

Ian Mulgrew: Vancouver's bylaw ticket system raises questions about fairness

City changed its adjudication scheme in 2011, moving it out of provincial courts

BY IAN MULGREW, VANCOUVER SUN COLUMNIST SEPTEMBER 20, 2014 8:09 AM



Arny Wise is incredulous at what he considers Vancouver's disregard of fundamental legal principles in its bylaw ticket adjudication system.

Arny Wise stood outside the bylaw-ticket adjudication room complaining the City of Vancouver is putting its thumb on the scales of justice to fill tax coffers.

His firm Apex Dispute Resolution conducts similar hearings in 23 B.C. municipalities and he is incredulous at what he considers Vancouver's disregard of fundamental legal principles.

When he asked to have a couple of questions answered, the adjudicator told him no one from the city would attend.

"This is supposed to be fair," Wise said after his 17-year-old daughter's parking ticket was upheld and he was ordered to pay the \$95 fine.

The previous disputant was less sanguine about his loss.

"I'm not going to pay this. It's purposely confusing to entrap people — this is like a speed trap," he fulminated while the adjudicator was still delivering his decision.

The man had spent time assembling photographs and evidence to counter a ticket he received on an unsigned stretch of road where parking appeared to be allowed.

The adjudicator agreed it was confusing and the city probably should have signage, but the ticket was valid.

"I'm not going to pay this — throw me in jail," the man barked. "This is ridiculous."

He stormed out with a dismissive wave of his hand: "Whatever!"

Wise says the ticket adjudication scheme that Vancouver adopted in Feb. 2011 to replace the provincial courts is unfair.

The city and others municipalities opted to set up the administrative processes for simple reasons — it would save money, court resources and increase revenue.

It hasn't worked and has angered many people.

In Nov. 2010, city manager Penny Ballem produced a report justifying the move saying Vancouver issued about 450,000 parking tickets annually bringing in \$16.2 million in net revenue. About 101,000 tickets annually went unpaid, about 20,000 were cancelled by staff and some 16,000 were disputed.

But the old court process only dealt with about 6,000 disputed tickets a year so there was a growing two-and-a-half year backlog.

The outstanding tickets represented about \$7-8 million a year in uncollected revenue, staff said, and moving to an administrative rather than court regime would boost revenue.

Expected to cost \$238,000 a year to operate, the adjudication system was to increase fine collection by \$1.2 million in 2011 and up to \$3.66 million this year.

"This revenue increase will grow year-over-year as it is anticipated that payment rate will increase and the dispute rate decrease over time," the report says. "Current estimates indicate that revenue will increase by \$3.66 million by the end of 2014."

Those numbers appear in hindsight to have been significantly inflated — the city issued over 100,000 fewer tickets last year and is collecting millions less than Ballem projected.

Tobin Postma, city communication manager, said Vancouver issued only 332,000 tickets last year, generating only about \$15 million.

Even though it has increased its collection rate by five per cent (about \$900,000 annually) under the new system, revenue is way down.

The city pays \$20,000 a year to Luke Krayenhoff for adjudication services and has only collected about \$500,000 in extra revenue via the new process — nothing close to the millions staff predicted.

"The 2010 numbers were based on historical data that had been continually rising and so the numbers were estimated to maintain this trend, however, it turns out that due to a number of reasons (such as change in traffic patterns to downtown core and more bike trips) the number of tickets have steadily

decreased since then," Postma maintained.

I find that explanation hard to believe.

And note — to date adjudicators have heard 3,694 cases since Feb. 2011 — little more than half heard every year in court.

Of those, 3,238 tickets were upheld — nearly nine out of 10.

Talk about a rubber-stamp!

Postma claims the city's screening process before adjudication hearings has led to fewer citizens disputing tickets.

I suspect people simply realize the system has been stacked against them.

Wise thinks Vancouver may be the only provincial municipality using a strict "documents-only regime" for evidence — if you appear to dispute a ticket, you are confronted by a giant TV screen bearing a copy of the ticket, a printed version of the officer's report and a screening report, sometimes photographs.

"To their credit every other municipality has at least one responsible staff person attending the hearing in order to at least respond to clarification questions from the disputant," Wise insisted.

"Some municipality staff actually present the government's case, some merely sit and monitor proceedings in order to improve the systems of bylaw enforcement and dispute screening. These municipalities provide assurances to the public that they are being dealt with fairly by their local government."

No one from Vancouver appears at the adjudication hearing to clarify questions or be cross-examined.

"Written evidence without the opportunity to cross examine or face the trier of fact does not meet the standard tests of credibility available to any defendant in our judicial system," Wise said.

"Lots of judges have underscored this."

The proceedings are monitored and recorded on camera without signage in the room and a uniformed security guard sits in the small room with the adjudicator and a clerk.

Wise finds that offensive and heavy-handed, too.

Postma said there are signs at the front and rear doors of City Hall that state: "This area is under video surveillance."

The city, in Wise's opinion, unlike other municipalities, is using the 2003 Local Government Bylaw Notice Enforcement Act, which established the non-judicial bylaw dispute resolution scheme, in "a highly prejudicial manner that does not provide the appearance of judicial fairness."

There is no opportunity to appeal the adjudicator's decision but Wise has 30 days to seek a judicial review in B.C. Supreme Court challenging the procedural fairness of Vancouver's adjudication system.

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