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BUSINESS REGULATION: HOW FAR CAN YOU GO?

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I. INTRODUCTION

In 1994 in a case that raised the scope of the municipal power to regulate businesses under the *Municipal Act*, Madam Justice Southin put forward, somewhat provocatively, the following:

> During the course of argument, I raised from the bench the question of whether, by section 528, the Legislature intended to empower a municipality to fix the price of any article of commerce, in which term I include services including tow truck services.
>
> Upon reflection, I do not consider it necessary to address that issue because the appellant's case, as it was put before the court below and in its factum on this appeal, does not raise it. That issue must be left for another day.

This paper will discuss the reach of the municipal business regulation power, and the limitations placed on that power by the *Community Charter* and the case law. Is the power to regulate business robust enough to support municipal price regulation or other such bold initiatives? Or is the municipal business regulation authority rather more modest?

II. INTERPLAY BETWEEN THE BUSINESS REGULATION POWER AND LAND USE REGULATION AUTHORITY

The power to regulate in relation to business now is conferred by section 8 (6) of the *Community Charter*. The prospect that municipal bylaws regulating business may overlap with land use regulation bylaws is explicitly recognized in section 8 (7)(c), which provides that the powers to regulate, prohibit and impose requirements in relation to the authority granted under subsections (3) to (6):

> (c) may not be used to do anything that a council is <u>specifically authorized</u> to do under Part 14 [*Planning and Land Use Management*] or Part 15 [*Heritage Conservation*] of the *Local Government Act.*

To date the meaning of "specifically authorized" in s. 8 (7)(c) has not been the subject of judicial commentary. What is the nature of the subject matter of a bylaw that is "specifically authorized" under Part 14 or Part 15 that can no longer be addressed in a business regulation bylaw? Quite apart from s. 8 (7)(c), what are the characteristics of a bylaw that is in substance a business regulation bylaw as opposed to a land use regulation bylaw, and vice versa?

The distinction can be important because bylaws adopted under Part 14 are subject to public hearing requirements that do not apply to bylaws regulating businesses. Land use bylaws masquerading as business regulation bylaws are likely to be invalidated for failure to satisfy the public hearing procedure requirements applicable to Part 14 bylaws. As discussed below, business regulation cases decided before the enactment of the *Community Charter* provide some guidance.

For example, municipal attempts to regulate self-service gas stations led to judicial consideration of the boundary between business and land use regulation. In the late-1970s the City of Vancouver amended its business licence bylaw to distinguish between conventional (full-service by attendants) and self-service gas stations. The City's bylaw provided that no business licences would be issued for self-service stations other than for the 64 existing locations listed in a schedule to the bylaw. Gulf Canada challenged the denial of a licence for the 65th self-service station. The BC Supreme Court sided with the City, but Gulf's appeal was successful (*Gulf Canada Ltd. v. Vancouver (City),* [1980] BCJ No. 1253). The lower court accepted the City's argument that the bylaw dealt with the manner in which a business may be conducted, as opposed to the use of land or buildings (the latter being a matter of land use or zoning regulation, rather than business regulation). The relevant enabling provision in the *Vancouver Charter* allowed council, in the course of regulating businesses and trades, to divide and subdivide them into groups or classes as council saw fit. The appeal court concluded that this power could not sustain the bylaw. The designation of areas within the city (the scheduled locations) where self-service stations were permissible had the effect of creating zones. While the Court did not doubt the City had the power under the *Vancouver Charter* to limit the establishment of additional self-service stations, it could not do so via its business regulation power.

The converse to the 1980 *Gulf Canada* case was considered in *Petro-Canada v. North Vancouver (District),* 2000 BCSC 486; affd. 2001 BCCA 203. The District of North Vancouver amended its zoning bylaw to define "gasoline service stations" that must have a service bay, and "gasoline bars", where a service bay was optional. The existing C3 commercial zone was divided into C3 and C3A zones; gasoline bars being permitted only in the C3A zone. Petro-Canada's argument was that while requiring an owner to provide specified services might be appropriate in a licensing bylaw, it was not permissible in a zoning bylaw. The oil company tried to convince the Court that the legislature could not have intended to delegate to municipalities the power to dictate to businesses what products and services the business must sell or provide. However, the Court reasoned that as it was clear the District had the power to prohibit gas stations without service bays or full-service pumps in any zone, there was no reason why it could not achieve the same result by its definition of permitted stations. On that basis the Court found it unnecessary to determine whether a requirement to maintain a service bay in connection with a service station could also be achieved through a bylaw enacted under the business regulation power.

The overlap between business and land use regulation was clearly in evidence in the case of companion amendments to New Westminster's zoning and business licensing bylaws; *Wah Kwong Enterprises Ltd. v. New Westminster*, [1999] BCJ No. 2006 (BCSC). The amendments prohibited video arcades in a specific area, based on concerns expressed by the police that such arcades provided encouragement for various criminal activities. The petitioner sought to compel the issuance of a building permit and business licence for an arcade. The direction to staff to commence preparation of the zoning bylaw amendments came less than seven days before the City had received a complete building permit application for the arcade, so the City could not withhold the building permit under what was then s. 929 of the *Local Government Act* (now s. 463). The Court considered the application as it related to the business licensing bylaw amendments alone.

The statutory scheme for business regulation in 1999 was considerably different than the current one under the *Community Charter.* Back then, s. 679 of the LGA authorized a council to prohibit various business operations, in all or defined parts of the municipality. The petitioner argued that there should be a link between the seven-day "window" protection in respect of zoning amendments afforded to building permit applications and its business licence application, and that it would be absurd not to extend a similar protection to its licence application. The Court noted that the power to regulate business emanated from a different statutory source than the s. 929 power to withhold permits, which was found within the land use management part of the LGA. The two amendment bylaws were thus distinct. The fact that the petitioner apparently did not advance an argument that the business licence bylaw amendment was in substance a land use regulation may be explained by the presence of the specific power in 1999, in s. 679, that allowed municipalities to prohibit certain businesses in all or part of a municipality. Nevertheless, the judge did not seem at all concerned at the duplicative nature of the regulations adopted by New Westminster.

A hint as to the type of regulation that may have been in the mind of the drafter of s. 8 (7)(c) that would be "specifically authorized" under Part 14 (previously Part 26) of the LGA, is the greenhouse lighting and heating source bylaw considered in *Windset Greenhouses v. Delta (Corp.),* 2003 BCSC 570. Delta is one of four municipalities in BC (Abbotsford, Langley Township and Kelowna being the others) named in the *Right to Farm Regulation*, BC Reg. 261/97, where sections 903 (5) and 917 of the LGA [now ss. 481 and 552] restricting zoning authority in relation to farming operations are applicable. These four municipalities cannot pass zoning bylaws respecting the conduct of farm operations, or prohibiting specified farm operations, without the approval of the minister. In 2001 Delta had amended its Business Licence Bylaw to limit light emissions and require the use of natural gas, propane or methane as the primary heat source for greenhouses that had a site coverage of more than 0.5 hectares. Delta did not obtain the approval of the minister on the premise that the bylaw amendments drew on the business regulation power, not the zoning power.

The legal backdrop to the Delta bylaws was an earlier decision of the Court of Appeal in *Peters v. Chilliwack (District),* [1987] BCJ No. 1968. In that case the Court upheld a bylaw that restricted intensive swine operations to certain zones specified in the zoning bylaw, which frustrated the petitioner's efforts to establish such an operation on his lands. Then s. 933 (d) of the LGA authorized municipalities to regulate and prohibit, throughout or within defined areas, the keeping of various animals, including swine.[1] Peters contended that the bylaw was, in substance, a zoning bylaw because it regulated the use of land and divided the District into zones. As no public hearing had been conducted in connection with enactment of the bylaw, Peters said the bylaw was invalid. The appeal court considered that it was clear that the bylaw was drafted in accordance with and fit within the s. 933 (d) power to regulate and prohibit in respect of swine. The Court went to hold that the public hearing requirements applied to zoning bylaws but not miscellaneous bylaws passed under s. 933 "even if they deal as part of their subject matter with the regulation and use of land and the dividing of land into areas in order to deal with regulating the keeping of swine and carrying out the other subjects of s. 933."

The chambers judge in *Windset*, without mentioning the *Peters* decision, refused to accept Delta's characterization of its greenhouse regulations as valid under the business regulation power. Therefore, Delta required the minister's approval in relation to farm bylaws enacted under the Planning and Land Use Management Part of the LGA. At that time the LGA "broad powers" provision provided that where a specific power conferred on local governments could be read as coming within a general power, the general power was not to be interpreted as being limited by the specific power. There was no equivalent of the current qualification found in the s. 4 (2) *Community Charter* "broad interpretation" provision, which states that while the general power is not limited by the specific power, that aspect of the general power "may only be exercised subject to any conditions and restrictions established in relation to the specific power."

The Court in *Windset* thought Delta's regulation of light levels and heat sources for commercial greenhouses was an attempt to avoid the need for ministerial approval, by doing indirectly (with a business regulation bylaw) what it was restricted from doing directly (through a farm bylaw). If a local government to which the Right to Farm Regulation applied wished to adopt bylaws respecting farm operations as part of a farm business, they had to do so under s. 917, with ministerial approval. Delta's business regulation amendments were held to be farm bylaws within the context of s. 917. The judge reasoned that giving effect to Delta's interpretation would render the farm bylaw provisions meaningless, by allowing the use of a general power to "oust and frustrate" the specific provisions of the farm bylaw legislation.

[1] The equivalent power for regional districts today is found in s. 318. Regulating, prohibiting and imposing requirements in relation to animals is a fundamental power of municipalities under s. 8 (3)(k) of the *Community Charter*.

It is safe to conclude that where there is a discrete legislative authority in Part 14, that is, where council is "specifically authorized" to act, it will operate as a limitation on enacting business regulations under s. 8 (7)(c) in the same manner as in *Windset*.

III. PROHIBITION VS. REGULATION

As noted earlier, the *Community Charter* grants the power to regulate, but not to prohibit, in respect of businesses. The need for the courts to wrestle with the question of whether a bylaw is prohibitory, and not merely regulatory in its effect, pre-dates the *Community Charter*. In attempting to identify the attributes of regulation as opposed to prohibition, the 1898 decision of the Privy Council (which at the time was Canada's highest court) in *Toronto v. Virgo* stated there was a marked distinction between the prohibition or prevention of a trade and its regulation. The power to regulate implied the continued existence of the trade to be regulated. A bylaw which purports to regulate may nevertheless be prohibitory in substance.

In *Rojem v. Kelowna*, [1995] BCJ No. 718, an amendment to the City's Business Licensing and Regulating Bylaw that restricted mobile vendors to operating at five locations in the downtown core was challenged as being prohibitory. No other area of the city was subject to similar restrictions. While acknowledging that it could be argued only five downtown locations was too restrictive, the Court accepted that council acted in good faith in choosing to limit the number of locations to five, based on the evidence before from the RCMP regarding problems that were developing from the proliferation of mobile business operators. Whatever the number may have been that in effect constituted a prohibition, the Court concluded it wasn't five in the downtown area, given what it considered to be a unique form of business.

The particular character of the business, when considering the prohibition vs. regulation issue, is highlighted in a decision which considered the concurrent authority regime established by the *Community Charter*. In *Peachland (District) v. Peachland Self Storage Ltd*., 2013 BCCA 273, the Court of Appeal upheld the lower court's ruling that a volume restriction in a gravel removal bylaw was prohibitory in substance, and of no force and effect as it required ministerial approval. The Court rejected the notion that only a complete "interdiction" could be characterized as a prohibition. Mr. Justice Groberman commented that it was unfortunate that the statutes like the *Community Charter* continued to take an approach that assumed that a clear distinction existed between regulation and prohibition. The result was, in his view, that it was difficult for municipalities to know the limits of their jurisdiction. Peachland Self-Storage had obtained a permit under the *Mines Act* to remove up to 100,000 m^3 of aggregate per year from its property, but was limited to a volume of 200 m^3 under the District's soil removal bylaw. Under s. 9 (1)(e) of the *Charter*, bylaws which prohibit the removal of gravel require the approval of the responsible minister.

The chambers judge in the Supreme Court had suggested that the test for whether the bylaw was prohibitory was whether it precluded a commercially viable operation. The appeal court, responding to the District's criticism this was not an appropriate test, considered it would be unfortunate if a municipality's exercise of its jurisdiction to adopt a regulation was

determinable only after a "comprehensive evaluation of the viability of specific projects", which would be particularly difficult in the case of mine or quarry projects. However, the Court was satisfied that in this case the limit fixed by the District was a prohibition in substance.

IV. REGULATING COMPETITION AND NUMBER OF LICENSEES

The issue of whether municipalities have the power to limit the number of licensees in a particular trade or business requires an assessment of the case law prior to the enactment of the *Community Charter* and the implications of the Legislature moving away from a multitude of discrete grants of power in various subject areas to the grant of broad authority.

In the third case involving Gulf Canada, the City of Vancouver abandoned its attempts to limit service stations to existing location and instead capped the number of annual business licences to be issued to self-service stations to 65; *Gulf Canada Ltd. v. Vancouver,* [1981] BCJ No. 1891. The 65 licences were to be issued first to operators of self-service stations as of December 15, 1980, then by lot to applicants for new licences. Gulf sought the 66th licence, which the City denied. The Vancouver Charter business licence power allowed council to prohibit a business, but only on the unanimous vote of the members present. The Court interpreted this prohibitory authority as relating to a particular type of business, not a particular licence applicant from carrying on business.

The *Vancouver Charter*, then as now, provides in s. 317 (m) that council may regulate the number of persons licensed in any class of carriers. The Court took from this express power to limit the number of carrier licence-holders the negative implication that the power to regulate and require licences to be obtained in relation to other businesses did not include the power to limit licence numbers. As a result the Court set aside the City's limitation on the number of licences to 65.

The 1981 *Gulf Canada* decision was referred to with approval by the Alberta Court of Appeal in 2002 in *United Taxi Drivers Fellowship of Southern Alberta v. Calgary*. Alberta had revamped its Municipal Government Act, doing away with granting specific powers in particular subject areas and instead conferring broad authority over general matters. Prior to the legislative revision a specific section provided municipalities with the power to limit the number of taxi and limousine licences. The new Act provided municipalities with a broad power to regulate in respect of businesses or industries and to provide for a system of licences, permits or approvals. The section outlining what a municipality could do in the course of creating a system of licences or approvals was very similar to the outline of power in s. 15 of our *Community Charter*. The majority in the Alberta Court of Appeal considered that the absence of a specific power to limit the number of licences in the new Act effected a change in the law, removing the authority to limit licence numbers.

However, the Supreme Court of Canada came to the opposite conclusion. It referred to the "well established" principle that the legislature is presumed not to alter the law by implication. If the legislature had intended to remove the power to limit the number of taxi licences it would have done so expressly. There was no indication in the new Act that the legislature intended to limit municipal authority in this way. To the contrary, the new Act indicated that the broad powers were granted to enhance the ability of councils to respond to issues in their communities. The new method of legislative drafting was intended to avoid the need for listing specific matters and powers. The Supreme Court found the majority in the Alberta appeal court had failed to apply a broad and purposive interpretation to the grants of authority in the new Act providing for regulating businesses. The Supreme Court adopted the interpretation of the dissenting judge in the Alberta Court of Appeal that the jurisdiction to regulate the taxi industry necessarily implied the authority to limit the number of taxi licences. Common to the list of things that a municipality could do in a system of business licences was the power to impose limitations. Like section 15 of our *Community Charter*, the list was not stated to be exhaustive by virtue of the use of the word "including" before the list. Accordingly, municipalities were held to have retained the power to limit licence numbers in the taxi industry under the new legislation.

The judgment of the Supreme Court of Canada was founded on two principles: first, there was no clear indication in the new legislation that it intended to alter or limit the previous express authority to restrict licence numbers; and second, the proper interpretive approach to broad grants of power is not to limit them by application of the implied exclusion rule (the absence of a specific reference to a power or authority should be taken as an indication that it was excluded). In the case of taxi licences there was a specific prior statutory authority to limit the numbers of licences. Does the assessment change if the prior legislation did not include such a specific authority?

The pre-*Community Charter* version of the *Local Government Act* included a specific power to limit the number of vehicles with respect to which persons may be licensed in a class of carrier. Following the reasoning of the Supreme Court in *United Taxi Drivers*, one would expect that any post-*Charter* municipal cap on carrier licences would continue to be valid. But in respect of other types of businesses, how confident can we be that the courts would sustain attempts by municipalities to limit the numbers of licences issued to, for example, self-service stations? If the argument in favour rested on the fact that s. 15 of the *Charter*, while not mentioning specifically the power to limit the numbers of business licences in any given business, by prefacing the list of things that can be included in a system of licences, permits or approvals, is the result the same as in *United Taxi Drivers*?

The regulation of competition *per se* as a municipal purpose was the basis of challenges to municipal business regulation in cases in Alberta and Ontario. In *Associated Cab Limousine Ltd. v. Calgary (City),* 2006 ABQB 32, a limousine regulation bylaw requiring minimum trip charges of $50 per hour was upheld in the face of an argument that promoting competition was a federal head of power. The Alberta Queen's Bench concluded that the incidental regulation of

competition between businesses (limousines and taxicabs) was not incompatible with the broad grant of power to regulate businesses. In *Toronto Livery Assn. v. Toronto (City),* 2009 ONCA 535, the Ontario Court of Appeal was more positive in finding that similar minimum limousine charges were valid, concluding that the regulation of competition was a legitimate municipal goal.

Complaints that the effect of municipal business regulations would render a business operation uneconomic have routinely been rejected. The Supreme Court of Canada found that a municipality may set conditions for the operation of a business that make it uneconomic to continue but this does not amount to a prohibition on the business itself; *Montreal v. Arcade Amusements Inc,* [1985] 1 SCR 368. The *Montreal* decision was similar to earlier cases of unsuccessful challenges to business regulations in Vancouver. For example, in *Murray W. Schacher Enterprises Ltd. v. Vancouver (City),* [1974] BCJ No. 741 the Court upheld a business regulation that prevented property rental agencies from collecting fees prior to a tenant securing a rental, despite evidence that this particular regulation would put the agencies out of business.

V. PROCESS FOR ALLOCATING LIMITED NUMBER OF LICENCES

Assuming a municipal bylaw limiting the numbers of licences available for a particular type of business survives a legal challenge, what latitude is there in relation to the process or system for determining who is a successful applicant? Section 15, again, provides for establishing a system of licences, which by subs. (1)(d) may include establishing terms and conditions that licence applicants must meet. Conditions reasonably related to the conduct of the business are likely to be upheld. For example, a requirement to pass a test to show proficiency in a particular trade or business is a valid exercise of the licensing power; *McLeod v. Vancouver (City),* [1987] BCJ No. 2025 (another taxi driver case).[2]

In *Surdell-Kennedy Taxi Ltd. v. Surrey (City),* 2001 BCSC 1265, the Court was dealing with s. 657 of the *Local Government Act* which at that time allowed municipalities to limit the number of vehicles for which a class of carrier could be licensed. In the course of amending its Taxi Bylaw to increase the number of authorized licences, the City decided to allocate the new licences through an auction sale, in which the minimum bid would be $30,000. The Court found the auction process invalid for two reasons. First, nothing in the relevant statutory provisions specifically permitted new licences to be sold by auction. This was, though at a time when the legislative regime provided various specific authorities for municipalities to act, instead of the broad conferral of power that is found in the *Community Charter*. More problematic going forward is the second reason, which was that the "fee" Surrey would receive on auction did not

[2] But note that under s. 61 of the *Community Charter* that a municipality may not require an examination or certification of a person engaged in a trade or occupation where the person already holds a certificate or evidence of competence under a provincial or federal act.

bear any relationship to the cost of the regulatory program. A fee cannot be used for general revenue generation; it must be otherwise justified as a tax. There was no proper basis for imposing a tax by auction.

VI. NON-CONFORMING USE PROTECTION AND BUSINESS REGULATION

From decisions such as *Central Saanich v. Amaryllis Enterprises Inc.,* [1991] BCJ No. 3461 we understand that a non-conforming use protection to continue a use of land that no longer complies with a zoning bylaw cannot be defeated by the owner or occupier's failure to obtain a business licence. Landowners have attempted to extend this proposition to a wholesale immunity from any change in municipal business regulations. What, if any, substance is there to this position?

An answer may be forthcoming in a case where judgment has been reserved involving amendments to a business licence and regulation bylaw affecting cannabis dispensaries. The counter-argument to the owner's quest for full immunity is that regulatory changes affecting businesses that address nuisances, public health and the suppression and prevention of conditions likely to give rise to criminal activity deal with the manner in which a business is conducted and do not clash with the basic right to continue a non-conforming use of land. The municipality's argument to that effect was accepted in *Princeton (Town) v. Heppner*, [1989] BCJ No. 2345 where the owner of a salvage yard asserted that his non-conforming use was protected against the application of the Town's unsightly premises bylaw. The court in *Heppner* held that the salvage yard use was not immune from bylaws of general application dealing with matters such as health and nuisance abatement.

Given the potential for business regulations to overlap with zoning regulations, it is difficult to say precisely where the dividing line is between regulations of general application that will apply notwithstanding the right to continue a statutorily protected non-conforming use, and regulations that will not apply on the basis that they impinge on the protected use.

VII. IDENTIFYING THE BYLAW PURPOSE

Whereas the law on business regulations and non-conforming uses is ripe for reconsideration, the question of how to characterize the purpose of a business regulation has been the subject of recent litigation. For example, characterizing the purpose of a business regulation was the Court's central pre-occupation in *Canadian Plastic Bag Assn. v. Victoria (City),* 2018 BCSC 1172. Victoria's Checkout Bag Regulation Bylaw required businesses to charge a fee of not less than 15 cents for paper bags and $1 for reusable bags, and banned altogether single-use plastic bags. Apparently, the process leading up to the City's adoption of the bylaw began when the Surfrider Foundation advocated a ban on single-use plastic bags as a means of reducing pollution and obstruction of waterways. Applying the decision in *International Bio Research v. Richmond (City)*, 2011 BCSC 471 that the purpose of a bylaw is to be taken from its wording, the minutes of council and public submissions surrounding its adoption, Justice Smith reviewed the various staff reports preceding the bylaw's adoption which discussed the impacts in terms of littering,

on the City's landfill, sewers, etc. A report from the City's solicitor framed the issue in terms of the City having the power to ban plastic bags under its power to regulate business if council was satisfied continued unregulated use had negative local impacts. On the other hand, if the concern motivating council was for global environmental impacts, the regulation would likely fall under the protection of natural environment authority in s. 8(3)(j) of the *Community Charter*, which would then need ministerial approval under the concurrent authority requirement in s. 9(1)(b).

The Court found the bylaw did not engage the ministerial approval requirement, because it was a business regulation bylaw not an environmental protection bylaw, reasoning as follows:

> 46 I find that, in order to be considered to be a bylaw for the protection of the natural environment within the meaning of ss. 8(3)(j) and 9(1)(b) of the [*Community Charter*], a bylaw must similarly regulate the conduct of parties directly engaged in activities that are considered to have a negative environmental impact.
>
> 47 The bylaw at issue addresses the transaction in which a merchant packages the goods purchased by a customer. Although a plastic checkout bag may ultimately find its way into the natural environment, that is the result of subsequent actions by the customer or by others who subsequently come into possession of the bag. It is not the inevitable, direct or immediate result of the transaction that Bylaw 18-008 seeks to regulate.
>
> 48 For that reason, I find that Bylaw 18-008, in its immediate effect, is properly characterized as a business regulation, rather than a bylaw for the protection of the natural environment.

It is somewhat surprising that Justice Smith did not mention s. 9(2)(a) of the *Charter*, which provides that any concurrent authority requirements, such as ministerial approval, do not apply where the bylaw is under a provision not listed under subs. (1) as one of the concurrent authority subject matters "even if the bylaw could have been made under an authority to which this section does apply". However, the judge went on to consider what the result would have been if he was wrong about what constituted a bylaw for the protection of the environment. He found that any environmental purpose in Victoria's bag law was at most additional or peripheral to the bylaw's primary purpose as regulating a particular business transaction. That conclusion drew on both the wording of s. 8(7)(a) of the *Charter*, which states that the municipal powers to regulate, prohibit and impose requirements "are separate powers that may be exercised independently of one another", and the decision in *Koslowski v. West Vancouver* (1981), 122 DLR (3d) 440. *Koslowski* is authority for the proposition that if a bylaw

was passed for an ulterior, unlawful purpose, it may nevertheless be upheld so long as council also had an "honest purpose that is within its statutory powers." In other words, the business regulation aspects of Victoria's plastic bag ban were enough to shield it from a challenge on the basis that it could also be characterized as an environmental bylaw adopted without the requisite ministerial approval.

The *Canadian Plastic Bag* decision has been appealed and it will be interesting to see how the Court of Appeal handles the issue of characterizing the purpose of the bylaw. Will the appeal court find that focusing on the immediate transaction to which the regulation applies is too narrow, when it's clear that a council is also, or even primarily, responding to concerns about the environmental impacts? Will the Court revert to an approach of identifying a singular, dominating purpose? Or will it adopt a more benevolent approach, that seems to be supported if not demanded by the acknowledgement in s. 9(2) of the *Charter* that a bylaw might be authorized under more than one statutory authority?

VIII. SUMMARY

In some respects, Victoria's bag battle resembles a struggle that took the Quebec town of Hudson to the Supreme Court of Canada nearly 20 years ago. Hudson had responded to local environmental concerns by banning the cosmetic use of pesticides, much to the chagrin of local lawn and garden care companies. Both cases are examples of how, as the level of government closest to its citizens, municipalities often find themselves playing the role of first responders to emerging community concerns. At the same time, as a level of government whose authority is defined by provincial legislation, municipalities as first responders are sometimes forced to test the limits of that authority. It seems to us the power to regulate in relation to business is a power whose limits municipalities are only beginning to test, and especially if Victoria is successful on appeal in the *Canadian Plastic Bag* case, it's a power municipalities should be more willing to use, and in more creative ways than they might previously have considered.

NOTES