



THE CITY OF
CALGARY

LAW DEPARTMENT (8053)

Via Fax # 403-237-0566

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Our File: L5847
Your File:

December 16, 2010

Michael G. Bates
Ruttan Bates
200, 614 – 6 Ave. S.W.
Calgary, AB T2P 0S4

Dear Sir:

RE: Pawlowski v. The City of Calgary

I am writing in response to your letter to Mr. Lewis of our office dated December 14, 2010. As Mr. Lewis advised you on October 22, I was occupied with trial preparation and have therefore been unable to respond to your correspondence until now. The delay in responding to your letter of October 25 is entirely due to my lack of availability and not at all attributable to Mr. Key. Most recently, I have been occupied by daily communication from Mr. Pawlowski's other lawyer regarding his upcoming Christmas Festival to be held on City property.

In response to your earlier inquiry, Mr. Key is the "authorized representative" of the City of Calgary for the purposes of the *Trespass to Premises Act* and further is authorized to act for the City as the "occupier" of the City's property under the *Petty Trespass Act*. As such, he is authorized to remove individuals from City property when they are not in compliance with the City's bylaws and policies regarding use of City property. Further, once he gives notice, which may be oral, to any individual that they must leave City property, it then becomes an offence under each of those Acts if the individual does not leave the City property immediately.

With respect to the public nature of the City Hall Complex, we agree that the public has access to the Complex but that access is subject to the City Hall Complex Bylaw which incorporates by reference the City's policy established by Council regarding the use of the City Hall Complex. The two read together establish a system whereby if a group wishes to put on an exhibit of some kind, they can make application to use the public areas of the building to do so. Those activities that would be permissible must,

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pursuant to the Policy, “not interfere with the normal business conducted by employees, citizens, visitors and guests”. Further, with respect to demonstrations specifically, they are limited to the perimeter sidewalks around the Municipal Building only. Finally, no one is permitted to conduct themselves in such a way as to “intimidate, harass or obstruct” any other person while at the City Hall Complex. I am advised that several employees complained about their contact with your clients on the day in question. It must be borne in mind that, in addition to being City Hall, the Municipal Building is also the office of several thousand City of Calgary employees.

In your original correspondence, you cited several cases for the proposition that government property is an appropriate place for your clients to exercise their freedom of expression. Within the very cases you cited, however, are direct indications that certain areas of the government property are not appropriate locations. Specifically, in Madam Justice L'Heureux-Dube's quote from *Committee for the Commonwealth* which you cited, she stated:

“On the other hand, the Charter's framers did not intend internal government offices, air traffic control towers, prison cells and Judges' Chambers to be made available for leafleting or demonstrations. It is evident that the right to freedom of expression under s. 2(b) of the Charter does not provide a right of access to all property whether public or private. Such a wholesale transformation of all government property is not necessary to fulfill the Charter's purposes, or to avoid stifling of free expression.”

This distinction is very important given the circumstances of the day in question. If you review the video that your clients made of the event, you can clearly hear one of the police officers indicating that your clients are free to continue their expression, including the handing out of their material, outside of the Municipal Building. This restriction on the location of expression is directly in line with the British Columbia Court of Appeal's ruling in *R v Breden* 2009 BCCA 463. In that case, the Court was faced with a situation where a disgruntled, terminated firefighter sought to demonstrate his cause at his former firehall, at the West Vancouver Municipal Building and inside the provincial courthouse.

The Court of Appeal considered the public nature of the buildings and their historical use and concluded by agreeing with the lower court who said:

“In my view it would be anathema to the orderly conduct of the public business that these places are assigned to discharge, to require them to submit to indiscriminate use of their public areas for free expression of political or personal views... These are not sidewalks, airport concourses, public arenas or parks. They were, and are, places in which a public function or mandate, or constitutional function, was being performed. None had a historical, or actual, function as a forum for public expression.”

The Court then continued itself by stating:

“It must be noted that in the present case, it was always clearly open to the appellant to conduct his activity in public areas outside the respective locations but not within the building envelopes of these premises. His right to express himself in the near vicinity of the venues was in no way under threat and he was advised that he was permitted to convey his message to those who attended or passed by such locations.”

This distinction has also been recognized by the City in its other dealings with your clients. As you know, your clients hold regular events on the sidewalk in the area of Old City Hall. Further, they have held several events both on the Municipal Plaza and Olympic Plaza with the consent of the City. Whenever your clients have made reasonable requests to use public facilities, the City has acceded to those requests. As a result, your clients knew the procedure to follow if they wished to hold an event at the City Hall complex but chose not to follow that procedure on this day.

Given all of the above, the City takes the position that its request to your clients that they not engage in their campaign inside of the Municipal Building on the day in question was reasonable and, had your clients complied with that reasonable request, no charges would have resulted. As Mr. Lewis mentioned in his earlier correspondence, the trespass charge against Mr. Pawlowski is being prosecuted by the Provincial Crown so I expect you have been dealing with them in that regard.

With respect to the Petty Trespass Notices given to your clients other than Mr. Pawlowski, in retrospect, a two-year prohibition has been determined to be more onerous than necessary for first offences. As a result, your clients who received those Notices can take this letter as official notice that their periods of prohibition are at an end. They are therefore free to access the City Hall Complex as any other citizen may. They are still required to comply with the bylaw and the City policy and could be subject to future prohibition should they, once again, breach either.

You had inquired about the procedure to appeal the service of a trespass notice and I can advise that Mr. Key would be the individual to whom such an appeal should be directed in writing.

I trust that this letter answers your clients' inquiries but please feel free to contact me if they have any further questions.

Yours truly,



Colleen Sinclair
Barrister & Solicitor