacy Act***, R.S.B.C. 1996, c. 165. The description of the information requested is in these terms:

> Details of an investigation of David O Marley + his involvement/interference in the last West Vancouver Municipal election.

[46] The West Vancouver Police Department responded by letter dated September 16, 2009, which said in part:

> I can confirm that there is an investigative file, WV08-14455, concerning an allegation of misconduct in the West Vancouver municipal election in 2008. Currently the file is being considered by Crown Counsel for charges. As such, no details of the file may be released . . . .

[47] When Mr. Kains read this, he took it at face value. He assumed – as it turned out incorrectly – that the investigative file related to an investigation of Mr. Marley. In fact, it related to the investigation of the Marley Complaint: in other words, an investigation requested by Mr. Marley. The file number was the number Constable Chow had written on the business card he gave to Mr. Marley on November 17, 2008, when Mr. Marley and Mr. Lewis made the Marley Complaint.

[48] In late July 2009, Mr. Baron rendered an account to Mr. Marley for $600 (excluding taxes) re "Campaign Legal Counsel." The time period covered is May 7 to May 11, 2009, and the description of the service is:

> All conferences, communications, enquiries and correspondence provided in investigating the basis of statements made by Peter Kains impugning the character of Mr. Marley at an all-candidates forum on May 6, 2009.

Mr. Marley relies on this account as proof of special damage.

[49] This action was filed on September 4, 2009. Shortly thereafter, Mr. Marley contacted the

editor of the North Shore News, Mr. Millerchip. At trial, Mr. Marley explained that he was concerned about a whisper campaign and that he wanted to let the people who had attended the all-candidates forum know that he was taking steps in relation to Mr. Kains' question. He explained that the only thing he could think of was contacting the North Shore News. Mr. Marley testified that he had also told Mr. Millerchip that he would let Mr. Millerchip know what he was doing.

[50] Mr. Millerchip put Mr. Marley in touch with a reporter, who interviewed Mr. Marley for an article that was published in the North Shore News on September 13, 2009. The headline was "West Van MLA candidate files slander suit."

[51] Mr. Marley could not recall if he gave the reporter a copy of the statement of claim. However, the article mentions:

> During the meeting's question period, Kains said Marley was being investigated by the attorney general's office in regard to West Vancouver's 2008 civic election.
>
> "Don't you think, Mr. Marley, that it would be incumbent upon you to let the voters of West Van-Capilano be aware that you were under this serious investigation?" said Kains, according to Marley's writ of summons.

On cross-examination, Mr. Marley agreed that, in fact, the North Shore News had not published anything about what Mr. Kains said at the all-candidates forum until Mr. Marley approached the newspaper in September 2009 in connection with the filing of this action.

[52] During the interview in September, Mr. Marley told the North Shore News reporter that he would let him know if there were any significant developments in Mr. Marley's action. Mr. Marley spoke to the reporter again for an article that was published in the North Shore News on December 4, 2009 under the headline "Questions raised over election suit." The article, which Mr. Marley agreed was a fair representation of what he had said to the reporter, began:

> INFORMATION that has come to light in a civil suit connected to the last provincial election raises questions about the world of municipal campaign funding, says a one-time provincial candidate [i.e., Mr. Marley] involved in the case.

[53] On December 5, 2009, Mr. Marley sent a lengthy e-mail message to about 200 individuals. Mr. Marley described and commented on aspects of both his claim against Mr. Kains and the statement of defence filed on behalf of Mr. Kains. Mr. Marley also commented on the Marley Complaint. He attached a copy of the December 4 article from the North Shore News to his message. The subject line of the message was "Turning over the rock." The content of Mr. Marley's e-mail appears to draw a link between Mr. Kains and the individual or individuals who were the subject of the Marley Complaint, although Mr. Marley denied that he believed there was in fact a link.

Discussion and Analysis

(a) Liability: Basic Principles

[54] A plaintiff in a defamation action must prove: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff. See ***Grant v. Torstar Corp.***, 2009 SCC 61, at para. 28.

[55] Here, there is no issue concerning the second and third requirements, which are clearly met. The disagreement is over the first: are Mr. Kains' words defamatory?

[56] As Mr. Justice Cory noted in ***Botiuk v. Toronto Free Press Publications Ltd.***, [1995] 3 S.C.R. 3, at para. 62:

> [62] . . . What is defamatory may be determined from the ordinary meaning of the published words themselves or from the surrounding circumstances. In *The Law of Defamation in Canada* (2nd ed. 1994), R. E. Brown stated the following at p. 1-15:
>
> > [A publication] may be defamatory in its plain and ordinary meaning or by virtue of extrinsic facts or circumstances, known to the listener or reader, which give it a defamatory meaning by way of innuendo different from that in which it ordinarily would be understood. In determining its meaning, the court may take into consideration all the circumstances of the case, including any reasonable implications the words may bear, the context in which the words are used, the audience to whom they were published and the manner in which they were presented.

[57] The generally accepted test for identifying defamatory statements has often been referred to as setting a low threshold for establishing *prima facie* defamation, as Mr. Justice LeBel noted (although in *obiter*) in ***WIC Radio Ltd. v. Simpson***, 2008 SCC 40, [2008] 2 S.C.R. 420, at paras. 67-68.

[58] Mr. Justice LeBel (writing only for himself, although concurring in the result) observed (at para. 74) that "public figures may have greater opportunity to influence their own reputations for the better." He observed further (at para. 75) that "what may harm a private individual's reputation may not damage that of a public figure about whom more is known and who may have had ample opportunity to express his or her own contrary views."

[59] Mr. Sieg argues that, rather than being more vulnerable to potentially defamatory comments, Mr. Marley, by virtue of having a developed public profile, was in fact less vulnerable. I think there is some force in this argument. Mr. Kains did not know Mr. Marley, but knew of him through Mr. Marley's participation in local affairs and appearances in the North Shore News, and he considered Mr. Marley to be a "solid citizen." Moreover, in the context of the all-candidates forum, Mr. Marley had ample – and immediate – opportunity to put the record straight in response to Mr. Kains' question.

[60] Mr. Justice LeBel goes on to say, at para. 78:

> [78] Triers of fact should be mindful of ensuring that the plaintiff's reputation is actually threatened by the impugned statements before turning to the available defences. I do not mean to imply that damage to reputation must be proved, since actual harm to reputation is not required to establish defamation. However, before a *prima facie* case can be made out, there must be a realistic threat that the statement, in its full context, would reduce a reasonable person's opinion of the plaintiff.

Mr. Sieg also relies on this passage in support of his argument that Mr. Kains' words were not defamatory.

[61] Slander (which is oral defamation) requires proof of special damages, unless the impugned words were slanderous *per se*. There are four recognized categories of slander where damages are presumed to have been suffered from the very nature of the words, and thus are instances of slander *per se*: see R. E. Brown, ***The Law of Defamation in Canada*** (2nd ed. (loose-leaf)), at pp. 8-23 and 8-24. The two categories on which Mr. Marley relies are: (1) oral imputations calculated to disparage the reputation of the plaintiff in the way of his or her work, business, office, calling, trade or profession; and (2) accusations imputing the commission of a criminal offence. Moreover, Mr. Marley says that he has proved special damages in any event, namely the statement of account rendered to him by Mr. Baron for legal services.

[62] If the plaintiff proves the required elements, the onus then shifts to the defendant to advance a defence in order to escape liability. See ***Grant v. Torstar Corp.***, at para. 29. Mr. Kains relies primarily (although not exclusively) on the defence of qualified privilege. He abandoned the defences of justification and fair comment in closing submissions.

[63] The defence of qualified privilege is described by Mr. Justice Cory in ***Hill v. Church of Scientology of Toronto***, [1995] 2 S.C.R. 1130, at para. 143:

> Qualified privilege attaches to the occasion upon which the communication is made, and not to the communication itself. As Lord Atkinson explained in *Adam v. Ward*, [1917] A.C. 309 (H.L.), at p. 334:
>
> > . . . a privileged occasion is . . . an occasion where the person who makes a communication has an interest or a duty, legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential.

[64] As McLachlin C.J.C. noted in ***Grant***, at para. 30:

> The defences of absolute and qualified privilege reflect the fact that "common convenience and welfare of society" sometimes requires untrammelled communications [citation omitted]. The law acknowledges through recognition of privileged occasions that false and defamatory expression may sometimes contribute to desirable social ends.

[65] The purpose of the immunity provided by the defence of qualified privilege is described in

The Law of Defamation in Canada, at pp. 13-15 to 13-19 (footnotes omitted):

> The protection ... is justified on the basis of public policy and utility, and in furtherance of the "common convenience and welfare" or "general interest" and "advantage" of society. ...
>
> The purpose of the immunity is not so much to protect the parties involved as it is to promote the public welfare. ... As Bankes J. in *Gerhold v. Baker* [[1918] W.N. 368 at 368-369 (C.A.)] said:
>
> > "It was in the public interest that the rules of our law relating to privileged occasions and privileged communications were introduced, because it is in the public interest that persons should be allowed to speak freely on occasions where it is their duty to speak, and to tell all they know or believe, or on occasions when it is necessary to speak in protection of some common interest."

[66] The factors to be considered by the court in deciding whether an occasion is one of qualified privilege were summarized by Williams J.A., speaking for the Court, in ***Moises v. Canadian Newspaper Co.*** (1996), 24 B.C.L.R. (3d) 211 (C.A.) as follows (at para. 19):

> [19] . . . There are a number of factors which a court must consider when deciding whether or not any given occasion is one of qualified privilege. In *Sapiro v. Leader Publishing Co.*, [1926] 2 W.W.R. 268 at 271, 20 Sask. L.R. 449 (Sask. C.A.), Lamont J.A. said:
>
> > In determining whether or not it is so privileged, the Judge will consider the alleged libel, who published it, why, and to whom, and under what circumstances. He will also consider the nature of the duty which the defendant claims to discharge, or the interest which he claims to safeguard, the urgency of the occasion, and whether or not he officiously volunteered the information, and determine whether or not what has been published was germane and reasonably appropriate to the occasion.

See also ***Shavluk v. Green Party of Canada***, 2010 BCSC 804, aff'd 2011 BCCA 286, at para. 76.

[67] In ***Grant***, McLachlin C.J.C. noted (at para. 34) that:

> . . . the defence of qualified privilege has seldom assisted media organizations. One reason is that qualified privilege has traditionally been grounded in special relationships characterized by a "duty" to communicate the information and a reciprocal "interest" in receiving it. The press communicates information not to identified individuals with whom it has a personal relationship, but to the public at large. Another reason is the conservative stance of early decisions, which struck a balance that preferred reputation over freedom of expression. In a series of judgments written by Cartwright J. (as he then was), this Court refused to grant the communications media any special status that might have afforded them greater access to the privilege: *Douglas v. Tucker*, [1952] 1 S.C.R. 275; *Globe and Mail Ltd. v. Boland*, [1960] S.C.R. 203 . . . .

[68] Mr. Baron relies on ***Globe and Mail Ltd. v. Boland***, [1960] S.C.R. 203, and also ***Douglas v. Tucker***, [1952] 1 S.C.R. 275, to argue that Mr. Kains' defence of qualified privilege must fail.

[69] However, in ***Douglas v. Tucker***, Cartwright J. (as he then was) drew a distinction between statements published in newspapers – or "publication to the world" – and those made by voters to voters. He wrote, at p. 287:

> It has often been held that qualified privilege attaches to communications made by an elector to his fellow electors of matters regarding a candidate which he honestly believes to be true and which, if true, would be relevant to the question of such candidate's fitness for office. See, for example, Gatley on Libel and Slander, 3rd Edition, pages 250 and 251 and cases there cited. It is unnecessary on this appeal to decide whether such privilege is limited to publications made by an elector and to an elector or electors all of whom have a right to vote for the candidate about whom the communication is made and, if it is not so strictly limited, what is its extent. It is settled that whatever may be the extent of such a privilege it is lost if the publication is made in a newspaper.

[70] The legal effect of the defence of qualified privilege is to rebut the inference, which normally arises from the publication of defamatory words, that they were spoken with malice. Where the occasion is shown to be privileged, the good faith of the defendant is presumed and the defendant is free to publish, with impunity, remarks which may be defamatory and untrue about the plaintiff. See ***Hill***, at para. 144.

[71] However, the privilege is not absolute and can be defeated if the dominant motive for publishing the statement is actual or express malice, or if the limits of the duty or interest have been exceeded. See ***Hill***, at paras. 145-146.

[72] The concept of malice was discussed in detail by Kirkpatrick J.A. in ***Smith v. Cross***, 2009 BCCA 529, at paras. 30 and following. At para. 34, Madam Justice Kirkpatrick noted the "helpful framework for the categories under which a finding of malice can be made" set out in ***Canadian Libel and Slander Actions*** (Toronto: Irwin Law, 2004) at p. 299 (*italics* in original):

> A defendant is actuated by malice if he or she publishes the statement:
>
> i) Knowing it was false; *or*
>
> ii With reckless indifference whether it is true or false; *or*
>
> iii) For the dominant purpose of injuring the plaintiff because of spite or animosity; *or*
>
> iv) For some other dominant purpose which is improper or indirect, or also, if the occasion is privileged, for a dominant purpose not related to the occasion.
>
> More than one finding can be present in a given case.

[73] With respect to the limits of the duty or interest, in ***Ward v. Clark***, 2001 BCCA 724, 95 B.C.L.R. (3d) 209, Esson J.A. (as he then was) wrote (at para. 56):

> The law was stated thus by Lord Atkinson in *Adam v. Ward*, [[1917] A.C. 309 (H.L.)] at p. 173:
>
> > These authorities, in my view, clearly establish that a person making a communication on a privileged occasion is not restricted to the use of such language merely as is reasonably necessary to protect the interest or discharge the duty which is the foundation of his privilege; but that, on the contrary, he will be protected, even though his language should be violent or excessively strong, if, having regard to all the circumstances of the case, he might have honestly and on reasonable grounds believed that what he wrote or said was true and necessary for the purpose of his vindication, though in fact it was not so.

[74] Thus, the information communicated must be reasonably appropriate in the context of the circumstances existing on the occasion when that information was given. See ***Hill***, at para. 147.

[75] In ***Grant***, the Supreme Court of Canada formulated a new defence to an action in defamation – the defence of responsible communication – while leaving the traditional defence of qualified privilege intact. See ***Grant***, at paras. 7 and 95. In this case, and in the event that I find the defence of qualified privilege is defeated, Mr. Sieg urges me to follow the lead in ***Grant***, and formulate another new defence: the defence of "responsible questioning."

(b) Were Mr. Kains' words defamatory?

[76] Mr. Baron submits that Mr. Kains words are defamatory, based on the test set out in ***Botiuk***, at para. 62, and by Mr. Justice LeBel in ***WIC***, at paras. 67-75. He submits further that the clear inference of Mr. Kains' words was that Mr. Marley was lacking in integrity or otherwise of bad character, and someone who was unfit to be a candidate for public office.

[77] In a different context, Mr. Kains' words may have been defamatory, passing the "low threshold" that the law requires. However, I find that, in the full context in which the words were spoken, they were not defamatory. In that context, I do not think there was any realistic threat that Mr. Kains' words would reduce a reasonable person's opinion of Mr. Marley. I will explain why I have come to this conclusion.

[78] The all-candidates forum included a period for voters to ask the candidates questions. The fact that a voter – Mr. Kains – directed a question to Mr. Marley cannot have come as a surprise to anyone. In particular, Mr. Marley cannot have been surprised that a question would be put to him: that was one of the reasons he was there. Mr. Marley, who had many years of active political involvement, understood very well that candidates could expect to have to field uncomfortable questions.

[79] Mr. Kains' words were uncomfortable for Mr. Marley. However, Mr. Marley kept cool in front of the audience and the camera. In responding, Mr. Marley was calm and matter-of-fact. In terms of its content, Mr. Marley's response to Mr. Kains was articulate and detailed. Mr. Marley did not have to await another opportunity to get his message out. Rather, he could – and did – provide a full response immediately after the question was posed, in front of the very people who had heard Mr. Kains' words. Everyone in the room would have heard Mr. Marley say that he would be very surprised if the Attorney General's ministry was investigating him and explain that the only investigation he knew about was one in relation to a claim he (and Mr. Lewis) had triggered. Mr. Marley's statements were not challenged by anyone. In front of the assembly, Mr. Kains accepted them.

[80] Mr. Marley was given the further opportunity by the moderator to probe Mr. Kains about the basis for his question. Mr. Marley waved that off, with an expressive gesture that implied to do so

would be a waste of his and everyone else's time, because Mr. Kains was not only "underhanded" but had no idea what he was talking about.

[81] Ms. McMillan had a strong reaction to Mr. Kains' question. However, in my view, that was simply a normal reaction in the face of a perceived attack on a loved one, even where the loved one is completely capable of fending off the attack and, indeed, crushing the attacker. There was no risk that Mr. Kains' question would tend to lower Ms. McMillan's opinion of Mr. Marley, or the opinions held by Mr. Marley's supporters. There is no evidence that any of them had the slightest doubt that what Mr. Marley said was true.

[82] Accordingly, in my view, Mr. Kains' words, in their full context, did not create a realistic threat to Mr. Marley's reputation in the eyes of a reasonable person.

(c) The Defence of Qualified Privilege

[83] My conclusion that Mr. Kains' words, in context, are not defamatory is sufficient to dispose of this action. However, even if had I concluded the words were defamatory, in my view, Mr. Kains' defence of qualified privilege ought to succeed.

[84] I will therefore say a few words respecting Mr. Baron's submission that Mr. Kains' words amounted to slander *per se*, even though I do not need to make a determination on that point. I would reject Mr. Baron's argument that Mr. Kains' words amount to accusations imputing the commission of a criminal offence. However, Mr. Baron advanced an alternative argument that the words were calculated to disparage Mr. Marley's reputation in the way of his "office." He relied on definitions of the word "office" in the ***Concise Oxford Dictionary*** (7th ed.) and ***Black's Law Dictionary*** (4th ed.) to argue that as a candidate for the provincial legislature, Mr. Marley held an office. However, it seemed wrong to treat someone who was a candidate for office as equivalent to the holder of an office, and I found Mr. Baron's argument unconvincing. However, it might be said that the words were calculated to disparage Mr. Marley in the way of his calling, in the sense that he was (or may be) unfit to stand as a candidate for political office. That would bring Mr. Marley within one of the accepted categories of slander *per se*. I will accept that conclusion for the purposes of the discussion of qualified privilege.

[85] I agree with Mr. Sieg's submission that incurring legal expenses in connection with a possible defamation claim cannot be sufficient special damages for the purpose of a slander claim, and would render the developed categories for slander *per se* largely meaningless. Neither Mr. Baron nor Mr. Sieg was able to cite any case authority to the effect that such legal expenses were an acceptable item of special damage.

[86] I turn then to the defence of qualified privilege, as it applies to the facts of this case.

[87] As I mentioned above, Mr. Baron submits that ***Boland*** and ***Douglas v. Tucker***, both of

which rejected the defence of qualified privilege, ought to govern in this case. Mr. Baron submits that an all-candidates forum is not an occasion to which the protection of qualified privilege applies.

[88] I do not agree. I have noted above the distinction made by Cartwright J. (as he then was) between statements made by voters and statements made in newspapers, where publication is "to the world." That distinction applies to an all-candidates forum.

[89] The all-candidates forum was an occasion when voters and candidates were speaking directly to other voters concerning matters regarding the candidates, their fitness for office and the election. I agree with Mr. Sieg's submission to the effect that one of the main purposes of an all-candidates meeting is to provide voters with the opportunity to ask candidates questions so that other voters attending the meeting can hear the answers in order to become better informed about the candidates and who to vote for. Mr. Kains, as a constituent in West Vancouver-Capilano, had, at the very least, an interest in posing his question to Mr. Marley, a candidate for election in that riding. Mr. Marley, as a candidate, had a corresponding interest and duty to listen to and respond to Mr. Kains' question. Moreover, the content of Mr. Kains' question was reasonably appropriate in the context of a question period at an all-candidates forum prior to an election and did not exceed the scope of the privilege.

[90] Mr. Marley asserts that when Mr. Kains spoke, he was actuated by actual or express malice, thus depriving him of the defence of qualified privilege. The onus to prove that malice was Mr. Kains' dominant motive is on Mr. Marley. In my view, Mr. Marley has not met that burden.

[91] In support of his assertion that Mr. Kains was actuated by malice, Mr. Marley points to Mr. Kains' connection with and support of Mr. Sultan, and the provincial Liberal party. However, it simply does not follow from these facts that, when Mr. Kains put his question to Mr. Marley, he did so for the dominant purpose of injuring him because of spite or animosity or for some other improper purpose. The two men were not personally acquainted with one another. To the extent that Mr. Kains knew something about Mr. Marley, he held a positive view of him – that he was a "solid citizen." Moreover, Mr. Marley was never any threat to Mr. Sultan. A voter cannot be disqualified on grounds of malice from putting a question – even an uncomfortable one – to a candidate at an all-candidates forum merely because the voter supports another candidate or another party.

[92] Mr. Marley then says that Mr. Kains made notes of his question before putting it to Mr. Marley – in other words, Mr. Kains wrote out a script in advance. Mr. Kains admitted this. However, I do not think that making notes can support a conclusion that Mr. Kains acted with a dominant purpose of injuring Mr. Marley, or for some other dominant purpose that is improper or indirect. People make notes of what they want to or intend to say at a public gathering for a whole host of innocent reasons, including so that they will remember when the time comes to speak. I

think this is a much more likely explanation for Mr. Kains "scripting" his remarks. It is not a demonstration that he harboured some animosity or spite or ill-will towards Mr. Marley.

[93] In argument, Mr. Marley was also critical of Mr. Kains for not approaching Mr. Marley privately and asking his question, and Mr. Marley relied on this in support of the argument that Mr. Kains was actuated by malice. Indeed, in answering Mr. Kains' question, Mr. Marley called Mr. Kains' behaviour "underhanded." However, candidates for political office cannot reasonably expect voters to pre-clear – or warn the candidate of – potentially uncomfortable questions in advance of an open question period at an all-candidates forum. The candidate may prefer it, but I would not find Mr. Kains' conduct to be actuated by malice because he did not.

[94] Mr. Marley also notes that Mr. Kains attended only one all-candidates forum, the last one before the election. However, Mr. Kains explained that he had been out of town when others were held. Moreover, Mr. Kains had a long-standing practice, going back over decades, of attending all-candidates meetings. His attendance on May 6, 2009 does not demonstrate actual malice towards Mr. Marley.

[95] Mr. Marley points out that of all of the candidates, he was the only one to whom Mr. Kains put a question. However, this is simply a neutral fact; it is not proof that Mr. Kains was actuated by malice towards Mr. Marley. The only information Mr. Kains had was about Mr. Marley. Other candidates had made disclosures. Mr. Kains had a question, relevant to that issue, for Mr. Marley.

[96] Finally, Mr. Marley says that Mr. Kains acted recklessly, in basing his question on a two-pages of a redacted document that arrived anonymously at Mr. Kains' office. However, Mr. Kains took the contents of the document seriously. The text described the letter's author – and maker of the complaint – as a former councillor and candidate for mayor. In fact, that was true. The letter was addressed to a specific officer with the West Vancouver Police Department. The text concerned the 2008 civic elections in West Vancouver. Mr. Kains' memory of those elections was that they were unseemly, and he considered what he read to be serious and shocking. As of May 6, 2009, the letter's author, Ms. Vaughan, believed that her complaints were being investigated. Had Mr. Kains contacted her in advance of the all-candidates forum, presumably that is what he would have been told. At trial, Mr. Kains asserted that he had confidence in the letter, and confidence in the facts, when he put his question to Mr. Marley.

[97] In that light, I am not persuaded that Mr. Kains acted recklessly in basing his question for Mr. Marley on the pages he had received anonymously. I agree with Mr. Sieg's submission that those pages provided a reasonable basis from which Mr. Kains could formulate a question for Mr. Marley at the all-candidates forum concerning the existence of an investigation.

[98] The result is that Mr. Marley has not met the onus he bears to prove malice.

[99] In the circumstances, it is unnecessary for me to address Mr. Sieg's alternative argument

concerning a new common law defence of "responsible questioning."

[100] Finally, because I have concluded that Mr. Kains is not liable to Mr. Marley, I do not intend to address damages.

Summary

[101] In summary, I find that Mr. Kains' words were not defamatory. Had they been, I would have given effect to the defence of qualified privilege.

[102] Mr. Marley's action is, accordingly, dismissed. Unless there are relevant matters about which I am unaware, costs on Scale B will follow the event.

"The Honourable Madam Justice Adair"

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Canadian Social Trends

Article

Commuting to work: Results of the 2010 General Social Survey

by Martin Turcotte

August 24, 2011

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.	not available for any reference period
..	not available for a specific reference period
…	not applicable
0	true zero or a value rounded to zero
0^s	value rounded to 0 (zero) where there is a meaningful distinction between true zero and the value that was rounded
^{p}	preliminary
^{r}	revised
x	suppressed to meet the confidentiality requirements of the *Statistics Act*
^{E}	use with caution
F	too unreliable to be published

Commuting to work: Results of the 2010 General Social Survey

by Martin Turcotte

Introduction

For many workers, commuting to work is routine and causes little concern. Others, however, consider it a waste of time and a source of stress and frustration. This is especially true for workers whose commutes seem to take an eternity and are made even slower by traffic congestion.

Often irritating workers, traffic slowdowns and capacity problems in the road system are serious issues. In addition to delaying deliveries and reducing business productivity, traffic congestion contributes to urban smog and pollution—diminishing environmental quality and jeopardizing public health.

This article examines various facets of travelling between home and work. Part 1 begins with information about commuting times and how frequently workers are caught in traffic. In particular, it compares commuting times in major metropolitan areas by mode of transportation used by workers. Part 2 looks at workers' perceptions of the time they spend commuting. Are they happy with this time or not? In the past, there was no way of answering this question, but now there is data from by the General Social Survey which allows this question to be addressed.

In Part 3, the focus is on car users' perceptions of public transit. Have they ever tried using public transit to get to their current place of work? Is it convenient for them? In Part 4, a connection is drawn between the characteristics of commuting to work (commuting time, recurrence of traffic congestion, etc.) and selected subjective measures of quality of life, including stress levels and satisfaction with work–life balance. For more information, see the box entitled "What you should know about this study".

Part 1: Commuting times by place of residence, mode of transportation, residential density and traffic congestion

The larger and more populous the region, the longer it takes to get to work

In 2010, it took Canadian workers an average of 26 minutes to get to work on a typical day (the average includes all modes of transportation). This average was affected by various factors, including where workers lived. In general, travel times are longer in large metropolitan areas, where workers have to travel greater distances and traffic congestion is more frequent (Table 1).

For example, average commuting time was longest (30 minutes) in the six largest census metropolitan areas (areas with at least 1 million residents: Toronto, Montréal, Vancouver, Ottawa–Gatineau, Calgary and Edmonton). In the 10 census metropolitan areas (CMA)[1] with between 250,000 and fewer than 1 million residents in 2006, average commuting time was shorter (25 minutes).

Smaller census metropolitan areas with fewer than 250,000 residents had the shortest commuting times, averaging 19 minutes. In general, these smaller CMAs have many places of work that are not difficult to get to, in part because traffic congestion occurs less frequently. Average commuting times were the same in census agglomerations (areas with between 10,000 and 100,000 residents).

Commuting times were slightly longer in areas outside census agglomerations and census metropolitan areas (23 minutes on average). This might be because some people who live outside the boundaries of census metropolitan areas commute into those areas. In addition to travelling long distances, these workers may encounter traffic congestion if they commute into major centres.

What you should know about this study

This article is based on data from Statistics Canada's 2010 General Social Survey on Time Use, which included questions on time stress and the sense of well-being. A section of the survey also dealt with commuting to work.

This study is about people whose main activity during the week preceding the interview was working at a paid job or for themselves. People who were on vacation that week are excluded. The result is a sample of 6,988 respondents representing about 13.7 million workers in 2010.

Definitions

Commuting time: To measure how much time workers spend commuting, they were asked: "On a usual day last week, how many minutes did it take you to go one way from home to work?"

Mode of transportation: There were three modes of transportation reported: car or private vehicle, public transit and active transportation.

Car users: includes both passengers and drivers who use a private motor vehicle to commute to work.

Public transit users: includes passengers of public transit systems, including streetcars, subways, light-rail transit, commuter trains and ferries.

Active transportation: includes walking and cycling.

Respondents were given the opportunity to report more than one mode of transportation for their commute to work and people who reported using public transit in combination with some other mode of transportation (car, walking) are included with public transit users.

When Canada's six largest metropolitan areas are compared, a positive relationship between population size and commuting times is found. Of those six areas, the two most populous—Toronto and Montréal—have the longest commuting times (33 minutes and 31 minutes respectively). In both, 27% of workers had travel times of 45 minutes or more, which is much greater than in any other CMA or other area (Table 1). For more details on commuting in Toronto, Montréal and Vancouver, see the "Getting to work in Toronto, Montréal and Vancouver" text box.

Commuting takes longer by public transit than by car

How someone gets to work is associated with how long it takes to get to work. Workers who walk or bicycle to work have shorter trips (14 minutes on average) while public transit users spend considerably more time travelling to work (44 minutes). Car users, including passengers, fall somewhere in the middle. Since the vast majority of workers travel in private vehicles, their average commuting time of 24 minutes is very close to the average for all workers.

It makes sense to compare the commuting times of car users and public transit users based on the size of the metropolitan area. In 2010, in the six largest metropolitan areas, car users took an average of 27 minutes to get to work, while public transit users took 44 minutes. In mid-sized metropolitan areas (areas with between 250,000 and 1 million residents), the difference in average commuting times was larger—23 minutes for car users and 46 minutes for public transit users.

The gap is not due to distance travelled, as public transit users generally travel shorter distances. Among workers in CMAs with at least 250,000 residents who travel less than 5 kilometres to get to work, car users had an average commuting time of 10 minutes, compared with 26 minutes for public transit users (data not shown). The same held true for all other distance categories.[2] Since the use of public transit involves walking, waiting and sometimes traffic congestion, it is not surprising that commuting times are generally longer for public transit users. Nevertheless, the use of bus lanes and underground rail lines can speed up public transit commutes and even make them shorter than automobile commutes. However, when average commuting times for public transit users and car users are compared, automobile commutes are shorter.

The conclusions concerning commuting times by mode of transportation are much the same when proportions of users are considered. For example, in 2010, among workers in metropolitan areas with a population of at least 250,000 who lived 5 or more kilometres from their place of work, 45% of public transit users had morning commutes of 45 minutes or more, compared with 18% of car users (data not shown).

Low residential density neighbourhoods are less conducive to public transit

Access to public transit is closely tied to urban land use. It is much easier to provide efficient public transit in the high-density residential neighbourhoods typical of the central areas of major cities. The pool of potential users per square kilometre is much larger in such areas. This has an impact on public transit users who live in lower-density residential neighbourhoods—their commuting

Table 1 Average commuting time to work and proportion of workers, by selected characteristics, 2010

	Commuting time				
	Average	Less than 15 minutes	15 to 29 minutes	30 to 44 minutes	45 minutes or more
	minutes	percentage			
Total Canada	**26**	**30**	**33**	**19**	**17**
Type of region of residence					
Census metropolitan areas of 1,000,000 or more residents†	30	19	33	25	23
Census metropolitan areas of 250,000 to 999,999 residents	25*	29*	38*	18*	15*
Census metropolitan areas of less than 250,000 residents	19*	41*	39*	13*	7*
Census agglomerations	19*	49*	31	11*	10*
Outside of census metropolitan areas and census agglomerations	23*	41*	29*	15*	15*
Census metropolitan area					
Toronto†	33	15	33	25	27
Montréal	31	20	27	27	27
Vancouver	30*	22*	33	25	21*
Ottawa–Gatineau	27*	15[E]	50*	21	14[E]*
Calgary	26*	21[E]	33	29	16[E]*
Edmonton	23*	27*	41	20	12[E]*
Mode of transportation					
Car or private vehicle†	24	31	36	18	15
Public transit	44*	5*	21*	30*	43*
Active transportation (walking or cycling)	14*	57*	27*	14*	F*
Type of region and mode of transportation					
Census metropolitan areas of 1,000,000 or more residents					
Car/private vehicle†	27	21	37	24	18
Public transit	44*	5[E]*	20*	31*	44*
Census metropolitan areas of 250,000 to 999,999 residents					
Car/private vehicle†	23	31	40	17	12
Public transit	46*	F*	25[E]*	29[E]*	42*

† reference group
* statistically significant difference from reference group at $p < 0.05$
Source: Statistics Canada, General Social Survey, 2010.

Getting to work in Toronto, Montréal and Vancouver

Data from the General Social Survey can provide a more detailed picture of commuting times in Canada's three largest metropolitan areas, as the number of survey respondents from these three areas allows for more detailed analysis.

Average commuting times in these three CMAs followed the general trend: they were longer for public transit users than for car users. In Toronto and Vancouver, it took public transit users about 20 minutes longer than car users to get to work, while in Montréal, the difference was much smaller (about 10 minutes) (text box table).

CMAs are named after their central municipality, but they also contain other municipalities, which may be described as 'neighbouring', 'peripheral' or 'suburban' municipalities. The urbanization of most peripheral municipalities has been a function of automobile use. In contrast, many neighbourhoods in Toronto, Montréal and Vancouver are densely populated, which favours active modes of transportation or public transit. These differences in urban planning and the development of road systems can have a major impact on how workers commute to work.

In these three areas, workers living in the central municipality were much more likely to use public transit than workers in neighbouring municipalities. The difference was particularly pronounced in Montréal, where 41% of workers living in the city of Montréal commuted by public transit, compared with 11% of workers in neighbouring municipalities.

The differences in commuting times within the three areas were small. In the Vancouver area, the average commuting time was 27 minutes for workers living in the central municipality, compared with 31 minutes for workers residing in neighbouring municipalities (text box table). In the Montréal area, it took workers from the city of Montréal an average of 28 minutes to get to work, while the average commuting time for their counterparts in neighbouring municipalities, such as Laval or Longueuil, was 34 minutes. In the Toronto area, commuting times were the same for workers residing in the central municipality and workers in neighbouring municipalities (33 minutes).

These relatively minor differences may be due to the fact that many workers from peripheral municipalities do not have to travel to the central municipality to get to their place of work. Prior to economic expansion into the suburbs, the suburban municipalities played an essentially residential role within the census metropolitan area. This is no longer the case, since a great many jobs are outside the central municipality/city centre. According to 2006 Census data, for example, employment grew even more rapidly in the peripheral municipalities than in the central municipalities.[1]

Workers in the greatest metropolitan areas are more likely to experience traffic congestion daily on their way to work (Table 2). In the Toronto CMA, 29% of full-time workers were caught in traffic jams every day of the week, compared with 26% of their counterparts in Montréal and 25% of full-time workers in Vancouver (results not shown). In the Montréal metropolitan area, residents of the central municipality, i.e. of the city of Montréal, were less likely to experience traffic congestion every day (18% of full-time workers compared to 29% of those in the surrounding municipalities). The same held true in Vancouver with respective proportions of 17% of full-time workers living in the city of Vancouver caught daily in traffic compared with 28% of those living in surrounding municipalities.

1. Statistics Canada. 2007. *Commuting Patterns and Places of Work of Canadians, 2006 Census*, Statistics Canada Catalogue No. 97-561.

Getting to work in Toronto, Montréal and Vancouver (continued)

Mode of transportation and average commuting time to get to work in Montréal, Toronto and Vancouver census metropolitan areas

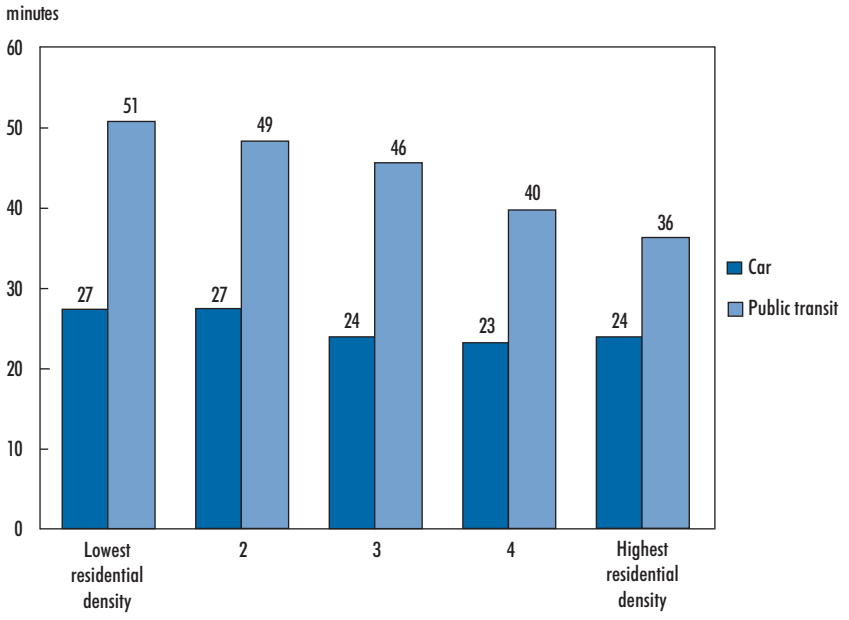
	Mode of transportation			Average commuting time to work		
	Toronto	Montréal	Vancouver	Toronto	Montréal	Vancouver
	percentage using public transit			minutes		
Mode of transportation						
Car†	...	...	...	29	30	25
Public transit	...	...	...	49*	39*	48*
Place of residence						
Central municipality†	29	41	32	33	28	27
Neighbouring municipalities	16*	11[E]*	17*	33	34*	31

† reference group
* statistically significant difference from reference group at $p < 0.05$
Source: Statistics Canada, General Social Survey, 2010.

times are longer because the distances are greater. Less frequent service may also increase public transit commuting times if transfers are necessary and schedules are out of sync.

The impact of neighbourhood is evident when public transit users in metropolitan areas with 250,000 or more residents are examined. In neighbourhoods with the highest residential density, typical of city centres, public transit users' average commuting time was 36 minutes. In comparison, public transit users in the lowest residential density neighbourhoods took an average of 51 minutes to get to work. On the other hand, there was little or no connection between residential density and the commuting times of car users (Chart 1).

Chart 1 In low-density neighbourhoods, public transit takes more time



Note: For workers living in a census metropolitan area of 250,000 or more residents.
Source: Statistics Canada, General Social Survey, 2010.

Traffic congestion makes commutes longer and affects many workers

In the 2010 General Social Survey, workers were asked for the first time whether traffic congestion was recurrent, occasional or non-existent during their daily commute to work. The following analysis is confined to full-time workers as respondents were asked about the frequency of congestion during an entire week.

In 2010, nearly 20% of full-time workers reported experiencing traffic congestion every day they commuted to work. Another 8% said they encountered congestion three or four times a week. On the other hand, a majority of workers (51%) said they were never caught in traffic jams on the way to work (Table 2).

Congestion problems were more frequent for car users in larger metropolitan areas. In the largest metropolitan areas, for example, about 30% of car users who were employed full time experienced heavy traffic every work day. In comparison, this was the case for 8% of workers living outside census metropolitan areas and census agglomerations.

Public transit users were not immune from traffic problems (Chart 2). This is attributable in part to the fact that many buses use the same road lanes as private cars and that some workers drive to park-and-ride lots before taking public transit. In 2010, in the six largest metropolitan areas, 53% of public transit users encountered congestion at least one day a week, compared with 67% of car users. However, they experienced congestion less frequently than car users (22% of public transit users were caught in traffic at least three days a week, compared with 41% of car users). It is impossible to differentiate between subway users and bus riders.

Not surprisingly, car users in large metropolitan areas who frequently experienced traffic congestion had longer commuting times (Chart 3). Congestion had a particularly large impact on workers who commuted more than 25 kilometres: those who never encountered congestion took an average of 36 minutes to get to work, while those who were caught in traffic at least three days a week took 51 minutes.

Part 2: Workers' perceptions of commuting time

Most workers are satisfied with their commuting times

Some people may consider a commute to work of 45 minutes or more acceptable, while others may find this hard to bear. How satisfied are workers with their commuting times?

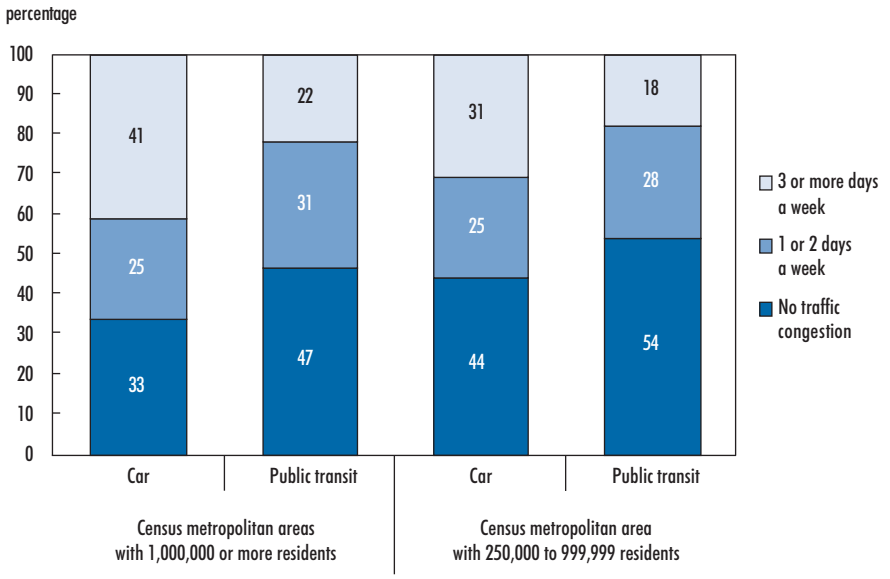
In general, satisfaction with commuting times was high: 39% said they were very satisfied with the amount of time it took to get to work, and another 46% said they were satisfied. This leaves 15% of workers who were dissatisfied with the amount of time required to travel to work. The proportion of dissatisfied workers was highest (20%) in census metropolitan areas with 1 million residents or more. Outside these areas, the proportion of dissatisfied workers ranged from 8% to 10% (Table 3).

Table 2 Frequency of traffic congestion by region of residence and mode of transportation, full-time workers, 2010

	Type of region of residence					
	Total	Census metropolitan areas of 1,000,000 or more residents†	Census metropolitan areas of 250,000 to 999,999 residents	Census metropolitan areas of less than 250,000 residents	Census agglomerations	Outside census metropolitan areas and census agglomerations
	percentage					
All full-time workers	**100**	**100**	**100**	**100**	**100**	**100**
No traffic congestion	51	38	47*	53*	67*	78*
1 or 2 days a week	22	26	25	24	15	11*
3 or 4 days a week	8	10	10	8	7*	4E*
Every day	19	26	19*	16*	11*	8*
Car drivers and passengers	**100**	**100**	**100**	**100**	**100**	**100**
No traffic congestion	50	33	44*	52*	65*	77*
1 or 2 days a week	21	25	25	24	16*	11*
3 or 4 days a week	9	12	10	8E*	7*	4E*
Every day	20	30	20*	16*	12*	8*

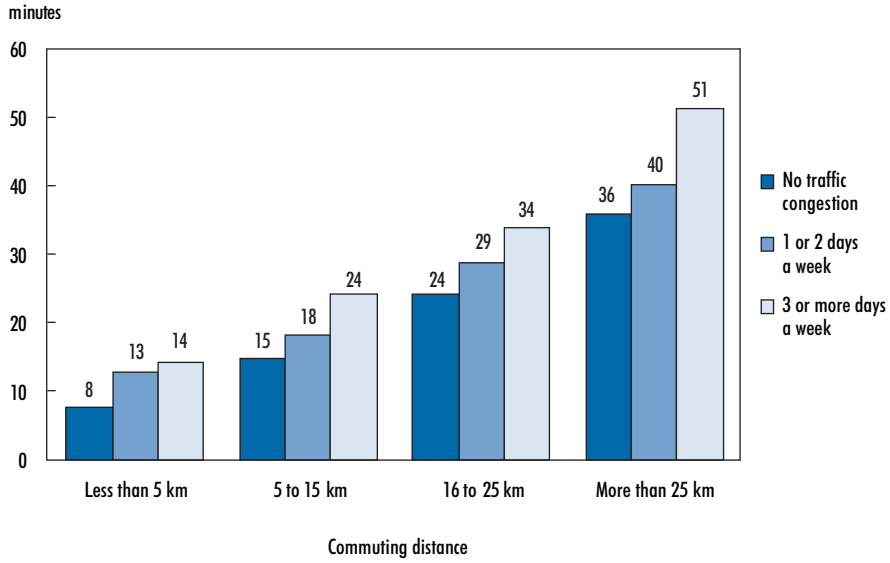
† reference group
* statistically significant difference from reference group at $p < 0.05$
Source: Statistics Canada, General Social Survey, 2010.

Chart 2 Many public transit users experience traffic congestion 3 or more days a week



Note: For full-time workers living in a census metropolitan area of 250,000 or more residents.
Source: Statistics Canada, General Social Survey, 2010.

Chart 3 Traffic congestion incidence on time spent commuting in the car, by commuting distance



Note: For full-time workers living in a census metropolitan area of 250,000 or more residents.
Source: Statistics Canada, General Social Survey, 2010.

Not surprisingly, dissatisfaction increased with commuting time. Nevertheless, a slight majority (55%) of those who took 45 minutes or more to get to work said they were satisfied or very satisfied with their commuting time. People who choose to live a long distance from their place of work might be more likely to accept the fact that it takes them a considerable amount of time to commute.

Traffic congestion is a major source of dissatisfaction

Much more than commuting time, traffic congestion leaves people very dissatisfied. In the absence of traffic congestion, a large majority of workers said they were satisfied or very satisfied with their commuting times. For example, 24% of those who had commuting times of 45 minutes or longer but never experienced traffic congestion said they were dissatisfied with that length of time (Table 3). The proportion was substantially higher (64%) for those who spent the same amount of time commuting but were caught in traffic at least three days a week.

The results were similar for other categories of commuting time, with very low levels of dissatisfaction for workers who never encountered congestion and much higher levels for those who did so every day or most days.

Public transit users are more tolerant of longer commuting times

In larger metropolitan areas, 6% of workers who used an active mode of transportation (walking or bicycling) to get to work were dissatisfied with their commuting time. Public transit users were more likely than car users to be dissatisfied with their commuting times (23% versus 18%). Public transit users' higher level of dissatisfaction was primarily due to the fact it took them longer on average than car users to get to work.

However, when commuting times were taken into account, a complex relationship between transportation

Table 3 Satisfaction with time spent commuting to work, 2010

	Degree of satisfaction		
	Very dissatisfied or dissatisfied	Satisfied	Very satisfied
	percentage		
Total Canada	**15**	**46**	**39**
Type of region of residence			
Census metropolitan areas of 1,000,000 or more residents†	20	49	31
Census metropolitan areas of 250,000 to 999,999 residents	14*	48	38*
Census metropolitan areas of less than 250,000 residents	8*	46	46*
Census agglomerations	9*	42*	49*
Outside of census metropolitan areas and census agglomerations	10*	41*	49*
Time spent commuting to work			
Less than 15 minutes†	4	26	70
15 to 29 minutes	7*	55*	38*
30 to 44 minutes	16*	63*	21*
45 minutes or more	45*	46*	9*
Time spent commuting to work and frequency of traffic congestion[1]			
Less than 15 minutes			
No congestion†	3[E]	19	78
1 or 2 days a week	4[E]	39*	57*
3 or more days a week	12[E]*	54*	34*
15 to 29 minutes			
No congestion†	3[E]	43	54
1 or 2 days a week	2[E]	67*	31*
3 or more days a week	23*	66*	11*
30 to 44 minutes			
No congestion†	5[E]	57	38
1 or 2 days a week	10[E]	74*	16[E]*
3 or more days a week	33*	62	5[E]*
45 minutes or more			
No congestion†	24	57	20
1 or 2 days a week	38*	52	10[E]*
3 or more days a week	64*	34*	F*
Mode of transportation[2]			
Car/private vehicle†	18	49	32
Public transit	23*	52	25*
Active transportation (walking or cycling)	6[E]*	27*	66*

† reference group
* statistically significant difference from reference group at $p < 0.05$
1. For full-time workers only.
2. Workers living in census metropolitan areas of 250,000 residents or more only.
Source: Statistics Canada, General Social Survey, 2010.

Changes in round-trip commuting times

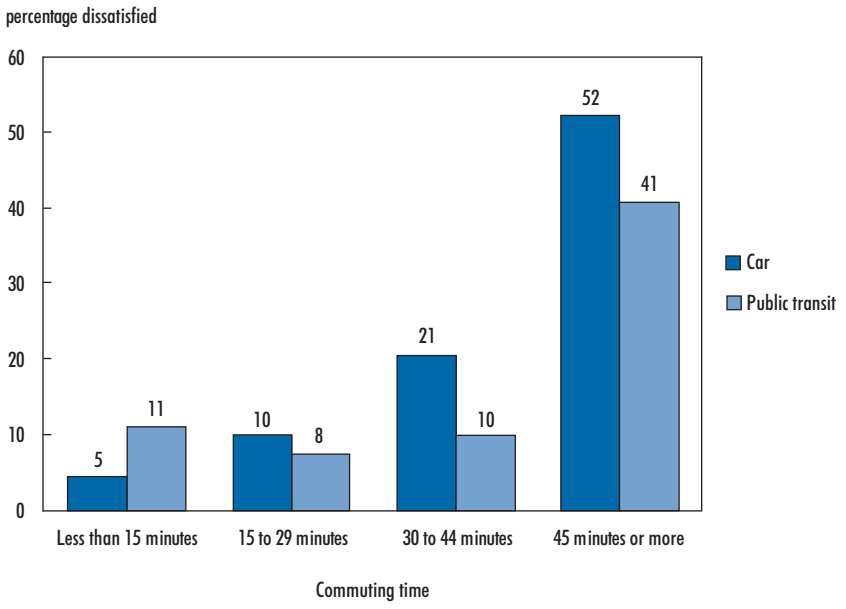
The round-trip commute between home and work is not always direct. Many workers make one or more stops en route—to drop off their children at school or daycare, buy a few things at the grocery store or pick up clothing at the dry-cleaner's. Obviously, these stops and side trips increase total commuting time between home and work.

If the entire duration of travel between home and place of work includes such side trips, the average round-trip commute was 65 minutes in 2010 for workers making a round trip on weekdays between their home and their main place of work. The average round-trip commuting time has increased: it was 63 minutes in 2005, 59 minutes in 1998 and 54 minutes in 1992. It was longer in the three largest metropolitan areas: 81 minutes in Toronto, 76 minutes in Montréal and 74 minutes in Vancouver.

For all workers, side trips to buy goods and services were the largest contributors to the increase in round-trip commuting times to work, followed by travel for child-care activities (appointments, school, etc.) and travel to restaurants.

For more information on the methods used to estimate round trip commuting times, please refer to: Turcotte, Martin. 2007. *The time it takes to get to work and back*. Statistics Canada Catalogue no. 89-622.

Chart 4 Car users with the longest commutes more likely than public transit users to be dissatisfied with commuting time



Note: For full-time workers living in a census metropolitan area of 250,000 or more residents.
Source: Statistics Canada, General Social Survey, 2010.

mode and satisfaction level emerged (Chart 4). For shorter commuting times, public transit users were less satisfied than car users. Yet, as commuting time increased, the pattern was reversed. For example, 21% of car users with commuting times between 30 and 44 minutes said they were dissatisfied, compared with 10% of public transit users.

Part 3: What workers think about public transit

A major goal of urban transportation is to encourage car users to leave the comfort and convenience of their automobiles and take public transit. In Canada in 2010, 82% of workers travelled to work by car, 12% took public transit, and 6% walked or bicycled.

In the 2010 General Social Survey, workers who did not use public transit were asked if they had ever tried using public transit to travel to work. They were also asked how they rated the level of convenience of public transit.

Of the 10.6 million workers who commuted by car, 15%, or 1.6 million, had tried using public transit to get to work. Slightly less than half (47%) of those who had tried public transit felt that it was a convenient way to get to work.

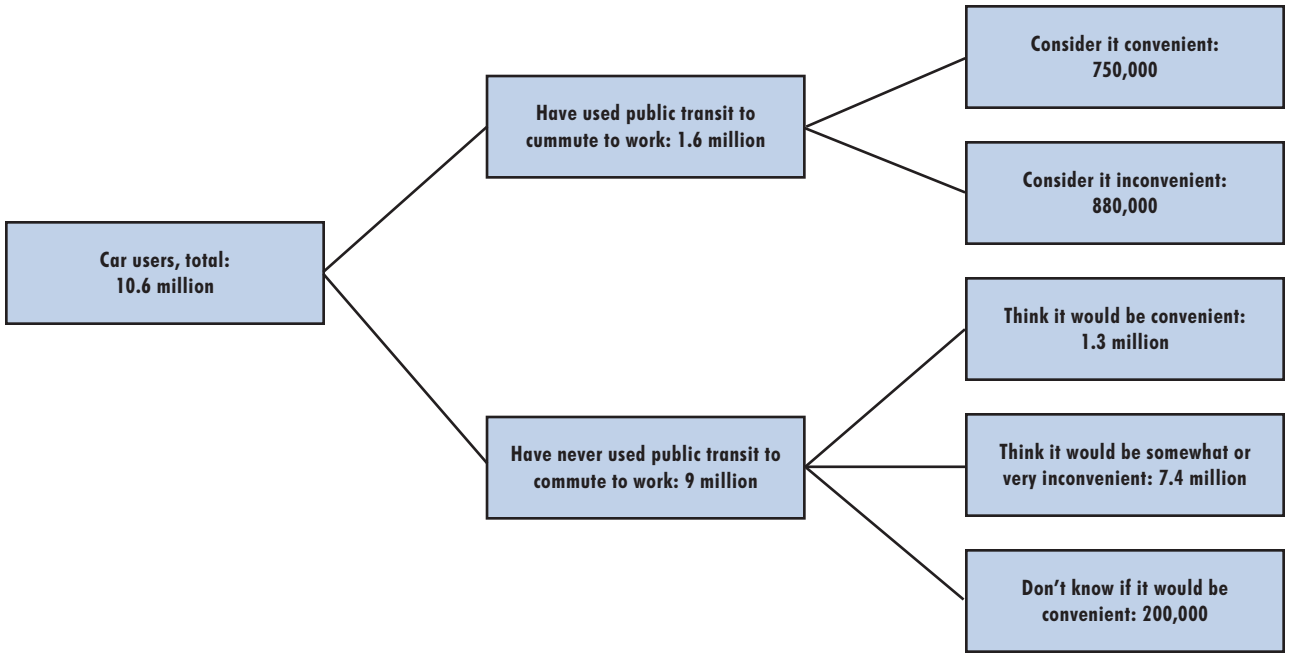
The same question was asked of the 9 million car users who had never tried using public transit to commute to work. Of that group, 15% thought that it would be convenient (Figure 1).

In summary, of the 10.6 million car users, just over 2 million felt that public transit would be convenient for them, while about 8.3 million thought it would be somewhat or very inconvenient.

Part 4: The impact of commuting on stress, well-being and work–life balance

A number of factors come into play in the choice of where to live. One of them is distance from work. If it is assumed that for people who choose to live far from where they work, the advantages of the location are well worth the time spent commuting.

Figure 1 A majority of car users find public transit inconvenient



Accordingly, general well-being or satisfaction should be similar regardless of the amount of time it takes to commute to work. However, the results of the General Social Survey on Time Use show this is not the case and that longer commuting times are associated with higher stress and less satisfaction with work–life balance.

Workers with longer commutes find most days stressful

The connection between commuting times and stress was clear. Of the full-time workers who took 45 minutes or more to travel to work, 36% said that most days were quite or extremely stressful. In contrast, this was the case for 23% of workers whose commuting time was less than 15 minutes (Table 4).

The same type of difference was observed for the frequency with which workers experienced traffic congestion. Of those who were caught in traffic at least three days a week (about one out of four workers), 38% said that most days were quite or extremely stressful. The corresponding proportion was 25% for those who never encountered traffic problems on their way to work.

High stress levels are associated with a number of other factors such as health status, hours worked, presence of children and occupation (Table 4). Some of these factors, such as hours worked or health status, had a greater impact on stress levels than did commuting times. For example, 43% of full-time workers who were in fair or poor health described most days as quite or extremely stressful, compared with 21% of those who were in excellent health. On the other hand, many factors were less closely associated with stress than commuting time, such as the presence of children, education and household income.

Moreover, when the impact of all these factors was kept constant in a regression model, the general conclusion was unchanged: workers who experienced traffic congestion more frequently and workers who had longer commuting times were more likely to rate most days as quite or extremely stressful (data not shown).

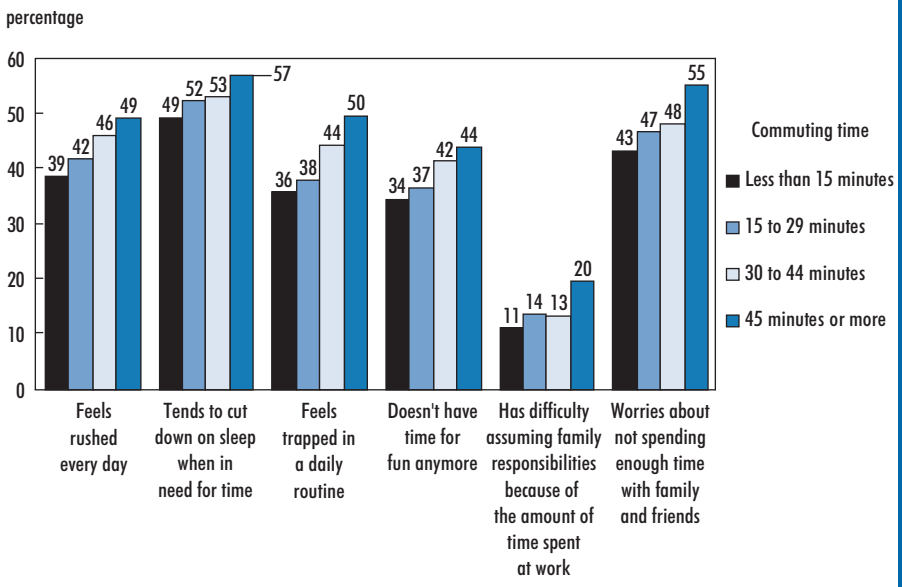
The association between commuting times, the frequency of traffic congestion and a series of time-stress indicators is presented in Chart 5. For each indicator, an increase in commuting time is associated with an increase in the prevalence of stress. For example, 39% of full-time workers who took less than 15 minutes to travel to the office felt that they felt pressed for time every day. Among those whose commuting time was 45 minutes or more, the proportion was almost one out of two (49%). The feeling of being trapped in a routine and the impression that there is no time for fun also increased with commuting time.

Table 4 Commuting time, traffic congestion and other factors associated with stress and work–family balance, full-time workers, 2010

	Workers describing their days as somewhat or very stressful	Workers satisfied or very satisfied with their work–family balance
	percentage	
Time spent commuting to work		
Less than 15 minutes†	23	79
15 to 29 minutes	26	73*
30 to 44 minutes	32*	70*
45 minutes or more	36*	65*
Frequency of traffic congestion		
No congestion†	25	78
1 or 2 days a week	23	71*
3 or more days a week	38*	64*
Sex		
Male†	26	74
Female	31*	72
Age		
Less than 25 years†	18	76
25 to 34 years	27*	67*
35 to 44 years	34*	69*
45 to 54 years	29*	76
55 years or more	24*	82*
Children present at home		
No†	27	75
Yes	31	70
Self-reported health		
Excellent†	21	83
Very good	23	78*
Good	32*	69*
Fairly good or bad	43*	54*
Education		
High school diploma or less†	26	76
College or trade school diploma	29	74
University degree	29*	69*
Household income		
Less than $60,000†	28	73
$60,000 to $99,999	27	73
$100,000 or more	30	74
Not stated	26	73
Occupation		
Management occupations†	38	67
Professional occupations	31*	70
Technologists, technicians and technical occupations	30*	71
Clerical occupations	30*	76*
Sales and service occupations	25*	75*
Trades, transport and equipment operators and related occupations	23*	75*
Occupations unique to primary industries	21*	82*
Occupations unique to processing, manufacturing and utilities	22*	78*
Hours worked per week		
30 to 39 hours†	23	82
40 to 49 hours	24	76*
50 hours or more	40*	60*

† reference group
* statistically significant difference from reference group at $p < 0.05$
Source: Statistics Canada, General Social Survey, 2010.

Chart 5 The likelihood of feeling trapped in a daily routine increases with commuting time



Note: For full-time workers.
Source: Statistics Canada, General Social Survey, 2010.

Workers with longer commutes less satisfied with their work–life balance

In addition to higher stress levels, longer commuting times were associated with work–life balance. Specifically, 79% of people who had commuting times of less than 15 minutes said they were satisfied or very satisfied with their balance between work and family life. This proportion declined as commuting time increased—reaching 65% among workers who took 45 minutes or more to get to work (Table 4). People whose commuting time was 45 minutes or more were also more likely to say that they had difficulty fulfilling their family responsibilities because of the time they spent at work (Chart 5). The feeling of not having enough time for family and friends also increased with commuting time.

Summary

In 2010, it took workers an average of 26 minutes to travel to work. Workers in Toronto, Montréal and Vancouver had the longest commuting times, at 33, 31 and 30 minutes respectively.

Public transit users took longer to get to work than car users living an equivalent distance from their place of work. For example, in Canada's six largest metropolitan areas, each of which has a population of at least 1 million, public transit users' average commuting time was 44 minutes. In contrast, the average commuting time for car users was 27 minutes.

Not surprisingly, traffic congestion was more common in larger metropolitan areas and affected more car users. In the major centres, public transit users were not immune from the effects of traffic congestion—in the six largest metropolitan areas, one out of five public transit users reported experiencing traffic congestion at least three days a week. This was less than the two out of five car users who were in the same situation.

In general, workers were satisfied with the amount of time it took them to travel to work. However, dissatisfaction was more common in larger urban centres, where it was observed that frequent encounters with traffic congestion had quite a large impact on the likelihood of being dissatisfied with commuting times.

Most car users (85%) had never used public transit to travel to their current place of work. Of that group, 15% believed that public transit would be convenient for them. The other 85% thought it would be somewhat or very inconvenient for them (or did not know). Of the 15% of car users who had used public transit to get to work, just under half believed that public transit would be convenient for them.

Longer commuting times were associated with higher stress levels in full-time workers. The same was true for those who often experienced traffic congestion.

Martin Turcotte is a senior analyst in Statistics Canada's Social and Aboriginal Statistics Division.

1. Québec City, Winnipeg, Hamilton, London, Kitchener, St. Catharines–Niagara, Halifax, Oshawa, Victoria and Windsor.
2. These results were confirmed by a linear regression model, based on the worker population in the largest metropolitan areas. The independent variables in the model were distance, distance squared, frequency of encounters with traffic congestion and mode of transportation used (car versus public transit). All these variables were statistically significant, and the regression's R^2 was 0.49. For equivalent distance and frequency of traffic congestion, public transit users took an average of 17 minutes longer to get to work than car users.

Vancouver faces greatest flood risk

Federal report says annual cost of damage will jump to $7.6 billion by 2050s

BY RANDY SHORE AND MIKE DE SOUZA, VANCOUVER SUN; POSTMEDIA NEWS SEPTEMBER 30, 2011

Metro Vancouver is at greater risk of flood damage to homes due to climate change than any place in Canada, according to a groundbreaking assessment released Thursday by a federal advisory panel.

The comprehensive study, titled Paying the Price: The Economic Impacts of Climate Change for Canada, recommends undertaking a detailed assessment of flood risk and the ability of the region's protective dikes to withstand climate change.

Although Metro Vancouver has an extensive system of protective dikes in place protecting tens of thousands of homes, "dikes were not designed with climate change in mind, so additional risk from climate change remains a concern," the report said.

The annual cost of flood damage to dwellings in British Columbia by the 2050s is estimated to be between $2.2 billion at the baseline level to $7.6 billion under the "high climate change" scenario.

That translates into an annual per-capita cost of $565-$2,146 in B.C., relative to percapita costs of $108 to $364 nationally.

More than 80 per cent of Canadian homes at risk of flooding under the report's most dire climate change scenario are in Metro Vancouver.

Canada can expect to pay between $21 billion and $43 billion each year by 2050 if it fails to develop a domestic plan within a global agreement to tackle climate change, the report warns.

The report is the first of its kind in the country to analyze Canadian trends in the growth of greenhouse gas emissions and their impact on health care costs, damage to infrastructure and disruption to industries affected by climate change.

B.C. forests and the economic benefits that they provide will suffer disproportionately due to climate change, the report said.

"By the 2050s, the impacts of climate change on the timber supply through changes in pests, fires and forest growth are expected to cost the Canadian economy between $2 billion and $17 billion per year," the report said.

It warns Canadians could have a steep price to pay if governments reject the science that links human activity and greenhouse gas pollution to global warming.

"Ignoring climate change costs now will cost us more later," said the report, which was produced by the National Round Table on the Environment and the Economy, an independent organization whose members were appointed by the Conservative government.

The report stresses the importance of assessing longterm decisions in areas such as coastal development, infrastructure and forest management in the context of climate change, through adaptation strategies.

"The highest costs result from a refusal to acknowledge these costs and [to] adjust through adaptation," said the report, published following extensive research and reviews by academics and stakeholders from the business world and environmental movement.

The federal government has committed to reducing Canada's greenhouse gas emissions to 1990 levels in about 10 to 15 years, but has not introduced a plan to meet its target and stop the growth of pollution.

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Immigration and Canadian Demographics-Summary

1. Who did this report? Roderic Beaujot, University of Western Ontario

2. When? 1997-1998; Date of Publication: May 26, 1998

3. Who commissioned the study? Citizenship And Immigration Canada (Special Studies, Strategic Research and Review)

4. Why? This is a follow-up to Charting Canada's Future, the very large study sponsored by the federal government in the late 1980's. Like its predecessor, it looks at a considerable amount of research done on Canada's population and summarizes the research.

5. How long is it? 21 pages

6.. Beaujot's Executive Summary:

(1) Each fall, C&I recommends immigration levels for the coming year to support the government's demographic goals.

(2) Difficulty #1: The government of Canada has no official demographic goals.

(3) Difficulty #2: Simplistic conclusions such as Without immigration, the Canada Pension Plan will go bankrupt... have resulted.

(4) We have a vested interest to ensure that the processes (of making decisions about numbers, etc.) operate to produce a net benefit.

(5) Purpose of paper: to review the state of the research regarding the effect of immigration on the evolution of the demographics of Canada. It focuses on three questions: size, age composition and geographic distribution of Canada's population.

7. Between 1901 and 1996, net immigration (gross immigration of 12 million minus emigration of 6 million) was 6 million, representing 20% of population growth between 1901 and 1996. The contribution of net immigration to population growth has varied but has never been as high as the 50% it was in 1991-1996.

8. There have been 5 phases of immigration to Canada:

(1) 1850-1895: Low immigration, in effect net out migration

(2) 1896-1914: Slow rise in immigration levels from 17,000 in 1896 to 400,000 in 1913. The numbers between 1910-1914 have never been surpassed. Although 1909-1914 remains unique with levels above 150,000 in each of those six years, there have been 11 consecutive years of 150,000+ between 1987-1997, making the last fifteen years unprecedented.

(3) 1915 -1945: Relatively low immigration (!920's were higher than the rest of this period)

(4) 1946-1989: Second wave of post-Confederation immigration: (21% to 28% contribution to total population growth)

(5) 1990-1996: Higher levels of immigration (almost double #4) and larger contribution of immigration to population growth (almost double #4, that is, over 50% of Canada's population growth)

9. Between 1966-1991, the direct plus indirect contribution of immigration amounted to 41% of total population growth. With low fertility (1.7%) and current levels of immigration (200,000+), the impact of immigration can only increase. Stats Can projects that 90% of population increase over the period 1986-2036 will be due to migration.

10. Census of 1971 found that 33.8% of the population was either foreign-born or had at least one foreign-born parent. The proportion of foreign-born was 17% in 1996.Censuses since 1971 have not included the birthplace of parents question.

11. PART I OF REPORT— CANADA'S POPULATION SIZE: Five generations of Stats Can projections since 1971 indicate some revealing figures:

(1) 1986 Census–With fertility of 1.7, the natural increase would become negative around 2020 and population would start to decline after 2026 with immigration of 140,000; with 1.7 fertility, population would start to decline after 2035 with immigration of 200,000.

(2) 1991 Census–With fertility of 1.5 and immigration of 150,000, population would decline only after 2033. With fertility at 1.7 and immigration at 250,000, population would continue to grow until 2041. Persistent immigration assumptions of 1% of the population (330,000) may be unrealistic.

(3) While the Ec. Council of Canada's report proposed an eventual 1% immigration level, it also recommended these levels should be reviewed every 5 years to verify that the integration of immigrants is being successfully managed.

(4) New Projections: With 1.7% fertility and immigration of 150,000, Canada would have a population of 35+M in 2016 and 38M in 2041. With same fertility and 250,000 immigration, Canada would have a population of 37+M in 2016 and 42+M in 2041. With same fertility and immigration of 330,000, Canada would have a population of 38+M in 2016 and 46+M in 2041.

(5) New Projections: With fertility at present level (1.7%?) and no immigration, Canada's population would continue to grow for 20 years, but would decline to 18 million after 100 years. With replacement fertility and no immigration, Canada's population would be 33.2M in 100 years. With replacement immigration, fertility stays at 1.7% but immigration is at 167,225 to yield the same size population as the replacement fertility model. This is an important result because it implies that immigration of around 200,000 is sufficient to avoid populaton decline. Higher immigration levels at any time imply that future immigration levels have to be even higher in order to prevent population decline. (Ryder-1997)

(EDITORS NOTE: THE MAJOR ASSUMPTION IN PART I OF THIS REPORT IS THAT

POPULATION SIZE SHOULD NOT BE ALLOWED TO DECLINE.)

10. PART II OF REPORT—AGE COMPOSITION OF CANADA'S POPULATION:

(1) Two erroneous conclusions are often made:

A. Immigration is a solution to population aging. It is not. Aging will continue, regardless of the level of immigration.

B. Immigration ages the population.

(2) The present median age of immigrants is 30. The present median age of Canadians is 35.

(3) STATS CAN population projections (immigration levels of 0, 140,000, 200,000) show that immigration has a rather small impact on the age structure. Over a 50 year projection, 1986 to 2036, immigration reduces the 65+ age group by between 1.4% and 2.5%.

(4) Denton found that immigration projections of 0 to 500,000 per year show the % over 65 does decline, but that the % over 65 will continue to increase even with immigration of over 500,000 per year. Denton et al. concluded that immigration is clearly not an effective tool for offsetting the process of population aging. (With high immigration, Canada will eventually have an even higher % of 65+ .)

(5) Ryder found that the movement from current fertility levels to replacement fertility levels would have a larger impact than using immigration to stabilize Canada's population.

(6) Increases in dependency ratios will occur only after 2011 when the baby boom starts moving into retirement ages. This dependency remains lower in 2036 than in 1971 when the baby boom was at young ages. Denton et al estimated that levels would have to be far in excess of 1M immigrants per year, at the current age distributioin of immigrants, in order to prevent the anticipated increase in dependency.

(7) If avoiding decline of the labour force is a goal, immigration of 200,000 at current age levels will be sufficient.

(8) Some authors (Foot) have suggested that the age of immigrants could be subject to deliberate policy control. In other words, only very young immigrants would be admitted.

(9) While immigration attentuates (reduces) aging and dependency, its impact is relatively minor.

11. PART III OF REPORT—GEOGRAPHIC DISTRIBUTION OF IMMIGRANTS

(1) Between 1956 and 1996, Ontario and B.C. took a % of immigrants that exceeded their % of the Canadian population.Ontario and B.C. are also the only 2 provinces to have more immigrants than their share of the population. (For example, in 1996, Ontario had 33.5% of the Canadian-born, but 54.8% of the foreign-born population.)Recent immigrants are concentrated in Toronto, Montreal and Vancouver.

(2) Most Canadian-born tend to remain in their birth province. In the 1996 census, 12.7% of Canadian born were not living in their birth province; another 16.2% were foreign-born. Only in Quebec and Ontario is the proportion foreign-born larger than the proportion born in another province. This means that population increases in Quebec and Ontario are more attributable to immigration than to Canadian-born migration.)

(3) If native-born internal migrants and foreign-born are added (1991 census), only 4 provinces (Ontario, B.C., Alberta and Quebec) have net gains. In

B.C., 51.6% of the population was foreign-born or non-B.C. born.

(4) The internal migration of the foreign-born within Canada is mostly to Ontario and B.C. Edmonston(1996) found that both Canadian-born and foreign-born tend to move to provinces that have large populations, more economic opportunities and higher proportions of foreign-born.

(5) The initial arrival of immigrants has the largest impact on population distribution, but this impact is reduced by the emigration of immigrants, which comprises about half of emigration from Canada.

(6) Toronto and Vancouver stand out from all other Canadian cities in that 41 and 35% respectively of their populations are foreign-born. Toronto, Montreal and Vancouver have 60.2% of the foreign-born compared to 26.9% of the Canadian-born population. In 1996, 88% of Quebec's foreign-born were in Montreal. If this trend continues, Montreal's population would increase significantly-almost doubling over the next 40 years. (Termote,1988). The non-metropolitan population comprises 43% of the Canadian-born population, but only 6.5% of immigrant arrivals of the period 1991-1996. This means that only a very small % of immigrants go to small town Canada.

(7) Immigration is pushing the urbanization trend in Canada and , in the large cities, it is compensating for the net departure of population through internal migration.

(8) Immigration will probably continue to accentuate the inequalities in Canada's regional population distribution. It cannot be seen as a means of demographic redistribution toward areas that have smaller populations.

(9) Over time, the differences immigrants possess (fertility, mortality, income, dress and speech) lessen, but the uneven distribution of population continues.

BEAUJOT'S SUMMARY AND DISCUSSION:

(1) Population Size: Immigration can be used to prevent population decline. A level of 200,000 per year would be sufficient. This level will also prevent a decline in the labour force.

(2) Aging and Dependency: Immigration brings only a slight attentuation (reduction) of aging in Canada. Dependency is already low and will remain lower than it was in 1971 for the forseeable future. It would take immigration levels of 1 million per year to prevent an increase in dependency from its current low levels.

(3) Population Distribution: Immigration to Canada is urban and is accentuating the differences in population distribution in favour of Ontario and B.C., particularly the Toronto and Vancouver metro areas.

(4) It would be best if immigration had a supportive rather than an essential role in influencing the future demographics of Canada. Assuming that maintaining population growth, or at least avoiding population decline, is a valuable objective, persistent below replacement fertility means that Canada must have immigration.

(5) It is more important to maintain cohesiveness as a society than to avoid population decline. We have to be very watchful about social tensions.

(6) Environmental arguments in particular would favour smaller populations.

(7) The research does not indicate a demographic or economic need for immigration. From a demographic point of view, a minimal level of immigration producing a population that would start to slowly decline in some 25 years, is not necessarily to be avoided.

(8) By way of contrast, demographers from Sweden tend to conclude that the absence of cheap immigrant labour has prompted policies aimed at full employment and family-friendly policies that ensure strong labour force participation for women.

(9) A stronger case for immigration can be made on socio-cultural terms than on economic or demographic terms. Immigration can bring richness, but it can also bring resentment and conflict.

(10) The book, Age of Migration, argues that migration is a constant phenomenon in human history, and that it was never as significant as today in terms of the diversity that it brings to most countries.

(11) Canada is presented with a challenge to maintain social cohesiveness and to profit from diversity and contact with a broader world.

1. This study was done by Roderic Beaujot (University of Western Ontario) in 1997-98 for Citizenship and Immigration Canada. It is a follow-up to Charting Canada's Future. It looks at a considerable amount of research done on Canada's population and summarizes the research.

2. The research does not indicate a demographic or economic need for immigration. The economic benefits are very small. The demographic benefits assume a need to either maintain population growth or to prevent population decline. When demographers recommend that Canada's population continue

to grow or avoid decline, they do not take environmental considerations into mind.

3. Immigration can be used to prevent population decline. A level of 200,000 would be sufficient. The notion that Canada's population is in immediate, serious danger of decline is not true. Even with no immigration, Canada's population would continue to grow over the next 20 years. Then, it would begin to decline. In 100 years (2096), Canada's population would be 18 million.

4. Immigration brings only a slight reduction in aging. Immigration is not an effective tool for offsetting the process of aging. Immigrants grow old and dependent. Encouraging, by different means, a raising of Canada's fertility levels is more effective than immigration.

5. Immigration to Canada is primarily urban and is accentuating the differences in population distribution in favour of Ontario and B.C., particularly the Toronto and Vancouver metro areas.

6. It would be best if immigration had a supportive rather than an essential role in influencing the future demographics of Canada.

7. It is more important to maintain cohesiveness as a society than to avoid population decline.

8. Environmental arguments, in particular, would favour population decline.

9. By way of contrast with Canada, demographers from Sweden tend to conclude that the absence of cheap labour has prompted policies that ensure strong labour force participation for women.

10 A stronger case can be made for immigration on socio-cultural terms than on demographic terms. Immigration can bring richness, but it can also bring conflict and resentment.