
CITY OF KELOWNA

MEMORANDUM

Date: September 21, 2007

File No.: **BL9227 and BL6550-89**

To: City Manager

From: Licence and Bylaw Enforcement Supervisor

Subject: Amendments to Second Hand Dealer and Pawnbroker Regulation Bylaw No. 9227
And the Ticket Information Utilization Bylaw No. 6550-89

RECOMMENDATION:

THAT Council receive the recommendations of the Licence and Bylaw Enforcement Supervisor as outlined in the report dated September 21, 2007;

AND THAT City Council give readings consideration to Bylaw No. 9866 being Amendment No. 2 to the Second Hand Dealer and Pawnbroker Regulation Bylaw No. 9227. and to Bylaw No. 9873 being Amendment No. 71 to the Ticket Information Utilization Bylaw No. 6550-89.

BACKGROUND:

On July 26, 2007 the B.C. Court of Appeal released its decision in the Royal City Jewellers appeal, striking down a number of provisions of the New Westminster Second Hand Dealers and Pawnbrokers Bylaw.

Royal City Jewellers argued that the personal information collected and the reporting requirements were not authorized by the Community Charter. The Court did not address the questions of whether the New Westminster Bylaw was invalid because of conflict with provincial privacy legislation or The Charter of Rights, however, the decision puts in question similar Bylaw provisions and without the authority that those provisions provide for the disclosure of personal information to the police, they may be non-compliant with provincial privacy legislation.

The Court reviewed several provisions of the Community Charter that were relevant to the determination of whether New Westminster had authority for the Bylaw but the judgement focused on Section 59 (1)(b) under Powers to Require and Prohibit. This section states that Council may by Bylaw regulate businesses actively engaged in purchasing, taking in barter or receiving used or second hand goods by requiring such persons to notify the Chief Constable who has jurisdiction in the municipality within the time period established by the Bylaw. This same section states that Council can prohibit such persons from altering the form of selling, exchanging or otherwise disposing of those goods during the time period established by the Bylaw.

The Court was satisfied that Section 59 (1)(b) of the Community Charter gave the authority to require disclosure of information identifying the goods, however, the question of disclosure of additional personal information about the person from whom articles are received was necessarily incidental to the same notification power. The New Westminster Bylaw required additional personal information to be collected and transmitted above and beyond the City of Kelowna Bylaw requirements.

The Court did not find that all personal information recording requirements were invalid. It is possible to see that the recording of the borrower / seller's name and address and the means of verifying identity as necessarily incidental to the legislature's purpose in delegating the notification power to the municipal Councils. However, the mandatory transfer of that personal information to municipal police, even in the absence of any criminal suspicion, is not necessarily incidental to that purpose.

While the Court found there was authority to require recording of the identity (and means of establishing identity of customers), it found the scope of that authority did not extend to the requirement of recording additional personal information. The record discloses no reason for the inclusion of occupation, birth date, height, build or weight of the borrower / seller or the particulars of the vehicle in which the goods arrived at the business premises ("the additional information").

The Court concluded that the requirement to collect, record and transmit the "additional information" to police was beyond New Westminster's powers. The Court also went on to hold that the requirement to "transmit" to the police the personal information of customers (eg. name, address and means of identification) was beyond the authority to require granted under Section 59 (1)(b). While recognizing the authority to require recording of this personal information, the Court found the New Westminster Bylaw so inextricably related to the offending "additional information" recording and reporting requirements, the Court found that the valid provisions could not stand on their own and concluded they could not strike down the offending portions of the Bylaw alone making the entire Bylaw invalid.

Kelowna's Bylaw contains personal information recording and reporting requirements similar to the New Westminster Bylaw, although not going as far in respect of the "additional information" that was problematic with the New Westminster Bylaw. The Bylaw provides in Section 2.2(a) that second hand dealers and pawnbrokers record in the electronic register the "name, residence or street address and birth date" of the customer. Section 2.2(b) requires the recording of "confirmation of the identity of the customer by way of picture identification including a complete description of the picture identification and name of the authority who issued it". Of these requirements, only the recording of the birth date was not specifically sanctioned by the Court of Appeal.

We recommend that Section 2.2(a) of the Second Hand Dealer and Pawnbroker Regulation Bylaw No. 9227 be amended as indicated in this report to delete the birth date recording requirement.

And we recommend that Section 2.2(h) be deleted in its entirety and renumber the subsequent paragraphs.

And we recommend that Section 2.3(c) be amended by deleting the words "a report of the entry in the electronic register" and replacing it with the wording "information pertaining to the identification".

And we recommend that Section 2.3(e) be deleted in its entirety and renumber the subsequent paragraphs.

And we recommend that Section 2.6 and Section 2.7 be deleted in their entirety and renumber the subsequent paragraphs.

And we recommend that Schedule "A" of the Second Hand Dealers and Pawnbroker Regulation Bylaw No. 9227 be replaced with a new Schedule "A" as attached to this report.

And we recommend that the Ticket Information Utilization Bylaw No. 6550.89, Schedule 27 be amended as follows:

- Section 2.2(i) be amended to read 2.2(h)
- Section 2.3(e) "Fail to submit no transactions" be deleted

INTERNAL CIRCULATION TO: CITY CLERKS
LEGAL/STATUTORY AUTHORITY: COMMUNITY CHARTER SECTION 59
LEGAL/STATUTORY PROCEDURAL REQUIREMENTS: PUBLIC INPUT REQUIRED PRIOR TO BYLAW ADOPTION
EXISTING POLICY: BYLAW NO. 9227
EXTERNAL AGENCY/PUBLIC COMMENTS: RCMP

Considerations that were not applicable to this report:

FINANCIAL/BUDGETARY CONSIDERATIONS:
PERSONNEL IMPLICATIONS:
TECHNICAL REQUIREMENTS:
ALTERNATE RECOMMENDATION

Submitted by:

J.A. Dixon
Licence and Bylaw Enforcement Supervisor

Approved for Inclusion:

David Shipclark
Acting Director of Planning & Corporate Services