



CITY OF VANCOUVER

ADMINISTRATIVE REPORT

Date: October 27, 2006
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RTS No.: 4498
VanRIMS No.: 08-4000-11
Meeting Date: November 30, 2006

TO: Standing Committee on Planning and Environment

FROM: Chief Constable in consultation with the Chief License Inspector

SUBJECT: Xtract System Update, Bylaw Amendments and Civilian Position Re-classification

RECOMMENDATION

- A. THAT Council approve amendments to the Secondhand Dealers and Pawnbrokers By-law No. 2807 as generally outlined in Appendix A of this report, to amend the definition of "picture identification", report physical descriptors of the customer to the police, eliminate the option of paper reporting, revise pawn reporting, and provide for separate secondhand store storage.
- B. THAT Council authorize the Director of Legal Services to bring forward the appropriate by-law amendments generally as set out in Appendix A.
- C. THAT Council, through the Mayor, send a letter to the Solicitor General and the Ministry of Public Safety, to be copied to UBCM, supporting the enactment of a Provincial Act to control the movement of secondhand goods.

GENERAL MANAGER'S COMMENTS

The Chief Constable and the General Manager of Community Services RECOMMEND approval of the above recommendations.

COUNCIL POLICY

Council, by way of the Secondhand Dealers and Pawnbrokers By-Law No. 2807, regulates all secondhand dealer and pawnbroker business in the City of Vancouver.

On November 1, 2001, Council approved amendments to the Secondhand Dealers and Pawnbrokers By-Law No. 2807 to allow for an on-line Internet reporting system called Xtract. The option of hand delivery reports was retained at the time.

On November 7, 2002, Council approved amendments to License By-law No. 4450 and Secondhand Dealers and Pawnbrokers Bylaw No.2807, to specify new definitions for types of secondhand dealer businesses and to adopt a new license fee structure to support the Xtract system.

SUMMARY

The Xtract system, adopted by Council in 2001, is an on-line Internet reporting system used to track inventory deposited at secondhand shops and to compare it against stolen property reports. Xtract has been extremely successful in both increasing the recovery of stolen goods and in shortening the time required to investigate incidents.

At the time it was adopted, Council expressed the desire that the system remains cost neutral and requested the cost recovery options be pursued. Although there has been no contributions from third party private companies to date, the VPD Anti-Fencing Unit has been very active in encouraging other users to join the system and in pursuing Provincial legislation for electronic reporting, which would ultimately lead to increased revenues or decreased costs.

This report also proposes a number of amendments to the Secondhand Dealers and Pawnbrokers Bylaw No. 2807. These amendments would amend the definition of "picture identification", have licence holders supply a physical description of the customer, eliminate paper reporting, implement new pawn reporting practices and allow off-site storage for secondhand stores.

PURPOSE

This purpose of this report is to provide a background and update on the Xtract system and to recommend amendments to the Secondhand Dealers and Pawnbrokers Bylaw No. 2807. This report went to committee on October 20 2005. There Councillor Bass moved that;
"That the Committee recommend to Council that this item be postponed pending comments from the Privacy Commissioner on the Administrative Report dated September 28, 2005, entitled "Xtract System Update, Bylaw Amendments and Civilian Position Reclassification".

This was carried unanimously. Also Council requested an assessment of costs and benefits from the point of view of secondhand retailers be included in the report.

This reporting back has been delayed because shortly after the committee meeting there was a court case, Royal City Jewellers and Loan Vs. New Westminster (City) that was very much on point with Councillor Bass's motion. This decision came down in spring 2006 and some analysis had to be performed. With the delay in reporting back much of the original report had to be updated. The draft was provided to the privacy commission and his comments are included.

BACKGROUND

In November 2001, Council approved the implementation of an on-line Internet reporting system called Xtract to track inventory deposited at secondhand shops against stolen property reports. Since that time Xtract has become a useful tool for returning stolen property and is the main means by which the City of Vancouver regulates the secondhand industry. Xtract is used at some level in every property crime related file, some 47,000+ in 2005. It has proven useful in major crime and fraud investigations and assisted in returning property in dozens of outside jurisdictions.

Stores Reporting Directly on Xtract						
CITY	YEAR					
	2001	2002	2003	2004	2005	2006
Vancouver	3	11	57	73	76	79
Kelowna				16	29	30
Chilliwack					8	5
Totals	3	11	57	89	113	

Vancouver is in the ongoing process of identifying secondhand stores. There are 7 shops in Vancouver that deliver their sheets by hand.

All shops in Kelowna and Chilliwack must report directly on Xtract.

Xtract Benefits

One of the prime benefits of Xtract lies in its ability to dramatically shorten timeline for returning of stolen property and thus reduce cost of investigations. The system enables officers to perform, in seconds, investigative tasks that previously would have taken hours and days. The efficiencies achieved by the implementation of Xtract have freed police personnel from other tasks and enabled them with time to deal with this part of the industry more effectively in terms of expanding coverage of secondhand transaction surveillance, recovering stolen property, identifying suspects, and closing cases.

The acceleration and automation of secondhand property reporting has improved the VPDs ability to return stolen property. Xtract has reduced the average investigative time per incident, without increasing its sworn officer count. While Xtract has been a great assistance to the Police, one must be cognisant of the sheer volume of property crime in Vancouver. The Anti-Fencing Unit could double its strength and still have a full case load.

Funding

In 2001, when Xtract was originally being considered, Council expressed the desire that the costs of the Xtract system and all associated staffing remain neutral. The Provincial government had originally been approached to cover the cost of the Xtract software-licensing fee for the entire province. When that option did not materialize, Council funded a portion of the system's operating costs from the 2002 Operating Budget and in November 2002 approved one-time costs of \$202,200 to cover implementation costs of the system. In addition, to support the Xtract system and associated staffing, increases in license fees were approved to provide funding for the estimated ongoing costs of \$107,000. Council also directed the Chief Constable to report back on progress seeking alternate forms of funding for future program upgrades and system improvements.

DISCUSSION

- **Xtract Funding Update**

In November 2002 Council directed the VPD to seek out alternate forms of funding for Xtract both from the private sector corporations and other government agencies that benefit from this program, in order to cover the costs of future program upgrades and system improvements. The following actions have been pursued:

- **Private Sector Funding**

Since 2001 no funds from the private sector have been realized. The Anti-Fencing Unit has met with the governing bodies of the BC and Canada insurance bureaus, but no funding has been forthcoming. However, ICBC, in response to their 2003 study crediting Xtract with a 13% drop in theft from autos in the Vancouver area (surrounding jurisdictions without Xtract had a 13%+ increase in theft from autos) is currently exploring ways in which they can be involved with the system again. It was ICBC that contributed the first computer servers (\$30,000 donation) that housed Xtract for its first three years.

- **User Fees**

Further funding, in the form of user fees to monitor the hardware and Internet costs, will also become available to the VPD as other municipalities adopt Xtract. All other jurisdictions that want to become involved with Xtract sign an agreement with the VPD to provide funds equal to 20% of what support and maintenance fees they pay Syscon Justice Systems. (Xtract's owners).

- **Provincial Legislation**

The Anti-Fencing Unit has been actively pursuing making Xtract a Provincial system and in 2003/2004 staff have participated in regional property crime meetings and have lectured to the BC Association of Chiefs of Police and at the Versaterm (Provincial Police Records Management System Vendor) Users Conference. The results of these engagements have been promising. In June 2004 Kelowna City Council amended their by-law to accept Xtract. In April 2005 the City of Chilliwack changed their bylaw to adopt Xtract. The City of New Westminster adopted Xtract in September 2004, with a by-law amendment expected in 2006. Victoria has amended its bylaw and contracted with Syscon for Xtract. They will come on line when the RCMP Island PRIME moves back to the mainland, fall 2006. Prince George is having final reading of its Xtract bylaw in September 2006. Plus there is strong interest in the Xtract

system within a number of RCMP jurisdictions in the Interior, Lower Mainland and on Vancouver Island.

With the success of Xtract in Vancouver, and its increasing use in BC, the VPD, in consultation with the Solicitor General's Ministry, is continuing to explore the possibility of a Provincial Electronic Property Reporting Act, which would incorporate the Xtract reporting system, to control the movement of secondhand goods. If enacted, this legislation would require the use of electronic reporting by all municipalities, resulting in revenues of approximately \$50,000. Alternatively, there is the possibility that the Province would administer this "police system" and would then likely purchase the hardware from the VPD.

A/Insp. Fisher (VPD) has been working with the Solicitor General and his office concerning a Provincial Reporting Act. As of July 2006 the Provincial Governments stance is that a request should come from local governments through the UBCM in order for the Act to come about. To this end the Vancouver Police submitted a resolution to the UBCM for support of such an Act. This resolution was passed at the October 2006 UBCM Annual General Meeting.

As such, it is requested that this Council, when meeting with other jurisdictions at the municipal or provincial level, dealing with public safety issues, continue to promote a Provincial Electronic Property Reporting Act . A Provincial Act will level the playing field for businesses and allow the police to be able have one set of rules to recover property by. Staying the present course there will be over 150 + different bylaws that the police will have to navigate through in order to retrieve victim's property.

The need for this provincial legislation has been illustrated dramatically in two recent stolen property files that involved Vancouver. Rich Reid Warner recently plead guilty to 23 offences involving stolen property located in 10 different jurisdictions. It took only a day to recover the property in Vancouver with Xtracts' help and weeks to recover more in the other non Xtract jurisdictions. Even then not all the property could be recovered because of the lack of proper reporting bylaws. The second issue is with metal theft. Millions of dollars in metal has been stolen all over the lower mainland, some of it putting citizens in danger by the theft of ground wires and plumbing. Much of it cannot be recovered due to little or no reporting. This has been widely covered in the local media.

- **Cost Benefits**

Committee requested an assessment of costs and benefits from the point of view of the secondhand retailers. Unlike other property reporting programs on the market there are no costs up front to the retailer. There are minimal staff training issues and the set up is done over the phone in about 10 minutes. Xtract comes as part of the fee paid to the City to obtain the privilege of a business licence.

There is a demonstrable need for this industry to be regulated as it can and does on occasion deal in property that is reported stolen. Considering the data collected by Xtract is the same data that has been provided for over 60 years, there is no "new" work involved. If you report electronically you never have to leave the store to provide what is mandated. Most stores find this fast and easier to manage than their paper files. The program is friendly to automated protocol interfaces (API) so there is little difficulty in maintaining what ever electronic "front end", in store software their business currently has.

There is a possibility that the Program will identify a piece of merchandise in a store that is stolen. The VPD will come and retrieve that item. All secondhand retailers know that they are in a risk based business and that there is a possibility with every purchase that the property might be stolen and later confiscated by the VPD. The VPD and city staff met with the industry representatives' for an afternoon to discuss these amendments. A full accounting of the varied comments is in Appendix "B".

- **Privacy Commissioner Comments**

As per Council's wishes, this report was sent to the Provincial Privacy Commissioner for comment. The commissioner did provide a letter back to council (full text in appendix "D") where he comments on the proliferation of bylaws, which collect information, that local governments have brought about in an effort to make communities safe. The commissioners Office also released a paper, "Local Governments and the Growth of Surveillance" in August 2006. While his office contests the need for some of these bylaws he does comment in his letter to mayor and council that pawn and second hand information is different. *"For the reasons given in the report, which I ask you to carefully consider, I strongly urge you to repeal any existing bylaws that are discussed in our paper, keeping in mind that we acknowledge pawnbroker and second-hand dealer bylaws are a special case. I also urge you not to enact any such bylaws and to use other, more effective, methods of keeping your community safe."* David Loukidelis, Information and Privacy Commissioner for British Columbia.

- **Appropriate Licensing & Fee Revenue**

The volatility and dynamics of a market economy requires regular monitoring. Operators often change business plans to meet the needs of their customers and perceived opportunities in the marketplace which results in a regular transition of businesses to and from the second-hand goods industry. As a result, an annual two month temporary Property Use Inspector position was approved by Council in November 2002 in conjunction with the X-tract system to assist the VPD Anti-Fencing Unit to ensure that businesses trading in second-hand goods are appropriately licensed.

Staff expects that as the need for initial business license set-up for new second-hand businesses decreases the inspector's role will have an increase emphasis on enforcement. Although, as an analysis of the fee revenue below indicates, there may need to be periodic blitz's every 2 or 3 years to ensure that new second-hand dealers entering the Vancouver market obtain the required business license. As a result, when the inspector is not conducting these blitz's, he or she will work closely with the Police Department's Anti-Fencing Unit to obtain evidence of non-compliance from businesses that are aware of the by-law requirements but which choose not to obtain the proper approvals and license.

Table 2 below summarizes the business license revenue collected from second-hand dealers and pawnbrokers from 2002 (the year prior to the implementation of X-tract and the new fee structure and business licenses) to 2006 (effective October). In 2003 and 2004, the temporary Property Use Inspector position was effective in bringing a level of consistency to the second-hand industry with respect to ensuring all businesses dealing in second-hand goods are licensed properly, as indicated by the year to year increase in the total number of licenses issued; 31 and 74 for 2003 and 2004, respectively. In addition to ensuring the businesses were appropriately licensed, the inspector educated operators about the second-hand bylaw

regulations and the city's rationale and need for closely monitoring transactions involving certain types of second-hand goods.

Table 2

YEAR	SECONDHAND DEALERS (# of licenses)	PAWNSHOPS (# of licenses)	TOTAL FEES COLLECTED (total # of licenses)
2002	\$ 21,098 (100)	\$ 5,359 (27)	\$26,458 (133)
2003	\$91,151 (144)	\$30,552 (20)	\$121,703 (164)
2004	\$114,240 (219)	\$30,495 (19)	\$144,735 (238)
2005	\$ 89,654 (177)	\$24,306 (16)	\$113,960 (193)
2006 (as of October)	\$ 87,619 (174)	\$ 21,437 (13)	\$ 109,056 (187)

In the 2002 report to Council staff predicted that the revised second-hand dealer business license classifications and increased license fees would generate total business license revenue of \$138,581 (estimated revenue increase of \$107,000). In 2003 collected revenue was approximately \$17,000 less than project, which is attributable to 7 of the combined Pawnbroker and Secondhand Dealer Class 1 business not renewing their business licenses (approximately \$3,000 for each premise for a total of \$21,000). A businesses failure to renew the business license could be due to a number of reasons; redevelopment of the building, loss of lease/change of use, suspension/revocation of the business license or some other closure of the business.

In 2004 the business license revenue slightly exceeded the projections by approximately \$2,000, even though there was a dramatic increase in the number of overall business licenses. The license revenue did not increase dramatically as many of the new licenses issued were for Class 4, 5 or 6 second-hand dealers (these licenses have the lowest fees of the 6 classes of second-hand dealer licenses).

Business license revenue dropped by over \$30,000 from 2004 to 2005 and there was a corresponding drop in the total number of licenses for each year; 238 to 193, respectively. This drop in revenue can generally be attributed to a further loss of 3 more combined second-hand dealer class 1 and pawnbroker businesses (approximately \$3200 each, total of \$9,600) and the introduction of the new Antique Dealer definition. The introduction of the antique dealer license resulted in the conversion of a number of Second-hand Dealer Class 4 business licenses into the less expensive Antique Dealer business license and the removal of their associated license fees from the second-hand dealer and pawnbroker business license fee revenue (i.e. the Antique Dealer license are a sub-type of the standard Retail Dealer business license).

Finally, it appears there will be a further drop in revenue for 2006, of approximately \$5,000. This too, can be attributed to the further loss of 3 more combined second-hand dealer class 1 and pawnbroker businesses (approximately \$3200 each, total of \$9,600). Staff note, that in 2005 and 2006 the seasonal property use inspector was not specifically requested to concentrate on second-hand business during their routine business license fee collection duties. Staff anticipates a focused effort on unlicensed second-hand businesses in 2007 by the temporary property use inspector.

Proposed By-Law Amendments

The following amendments to the Secondhand Dealers and Pawnbrokers By-law No. 2807 are recommended:

- **Identification**

The federal government recently accepted the use of a new type of government issued picture identification. This amendment updates identification requirements under the Secondhand Dealers and Pawnbrokers By-law to include this new type of identification, and to encompass any future changes in identification issued by any government or ministry. The amendment retains the picture requirement, but now has a five-year issuance condition, thereby aiding the merchant and the city in being able to identify the customer. This wording is similar to that used by the other Xtract jurisdictions.

- **Reporting Physical Descriptors**

The Secondhand Dealers and Pawnbrokers By-law regulates an industry that is susceptible to dealings in suspicious property. There has been a demonstrated need to have certain regulations that allow the city to identify who is conducting transactions of this nature within it. This is accomplished at present by the production of identification to the store involved in the transaction. The store should then verify that the identification represents the holder and enters the type of ID that was produced. These details are sufficient evidence in most court proceedings to identify an individual.

Xtract has a collection of physical descriptors to fill out. "Race", "Hair", "Eye Color", "Height (cm)", "Weight (kg)", which are currently not mandatory. This amendment proposes that it be made mandatory. In 2004 the VPD and the License and Inspections Department were involved in two major projects (Lucille and Raven) concerning the underground economy in Vancouver. As part of these projects undercover officers went into secondhand stores and pawn shops and sold property. In each case when identification was asked for (not every transaction involved identification) they produced identification that was of a different gender and race. The store would use some of the data, but because it is not mandatory they would not include a description of the holder. In some cases the store produced their own identification to mask the seller's identity. This evidence weighed heavily in the store's licence being suspended or prohibited. Having the description mandatory will aid city staff in ensuring stores comply with the bylaw by keeping a record of the individual beyond a name and identification type.

Some of the Industry members have had concerns regarding the legitimacy of this proposal while others wanted to go further by providing a digital photo of the person as they appeared on that day. Many stores in Vancouver have recording equipment capturing the transaction for their own purposes. The suggestion to take digital photos, while a very good one, is too expensive right now. The system does have that capability but the upgrade would be expensive and not palatable to the industry as this is a cost recovery plan.

At the October 2005 Committee meeting concerns were expressed about the possibility of identity theft by the collection of these descriptors. But, the city, under the authority of the Secondhand Dealers and Pawnbrokers Bylaw has already been collecting the essential data needed to build an identity since 1942. This has simply never happened because of the

safeguards built into the VPD being the only recipients of the data unlike other third party programs on the market place.

In October 2005 while Committee was discussing this report the issue of privacy and the legality of asking for certain information was raised by a speaker from the BC Civil Liberties Association, and her comments were echoed by Michael Isman, a New Westminster Pawn Shop owner. They had concerns that asking such information of the Second hand industry clients was not complying with federal and provincial privacy legislation. In fact Mr. Isman (of Royal City Jewellery and Loan) had brought a suit against the City of New Westminster over similar sections of their property reporting bylaw. A/Insp. Fisher supplied evidence in that trial. In February of 2006 Madame Justice Boyd released her decision (full Reasons for Judgement in Appendix "C") in favour of the City of New Westminster. Her reasoning why their bylaw, did not offend the privacy regulations is as follows;

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Royal City Jewellers & Loans v. New Westminster (City)*,
2006 BCSC 203

Date: 20060207
Docket: L041728
Registry: Vancouver

3. ***Does the Bylaw offend the provisions of either the Personal Information and Privacy Act or the Personal Information Protection Act?***

[33] The petitioner submits the City is a public body and thus governed by s. 26 of the Federal ***Freedom of Information and Protection of Privacy Act*** ("***FIPPA***") R.S. c. 165. It submits that the Bylaw in issue conflicts with s. 26 of ***FIPPA*** which provides that:

No personal information may be collected by or for a public body unless

- (a) the collection of that information is expressly authorized by or under an Act;
- (b) that information is collected for the purposes of law enforcement, or
- (c) that information relates directly to and is necessary for an operating program or activity of the public body.

[34] The City submits that the collection of the information in issue is not governed by ***FIPPA***, but rather by the ***Personal Information Protection Act*** ("***PIPA***"). The City relies on the reasoning of the Information and Privacy Commissioner in ***Order P05-02, Bull Housser & Tupper***, [2005] B.C.I.P.E.D. No. 19, in which it was held that s. 3(2)(d) of ***PIPA*** is designed to dovetail ***PIPA***'s scope with ***FIPPA***'s, the Legislature's

intent being to avoid overlap between the two statutes. Section 3(2)(d) provides:

This Act does not apply to ... (c) the collection, use or disclosure of personal information, if the federal Act applies to the collection, use or disclosure of the personal information.

[35] In this case, I agree with the petitioner, that while the petitioner itself is not a public body, it is collecting the information in issue “on behalf of a public body” and is thus caught by **FIPA**. As in the **Bull Housser** decision, the personal information in the hands of the petitioner, is gathered for and on behalf of a public body—in this case, the City.

[36] In any event, I am not persuaded that the collection of the information in issue offends either statute.

[37] If **FIPA** applies, as I have found, then I nevertheless am satisfied the collection of the information in issue does not offend that Act. In my view, the information in issue may be collected, by virtue of falling within any one of the first two exemption categories set out in s. 26—that is the collection of the information is “expressly authorized by or under an Act” or the information is collected “for the purposes of law enforcement.”

[38] If the **PIPA** applies, then I am satisfied the petitioner may collect the personal information, even without consent, where the information “is required or authorized by law”, as provided by s. 12(1) (h) of that Act. Further, I note that Section 17 of the **PIPA** allows for disclosure of such personal information “for purposes that a reasonable person would consider appropriate in the circumstances and that ...are otherwise permitted under this Act”. Section 18(1)(j) allows for disclosure to a public body of personal information without consent, provided the disclosure concerns “an offence under the laws of Canada or a province, *to assist in an investigation or the making of a decision to undertake an investigation*” (my emphasis). Once again, s. 18(1)(o) allows such disclosure without consent provided “the disclosure is required or authorized by law”.

[39] I note that in **Order P05-1, K.E. Gostlin Enterprises Limited**, [2005] B.C.I.P.C.D. No. 17, the Privacy Commissioner considered Canadian Tire’s requirement that persons returning goods provide identifying personal information for the purpose of detecting and deterring the fraudulent return of goods. One of the issues was whether Canadian Tire’s practice and policy complied with s. 11 of the **PIPA** which provides:

...an organization may collect personal information only for the purposes that a reasonable person would consider appropriate in the circumstances and that...are otherwise permitted under this Act.

[40] The Commissioner considered Canadian Tire’s policy and concluded at ¶ 59 and 60:

Here we have a retail organization facing ongoing challenges from attempted and successful fraudulent returns of goods, with the organization suffering losses each years due to fraudulent return of

stolen goods. We also have collection and use of identifying information that is generally publicly available and non-sensitive in nature. That information is collected and used to detect and deter fraudulent returns of goods as part of its overall loss-reduction strategy. The evidence also shows that the organization does not disclose the personal information to anyone else, except to the police for fraud or theft investigations resulting from the organization calling in the police.

In light of these circumstances, I conclude that a reasonable person would consider the organization's fraud and loss prevention purpose for collecting and using identifying personal information to be 'appropriate in the circumstances'. ... (b) that information is collected for the purposes of law enforcement, or (c) that information relates directly to and is necessary for an operating program or activity of the public body.

[41] Likewise, here, the City submits that in circumstances where it is difficult to trace, identify and verify lawful ownership and possession of goods for the purpose of commerce, the collection and disclosure of the personal information of a person having actual possession of the goods is "appropriate in the circumstances" and thus within the limitations of s. 11 of the *PIPA*. I agree with that submission and find that people buying goods from a licensed second hand dealer may reasonably expect that as a matter of licensing by a regulatory body, measures may be taken to ensure transactions and ownership in the goods is legitimate.

End Quote.

- **Electronic Reporting**

The purpose of the amendments pertaining to method of reporting is to completely eliminate paper reporting and thereby shift to a strictly electronic system. In Vancouver, currently 76 stores submit electronically and only seven stores submit in the paper format. The VPD estimates there should be some 150 stores reporting. Electronic reporting would make the system simpler and less prone to mistakes as well as less expensive to administer since the information is currently entered manually by staff. These efficiencies will assist in not having to raise licence fees. Removing the ability to report via paper would also eliminate the need for the 49-day hold period required for paper reports. It is essential for investigative purposes to retain the 35 day hold on all property. This hold period, as explained in the 2001 report, is due to the time it takes for victims to fully report to the police and have that information uploaded to the Police in PRIME, our records management system.

After a transition period of five years, with the technology currently available and the decrease in price of the required technology, there is no valid reason, for a business not to be able to report in the electronic format. In fact, Kelowna, Chilliwack and Victoria recently updated their by-law making electronic reporting mandatory. There are other municipalities that are re-drafting their by-laws to comply with electronic reporting only (Prince George, New Westminster). The VPD has also recommended to the Province that any future provincial legislation have strict electronic reporting only.

- **Pawn Redemption Reporting**

Vancouver has fourteen licensed pawn/secondhand shops (Class 1) that deal in tens of thousands of articles per year. Currently there is no requirement to keep a record of redeemed items, no hold period, beyond what is currently in the by-law, nor any requirement to notify authorities when the property is redeemed. This is because pawned property is considered collateral in a loan and if the "pawner" wishes to make good on the loan, the collateral must be returned. Council should take note that the Province repealed the Pawn Act in 2002 and there is a vacuum when it comes to regulation. As of now it seems the Province is expecting the municipalities to regulate how pawns are controlled.

For investigative purposes, the police can not treat pawns the same as an out right buy. Pawns now are reported the same as buys and this need not change. A change is needed to reflect the special status that the pawned property has. It may be removed any time before the 35 or 49 day hold, if it is redeemed. Once it has been redeemed, and then reported stolen, the police are unable to retrieve the item and return it to its rightful owner. In short the police need to know more about the redemption, when it happens and who is redeeming it. An audit of a large pawn/secondhand shop in Vancouver showed that out of the last 2500 transactions 2495 were pawns. If these are redeemed before the 35day hold then they are effectively removed from the Xtract System.

It is proposed that the bylaw be amended to require that all redemptions be recorded and reported in order to establish a traceable path back to stolen property. There is, at present, no method of reporting this information directly via Xtract, but since the merchants are already "on-line", it is suggested that all redemptions be reported immediately to the VPD AFU by email. The information required would include the pawn slip number, the redeemer's name and date of birth (If different from the original pawner) This can be as simple as a email with the header only including the information needed or one email a day with the redemptions listed.

Industry has commented that this new reporting requirement is labour intensive and expensive. Knowing if and when a suspect article goes back onto the streets and to whom did it go with would assist greatly in the recovery of stolen property. Much thought has gone into this amendment. Many proposals have been worked through but would either be too costly (technical changes in Xtract) or onerous on the client (mandatory hold periods). The proposed email notification would advise as to when an item of concern has left the store, before the 35 day hold is up, and who is in possession of it.

- **Off Site Storage**

At present, the by-law does not allow for merchants to have any off-site storage. This is a significant concern for Vancouver's two large sporting goods consignment dealers which each have two retail sites. Since these merchants deal in large bulky items that can be seasonal by nature, they have difficulty storing the consigned goods for the required holding period on-site. Some merchants have run afoul of the by-law by selling items that they have not stored for the appropriate amount of time, or storing them inappropriately. Some of these items have turned out to be stolen. The merchant has used the excuse that they have no where to store the items and they either inadvertently or purposely sold them to make room. This by-law amendment would permit Secondhand Dealers to store off-site, at a facility that can be

monitored by the police and City staff, properly awaiting the conclusion of the required hold period.

However, the VPD's view is that the benefit of off-site storage should not be extended to pawnbroker businesses or to pawned goods.

FINANCIAL IMPLICATIONS

There are no fee increases proposed. At this time this program is self sufficient from the licence fees collected.

CONCLUSION

The Xtract reporting system has been very successful, both in terms of increased efficiencies in policing and in the recovery of stolen property for victims. The recommended by-law amendments regarding pawn and secondhand reporting will further act to improve the system by ensuring that all relevant information is on-line and readily available for review.

To date, funding from other sources to support the Xtract system has been limited. However, revenues will increase as other municipalities adopt the system and the VPD will continue to pursue Provincial legislation to create a province-wide reporting system.

* * * * *

**Proposed Amendments
Secondhand Dealers and Pawnbrokers By-law No. 2807**

1. From section 1.2, repeal the definition of "picture identification", and substitute:

"picture identification" means:

- (a) identification issued by the government of Canada or of a province of Canada or a ministry, department, or agency of any such government;
- (b) driver's licence issued by the government of a state of the United States or a ministry, department, or agency of any such government; or
- (c) passport issued by a government of a foreign state recognized by Canada;

that is valid, providing that the identification is integrated with a picture of the bearer and provided that such identification is not more than five years old.

2. In section 2.2 and in section 3.2 insert a new subsection (c) " (c) a complete description of the seller, including race, hair, eye colour, height and weight"

Change the existing (c), (d), (e), (f), (g), and (h) to (d), (e), (f), (g), (h) and (i)

3. In section 2.16, strike out the period in subsection (b), and substitute a semi-colon, and, after subsection (b), add:

"(c) any property in the secondhand dealer's alternate storage site referred to in section 2.23;

(d) the secondhand dealer's alternate storage site referred to in section 2.23."

4. To subsections (b) and (c) of section 2.18, after "property", add ", except as permitted by section 2.23".

5. After section 2.22, add:

"2.23 During the applicable period of time set out in section 2.19, a Secondhand dealer may store property away from the Secondhand dealer's premises only if:

- (a) the secondhand dealer does not have sufficient room in the secondhand dealer's premises to store all the property required to be held under section 2.19;
- (b) the secondhand dealer has only one alternate storage site;
- (c) the location of the storage site is in the city

- (d) the Chief Constable and Chief License Inspector approve the location of the storage site, it will be a commercial location and not within a dwelling house;
- (e) the Secondhand dealer has a current license under the License By-law for storage of property at the storage site; and
- (f) the secondhand dealer uses the storage site only to store excess property.”
- (g) the storage site will have the same inspection regulations as listed in section 2.16

6. Make amendments to “SECTION 3 PAWNBROKERS” similar to those set out in the preceding paragraphs 2 to 4, except for the provision for off-site storage.

7. After section 3.20, and what will be the new section 3.21, add:

“3.22 If a pawner redeems property from a pawnbroker, the pawnbroker must notify the Vancouver Police Department Anti-Fencing Unit daily via email to anti-fencing.vpd@vpd.ca If the person redeeming the pawn ticket is named on the pawn ticket, the email shall only contain the pawn slip number in the subject line or body of the email. If a person other than the person named on the pawn slip redeems the pawn slip the email shall contain in the body or the subject line the name, date of birth, and picture identification number of the person redeeming the ticket.”

INDUSTRY COMMENTS

Comments were solicited from both consignment stores concerning off site storage and the identification change. Their comments are as follows:

Both consignments dealers agreed with the identification changes and both were agreeable to the offsite storage provisions. One did comment on the cost associated with having to rent additional space and the transporting of the goods to and from storage.

Information Meeting re: Bylaw 2807 amendments
2005-09-07 1400hrs

- Why don't we take valid IDs from other countries, ie. that country's Citizenship card?
- Some people's appearance changes every time you see them. What are we to write?
- Can we scan a person's ID once, issue our own ID card and use that instead of asking for and checking their ID every time?
- Is Civil Liberties not concerned about asking for people's height, weight, eye colour and race?
- Shops feel uncomfortable taking eye colour, height, weight and race. Some said they would rather take and send a digital photo.
- Do E-bay type shops have to comply with Bylaw 2807?
- Do specialty retail shops, such as bike shops and jewellery stores, that occasionally take in items in trade, have to report on Xtract?
- What if the ID has no issue or expiry date? Canadian Citizenship cards have neither.
- Social Services sometimes issues a notarized photocopy of a person's photo with the person's personal information. Is this an acceptable form of ID?
- In the case of consigned goods, if the customer wants to pick up his consigned item earlier than the 35 day hold, can he?
- How do we address items that are recycled? For example, if a shop charges \$5 to the customer to drop off their computer for recycling, then the shop then breaks the computer into its components, and sells the components, do they have to report that computer to the police?
- Regarding point 7, letting police know when a pawned item is redeemed, this creates an addition load to the store owner, affecting their bottom line. Store owners felt one person would have to be dedicated to this task. Large, US pawnshop software companies don't include a redemption section in their software. It will cost lots of money.
- Should there be a minimal dollar value before entering on Xtract?
- Would the city consider lowering the holding period?
- Perhaps the police department could offer the public a "Personal Property Database" to ease up and speed up the reporting times of stolen property for victims of theft.
- Why won't the police check serial numbers on CPIC when a shop owner calls?

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Royal City Jewellers & Loans
v. New Westminster (City)*,
2006 BCSC 203

Date: 20060207
Docket: L041728
Registry: Vancouver

Between:

Royal City Jewellers & Loans Ltd.

Petitioner

And:

The City of New Westminster

Respondent

Before: The Honourable Madam Justice Boyd

Reasons for Judgment

(In Chambers)

Counsel for Petitioner:

E.N. Kornfeld
and H. Silber

Counsel for the Respondent:

J.G. Yardley

Date and Place of Hearing:

November 18, 2005
Vancouver, B.C.

Introduction:

[1] The petitioner, Royal City Jewellers & Loans Ltd., ("Royal City") seeks a declaration that the City of New Westminster Bylaw No. 6408, 1997, *A Bylaw to Regulate Second Hand Dealers within the City of New Westminster*, (the "Bylaw") is *ultra vires* the powers and authority of the Corporation of New Westminster (the "City") by the **Community Charter** S.B.C. 2003, c. 26, or any other enactment. The City opposes the application and seeks a dismissal of the application with costs.

Preliminary Objection:

[2] By way of preliminary objection, City's counsel, Mr. Yardley, submits the Court ought not to exercise its discretion in granting any remedy under Rule 10 since this Bylaw, like many others involving the regulating and licensing of businesses, is presently undergoing a review. A report concerning the new proposed Bylaw was put before the City's Municipal Council on October 3, 2005. It was resolved that the City staff ought to consult with local pawnbrokers and second hand dealers regarding the proposed new Bylaw. Since it is expected that the new Bylaw will be passed by late January 2006 he submits that, whatever the result here, this matter can not be resolved in this hearing since yet another Bylaw will soon be in place, with presumably different issues raised.

[3] In support of his position he relies on the decision of Skipp L.J.S.C. (as he then was) in **Three Stars Investments Ltd. v. Narod Developments Ltd.** [1981] B.C.J. No. 112 (B.C.S.C.), in which it was held that it is inappropriate to proceed by way of petition under Rule 10(1)(b) where, "a decision will not end the matter, but requires further proceedings to be pursued".

[4] While it may be the new Bylaw will raise new issues to be resolved, I do not agree that based on the materials presently before the Court "a decision will not end the matter", at least regarding this Bylaw. Presumably the broad issues raised and addressed here will be of some assistance in guiding municipal staff in ensuring the future Bylaw falls within its proper constitutional parameters. Thus I will not accede to the preliminary objection raised.

Background Facts:

[5] Royal City describes itself as the largest pawnbroker in British Columbia and likely the largest pawnbroker in Canada. It has operated as a family-owned business since it was established some 49 years ago. The current general manager and director, Mr. Bernard Isman, is the founder and first President of the British Columbia Pawnbroker's Association and has served as an officer of that association since 1994.

[6] Since 1997, Royal City, like all other licensed pawnbrokers and second hand dealers in the municipality, has been subject to Bylaw No. 6048. The relevant sections of that Bylaw provide as follows:

4. Every Second Hand dealer must keep and use in his business a book or a computer record, known as the Second Hand Dealers' Register, containing in the English language the following:
 - (i) a correct account and description of each Second Hand Article bought, taken in trade, barter or pawn, or otherwise received in the course of business, including all descriptive marks, the make, model and serial numbers, be they stamped, engraved or on a

label, and any other letters, numbers or names, or combinations thereof, on each article;

- (ii) the precise minute, hour, and day of the receipt of each article;
- (iii) the full name, address, and description of the person from whom the second hand article is received or bought, and confirmation of same by picture identification including the type and serial or registration number other identification used;
- (iv) whenever possible, the make, description, and provincial licence number of any motor vehicle used for delivery of such Second Hand Articles received or bought, with the exception of those persons who arise via public transit or taxi cab; in such cases as the Second Hand Dealer is operating a drive-in facility, such as a scrap yard or junk yard, the recording of vehicle descriptive information shall be mandatory;
- (v) in cases where only a single item is exchanged, the exact price paid for that item. In cases of multiple items exchanges to a total of less than \$400, a total price only will be required. In cases where the total price exceeds \$400, the price paid for each Second Hand Article will be required.
- (vi) the name, initials or staff number of the staff person who takes in the item; and

no Second Hand Dealer shall permit any page or any entry made in the Register to be erased, obliterated, defaced or removed.

5. Every Second Hand Dealer must produce immediately, upon request, during business hours, the Second Hand Dealers' Register for inspection by the Chief Constable or any Constable and, upon request, give the Second Hand Dealers' Register for inspection elsewhere or for use as evidence in Court. Under some circumstances, at the discretion of the Chief Constable or the Constable requiring such evidence, an exact photocopy or printout of the specific page or pages of the Register, signed and dated by the Chief Constable or the Constable as an exact copy of the register, may be sufficient for investigative or Court purposes. In addition, every Second Hand Dealer must keep within his shop any Second Hand Dealer' Register that contains any entries which are less than 24 months old.

...

8. In addition to the Second Hand Dealer's Register, for each business day ever Second Hand Dealer shall complete a form in accordance with Schedule "A" to this bylaw which shall include all of the information included within the Second Hand Dealer's Register as set-out in Section 4. Each completed form shall then be delivered to the Chief Constable no later than 09:30 a.m. of the business day following the business day for which the form has been completed. The Chief Constable may designate the format for the transfer of this information and may direct that it be communicated to his office by means of the Internet, fax or other telecommunications system. In any such case that the Chief Constable directs the information be transmitted via

computer media, he may also direct the program which will be utilized in order to ensure unanimity between all Second Hand Dealers.

[7] While Royal City does not object to the collection of the information and the maintenance of the Second Hand Dealers' Register, as required by s. 4 of the Bylaw, it objects to the delivery of that information to the police as required by Sections 5 and 8. Royal City says that its business fills a long established historical gap in the market, providing short-term loans to borrowers who have lower and more uncertain incomes who are thus less likely or less able to obtain short term financing from larger financial institutions. The majority of its loans are under \$200.

[8] Mr. Isman deposes that currently Royal City makes annual loans totalling \$13 million on the security of goods valued at approximately \$55 million. Of that amount, he says the annual value of the goods actually found to be or suspected by the police to be stolen property totals less than \$10,000, representing loans of approximately \$2 million. Applying a second measure, he says that Royal City makes an average of 65,000 individual loans per annum with an average of 2.5 items per loan offered as security or 162,500 items. Of that total, he says that each year the police seize approximately 20-25 items as suspected stolen property. Accordingly, he concludes that only approximately 1/70th of 1% of those items annually pawned with the petitioner are either stolen property or suspected of being stolen—a total of .0070 of all items pawned. Based on his own experience and that of the various pawnbrokers' associations, he concludes "there is no widespread epidemic of trading in stolen goods through a pawnbroker".

[9] Mr. Isman's evidence is challenged by Sergeant Doug Fisher, a police officer with the Vancouver Police Department who is in charge of the Anti-Fencing Unit. He insists the pawn/second hand industry "has a significant link with crime and criminality" and that "effective investigation of property crime requires access to second hand transactions by information management tools designed to support the analytical and investigative requirements and needs of police officers".

[10] Apart from their disagreement concerning whether there is any connection between the pawn/second hand industry and criminal activity, they also disagree as to which is the appropriate computer database system which ought to be adopted for police investigation work. Mr. Isman supports the adoption of the L.E.A.D.S. Online system (LEADS) whereas Sgt. Fisher suggests the adoption of the XTRACT system, presently used by the Vancouver Police Department.

[11] In the case of the LEADS system, the particulars of pawn or second hand transactions are reported electronically daily to LEADS (a U.S. based company) and may be accessed by law enforcement agencies under contract with LEADS, which allows law enforcement agencies to obtain the description of the merchandise. However, it is only if there is a suspected crime involving such merchandise that the law enforcement agencies are permitted access to the particulars of the person who sold or pawned the merchandise.

[12] In the case of the XTRACT system, using data on the Vancouver Police Department controlled computers, the police are automatically able to compare CPIC and PRIME-BC stolen item databases against the full database of second hand items to present investigators with daily potential matches. Contrary to the LEADS' one day lag in "alerting" functionality, the XTRACT system allows police to effect an immediate arrest or initiate surveillance immediately.

Issues:

[13] The petitioner has raised multiple grounds of challenge which raise the following issues:

1. Is the City legislating criminal law? In other words is the pith and substance of the Bylaw criminal law such that it falls within federal jurisdiction and is therefore *ultra vires* the power of the Province and thus *ultra vires* the powers of the municipality?
2. If not, is the Bylaw *ultra vires* the municipality, as being outside the authority delegated by the Province to the municipality pursuant to s. 59 of the **Community Charter**, S.B.C. 2003, c. 26?
3. If not, do the provisions of the Bylaw nevertheless violate citizens' rights of privacy protected by the **Personal Information and Privacy Act** or the **Personal Information Protection Act**?
4. If not, does the Municipality's provision of the information in question constitute an illegal search and seizure of information, contrary to s. 8 of the **Charter of Rights and Freedoms**?

1. Is the City legislating criminal law?

[14] Before commencing this exercise, it must be acknowledged that certain principles of interpretation must be applied in scrutinizing a statute which empowers a local government. The parties agree that as dictated by the Supreme Court of Canada in **United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)** (2004) 46 M.P.L.R. (3d) 1 (S.C.C.), the Courts must take a broad, purposive approach when interpreting statutes which empower local governments. The onus is on the party alleging a bylaw is *ultra vires* to show a lack of authority on the part of a municipality and not on the municipality to show it is *intra vires*. (**Kuchma v. Tache** [1945] S.C.R. 234, at ¶ 12).

[15] The starting point is a consideration of the **Community Charter** (supra). Section 1(2)(a) provides:

the Provincial Government recognizes that municipalities require (a) adequate powers and discretion to address existing and future community needs...

[16] Further Section 3 provides:

The purposes of this Act are to provide municipalities and their councils with

- (a) a legal framework for the powers, duties and functions that are necessary to fulfill their purposes,
- (b) the authority and discretion to address existing and future community needs, and
- (c) the flexibility to determine the public interest of their communities and to respond to the different needs and changing circumstances of their communities.

[17] Section 4(1) repeats the principle of interpretation noted earlier:

The powers conferred on municipalities and their councils by or under this Act or the **Local Government Act** must be interpreted broadly in accordance with the purposes of those Acts and in accordance with municipal purposes.

[18] Section 7 states:

The purposes of a municipality include

...

(b) providing for services, laws and other matters for community benefit,

....

(d) fostering the economic, social and environmental well-being of its community.

[19] Section 8 deals generally with the authority of municipalities to regulate businesses:

8 (6) A council may, by bylaw, regulate in relation to business.

[20] The term “regulate” is defined in Section 1 as follows:

includes authorize, control, inspect, limit and restrict, including by establishing rules respecting what must or must not be done, in relation to the persons, properties, activities, things or other matters to be regulated.

[21] Finally, I turn to s. 59 which deals specifically with a municipality’s power to impose requirements on second hand dealers, including that they notify the City’s Chief Constable after purchasing, taking in or receiving used or second hand goods. It provides:

A council may, by bylaw, do one or more of the following:

(b) In relation to person engaged in the business activity of purchasing, taking in barter or receiving used or second hand goods,

(i) require such persons, after purchasing, taking in or receiving used or second hand goods, **to notify** the chief constable who has jurisdiction in the municipality within the time period established by the bylaw....

(my emphasis)

[22] As I understand it, the petitioner submits, relying on the decision of the Provincial Court of New Brunswick in **Fredericton (the City of) v. The Re-Purchase Shop** (Unreported December 3, 2004), (hereinafter referred to as “**Re-Purchase Shop**”), that Sections 5 and 8 of the subject Bylaw, which require disclosure of the recorded information to the police, are *ultra vires* the City as being an encroachment on the federal criminal law jurisdiction.

[23] In **Re-Purchase Shop**, the pawnbroker dealer challenged the constitutionality of the municipal by-law, which like the Bylaw in issue, required the pawnbroker to submit a report to the Chief of Police or his designate of all transactions involving goods received by the dealer during the previous seven days. While the dealer was apparently content to collect the information in the ordinary course of business as required by s. 5(1) of the by-law, he refused to provide the report to police, as required by s. 5(4) of the by-law. The Court rejected the municipality’s submission the criminal aspect of the by-law was merely ancillary and that the main intent of the by-law was to deal with property (and the re-unification of the property with its rightful owner). Cumming P.C.J. concluded at ¶ 4-5:

The sole purpose of this subsection is to facilitate criminal investigations. Given the contents of Subsection 5(1) there can be no other conclusion. The purpose is to require pawnbrokers to act, for all intents and purposes, as agents of the police. It forces the pawnbroker to provide information to the police for the purpose of the police investigating criminal offences which would not otherwise be available to the police outside the search warrant framework. This is not an ancillary aspect of the by-law, a 'side effect', so to speak, of a valid enactment relating to property and civil rights. It is the purpose of the subsection.

This purpose and intent, in my opinion, makes Subsection 5(4) of the by-law criminal legislation, *ultra vires* the power of the municipality, and thus not enforceable....

[24] I am of course not bound by the decision of this Provincial Court. In any case, at least based on the enabling statutes in British Columbia, I reject the notion that the pith and substance of the subject Bylaw is criminal law. To the contrary, I accept the City's submission that on a consideration of the provisions of the **Community Charter**, read in conjunction with the provisions of the Bylaw, it cannot be said that the Bylaw is in relation to criminal law, or that its pith or substance is merely to facilitate criminal investigations.

[25] Neither the Bylaw as a whole, nor Sections 5 and 8 in particular, have the purpose or effect of establishing criminal offences or establishing acts that are defined as criminal (**R. v. Chung Chuck** [1929] 1 D.L.R. 756 (B.C.C.A.)). Rather the Bylaw is directed at the investigation and prevention of crime. As noted in the authorities and ss. 7(a) and (d) of the **Community Charter**, the prevention of crime is an aspect of providing good government of the community and fostering the economic, social and environmental well-being of the community (**Dawson v. Bedard** [1923] 3 W.W.R. 412 (S.C.C.)).

[26] Even if the Bylaw involves matters which have an element of criminal behaviour—specifically the deterrence of criminal activity—this is not sufficient to bring it within the jurisdiction of Parliament (see **Dawson** (supra)). Finally, as Mazko J. noted in **Perry v. Vancouver (City)** (1990), 1 M.P.L.R. (2d) 69 at page 75, ¶ 18:

Even though provincial legislation may touch upon an area of criminal law, it may still be valid if its purpose is to prevent crime or to suppress the conditions which foster the development of crime.

...

The City is not required to prove that a particular activity contributes to crime, or, indeed that the measure taken will prevent crime.

[27] I find that the Bylaw only regulates aspects of the operation of second hand dealer businesses. It does not criminalize nor does it purport to criminalize any aspect of the actions of the petitioner or anyone else in terms of its purpose or effect. Rather, it is directed to the manner in which the second hand trade is carried on. (See **Cal Investments Ltd et al. v. City of Winnipeg** (1978), 6 M.P.L.R. 31; **Re Moffat v. Edmonton (City)** (1979) 99 D.L.R. (3d) 101; **Eve Studio v. Winnipeg** [1984] 4 W.W.R. 507; and **538745 Ontario Inc. v. Windsor (City)** [1988], O.J. No. 133)).

[28] In the end result, I reject the petitioner's submission that the impugned Bylaw is a matter of criminal law and therefore falls within Federal jurisdiction.

2. Is the Bylaw ultra vires as being outside the authority delegated to the Municipality under s. 59 of the Community Charter?

[29] The petitioner submits that while the Bylaw may have been properly created under the authority of s. 59 of the **Community Charter**, the latter statute goes no further than to provide the municipality with authority to pass a Bylaw whereby a second hand dealer is required to “notify” the municipality’s Chief Constable of a second hand transaction and to prohibit the disposition of a second hand article during the period set out in the Bylaw. Beyond this, the petitioner says the City has no authority. Specifically it says the City has no authority under s. 59(b)(i) of the **Community Charter** to oblige the second hand dealers to become “agents of the police” responsible to provide the police with the name and address of the pawner or vendor and the financial particulars of the transaction.

[30] I reject this submission. I accept the City’s submission that in considering the meaning of s. 59(b)(i), the “guiding principle is the lawmaker’s intention” (**City of Montreal v. 2952-1366 Quebec Inc.**, 2005 SCC 62). Rather than relying on the literal meaning of the language used, the meaning of the language must be determined by considering the purpose of the enactment.

[31] Section 59 of the **Community Charter** does not define “notify” nor does it otherwise prescribe what the Chief Constable is to be notified of. I am satisfied that the purpose of this notification requirement, however it is interpreted, is to protect the public interest. As the City’s counsel submits, the scope of the notification is for Council to determine, bearing in mind those portions of the **Community Charter** which address “existing and future public needs” (s. 3(b)), “municipal purposes” (s. 4(1)), and “fostering the economic, social and environmental well being of its community” (s. 7(d)). All of these factors must be considered in light of providing the municipal Council with the “flexibility to determine the public interest” (s. 3(c)).

[32] In my view since s. 59 of the **Community Charter** allows a municipality the general power to regulate business and to “require and prohibit” certain undertakings, including pawnbrokers and second hand goods operations, it follows that providing such establishments authority to “notify” the police must go beyond simply providing the police with a description of the goods taken in pawn. There is no basis for such a restrictive interpretation of s. 59, particularly when the local government is provided with jurisdiction to prevent crime (see **Dawson** (supra)).

3. Does the Bylaw offend the provisions of either the Personal Information and Privacy Act or the Personal Information Protection Act?

[33] The petitioner submits the City is a public body and thus governed by s. 26 of the Federal **Freedom of Information and Protection of Privacy Act** (“**FIPPA**”) R.S. c. 165. It submits that the Bylaw in issue conflicts with s. 26 of **FIPPA** which provides that:

No personal information may be collected by or for a public body unless

- (a) the collection of that information is expressly authorized by or under an Act;
- (b) that information is collected for the purposes of law enforcement, or
- (c) that information relates directly to and is necessary for an operating program or activity of the public body.

[34] The City submits that the collection of the information in issue is not governed by **FIPPA**, but rather by the **Personal Information Protection Act** (“**PIPA**”). The City relies on the reasoning of the Information and Privacy Commissioner in **Order P05-02, Bull Housser & Tupper**, [2005] B.C.I.P.E.D. No. 19, in which it was held that s. 3(2)(d) of **PIPA** is designed to dovetail **PIPA**’s scope with **FIPPA**’s, the Legislature’s intent being to avoid overlap between the two statutes. Section 3(2)(d) provides:

This Act does not apply to ... (c) the collection, use or disclosure of personal information, if the federal Act applies to the collection, use disclosure of the personal information.

[35] In this case, I agree with the petitioner, that while the petitioner itself is not a public body, it is collecting the information in issue “on behalf of a public body” and is thus caught by **FIPPA**. As in the **Bull Housser** decision, the personal information in the hands of the petitioner, is gathered for and on behalf of a public body—in this case, the City.

[36] In any event, I am not persuaded that the collection of the information in issue offends either statute.

[37] If **FIPPA** applies, as I have found, then I nevertheless am satisfied the collection of the information in issue does not offend that Act. In my view, the information in issue may be collected, by virtue of falling within any one of the first two exemption categories set out in s. 26—that is the collection of the information is “expressly authorized by or under an Act” or the information is collected “for the purposes of law enforcement.”

[38] If the **PIPA** applies, then I am satisfied the petitioner may collect the personal information, even without consent, where the information “is required or authorized by law”, as provided by s. 12(1) (h) of that Act. Further, I note that Section 17 of the **PIPA** allows for disclosure of such personal information “for purposes that a reasonable person would consider appropriate in the circumstances and that ...are otherwise permitted under this Act”. Section 18(1)(j) allows for disclosure to a public body of personal information without consent, provided the disclosure concerns “an offence under the laws of Canada or a province, *to assist in an investigation or the making of a decision to undertake an investigation*” (my emphasis). Once again, s. 18(1)(o) allows such disclosure without consent provided “the disclosure is required or authorized by law”.

[39] I note that in **Order P05-1, K.E. Gostlin Enterprises Limited**, [2005] B.C.I.P.C.D. No. 17, the Privacy Commissioner considered Canadian Tire’s requirement that persons returning goods provide identifying personal information for the purpose of detecting and deterring the fraudulent return of goods. One of the issues was whether Canadian Tire’s practice and policy complied with s. 11 of the **PIPA** which provides:

...an organization may collect personal information only for the purposes that a reasonable person would consider appropriate in the circumstances and that...are otherwise permitted under this Act.

[40] The Commissioner considered Canadian Tire’s policy and concluded at ¶ 59 and 60:

Here we have a retail organization facing ongoing challenges from attempted and successful fraudulent returns of goods, with the organization suffering losses each years due to fraudulent return of stolen goods. We also have collection and use of identifying information that is generally publicly available and non-sensitive in nature. That information is collected and used to detect and deter fraudulent returns of goods as part of its overall loss-reduction strategy. The evidence also

shows that the organization does not disclose the personal information to anyone else, except to the police for fraud or theft investigations resulting from the organization calling in the police.

In light of these circumstances, I conclude that a reasonable person would consider the organization's fraud and loss prevention purpose for collecting and using identifying personal information to be 'appropriate in the circumstances'. ... (b) that information is collected for the purposes of law enforcement, or (c) that information relates directly to and is necessary for an operating program or activity of the public body.

[41] Likewise, here, the City submits that in circumstances where it is difficult to trace, identify and verify lawful ownership and possession of goods for the purpose of commerce, the collection and disclosure of the personal information of a person having actual possession of the goods is "appropriate in the circumstances" and thus within the limitations of s. 11 of the *PIPA*. I agree with that submission and find that people buying goods from a licensed second hand dealer may reasonably expect that as a matter of licensing by a regulatory body, measures may be taken to ensure transactions and ownership in the goods is legitimate.

4. Are the provisions of the Bylaw inconsistent with s. 8 of the Charter of Rights and Freedoms?

[42] Lastly the petitioner submits the Bylaw in issue effectively authorizes an unreasonable search and seizure of personal information and is thus contrary to s. 8 of the *Charter of Rights and Freedoms*. The petitioner relies on the Court's analysis in *International Escort Services Inc. v. Vancouver (City)* [1988] B.C.J. No. 2475.

[43] In *International Escorts* (supra), the City's By-law required escort services to obtain licences from the City to operate and also required the escort service to maintain a list of all requests made for escort services, the date and time of the request, the name of the escort provided and the fee charged. The By-law also required the escort service to make this list available to any inspector or the Chief Constable for inspection upon request.

[44] Ultimately, Lysyk J. held the By-law did not amount to an illegal search or seizure, since the By-law "did not authorize a forced entry or a search of the premises or the removal of anything therefrom."

[45] In contrast, in the case at bar, the petitioner stresses the Bylaw does allow an opportunity of entry on the petitioner's premises and removal of records for criminal purposes. Section 7 of the Bylaw provides:

Every Second Hand Dealer shall maintain within his shop and must keep open all books and documents relative to the operation of the business during business hours for inspection by the Chief Constable or any Constable and, upon request, must give the books and documents, or in the case of records maintained on a computer base, an exact copy of the data base for inspection elsewhere or for use in Court...

[46] While the impugned Bylaw does allow for entry into and inspection and copying of the petitioner's records, I am not satisfied the Bylaw can be said to be in violation of s. 8 of the *Charter*. Even assuming the City's demands for production amount to a "seizure" of documents within the meaning of s. 8 (which I do not find), here the information contained in the records is

not the kind of information which is subject to the protection of s. 8. As Sopinka J. noted in **R. v. Plant** [1993] 3 S.C.R. 281 (S.C.C.), in determining the parameters of “informational privacy”, the Court will consider a number of factors including:

...the nature of the information itself, the nature of the relationship between the party releasing the information and the party claiming its confidentiality, the place where the information was obtained, the manner in which it was obtained and the seriousness of the crime being investigated allows for a balancing of the societal interests in protecting individual dignity, integrity and autonomy with effective law enforcement....

[47] Adopting the “contextual approach” adopted in **Plant** (supra), it is notable that here, there is no evidence from any particular individual concerning any alleged violation of his rights under s. 8. There are no facts in this case on which to make such an analysis.

[48] In any case, if such an analysis were made, I would conclude that the manner by which the information is sought is minimally intrusive to the petitioner’s customers. As in **Plant** (supra), the information does not intrude into the “biographical core of personal information” of either the petitioner or its customers, or reveal “intimate details of the lifestyle and personal choices of the individual”. Thus no s. 8 protection is available.

Conclusion:

[49] In my view, the impugned Bylaw withstands each of the petitioner’s challenges. Accordingly, this proceeding is dismissed, with costs to City.

“M.E. Boyd, J.”
The Honourable Madam Justice M.E. Boyd



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

August 30, 2006

Mayor and Council
City of Vancouver
453 West 12th Avenue
Vancouver, BC V5Y 1V4

Dear Mayor and Council:

Local Government Surveillance Bylaw Report—OIPC File No. 17823

British Columbia's municipalities have for decades had second-hand dealer and pawnbroker bylaws requiring reporting of information to police. In recent years, however, it has become more and more common for municipalities to enact bylaws requiring businesses to collect their customers' personal information and provide it to local police agencies or licensing inspectors for other purposes. Recent years have seen an expansion of the types of businesses that are required to collect customers' personal information, the purposes for such requirements and the types of personal information which must be collected and handed over to police. New information technologies that enable quick and efficient distribution of personal information to police agencies, and its storage, have added a significant dimension to the trend.

As bylaws forcing businesses to act as data collection agencies for government proliferated in kind and number, I became concerned that their privacy implications were not being considered. For this reason, I asked a number of larger British Columbia municipalities and organizations to comment on the use of municipal bylaws to require businesses to collect personal information from their customers and make the information available to municipal licensing staff or the police. I also obtained examples of bylaws aimed at lawful businesses that require them to collect and disclose customer information to police.

We then considered these bylaws and their impact on privacy measured against their real, not perceived, effectiveness. The result is our discussion paper on local government surveillance bylaws, *Local Governments and the Growth of Surveillance Discussion Paper*, released today. (It is posted on the web here: <http://www.oipc.bc.ca/publications/SurveillanceBylawDiscussionPaper.pdf>.)

The document speaks for itself, but our essential message to British Columbia's local governments is one of self-restraint. As discussed in the paper, I believe our local governments should not pass what amount to surveillance bylaws in an effort to fight

crime of various kinds. Like other citizens, I appreciate the need to ensure that our communities are safe. At the same time, the effectiveness of these bylaws is open to question, while the cumulative, creeping impact of such initiatives on everyone's privacy is real and of considerable concern.

Certainly, where increased law enforcement is necessary, adequate resources for police forces are the obvious answer, not bylaws that contribute to the increasing proliferation of surveillance databases at all levels of government in Canada. I also note that passage of the *Safety Standards Amendment Act, 2006* essentially eliminates the case for municipal bylaws aimed at marijuana grow-ops, as discussed in our report. That Act requires pro-active reporting to municipal officials of electricity consumption that may indicate a grow-op is present and facilitates effective action to tackle illegal activities.

For the reasons given in the report, which I ask you to carefully consider, I strongly urge you to repeal any existing bylaws that are discussed in our paper, keeping in mind that we acknowledge pawnbroker and second-hand dealer bylaws are a special case. I also urge you not to enact any such bylaws and to use other, more effective, methods of keeping your community safe.

Yours sincerely,

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia

cc: Chief Constable Jamie Graham
Vancouver Police Department

Doug Fisher
A/Inspector, Vancouver Police Department