



January 19, 2009

Mayor and City Council
c/o City Clerk's Office
City Hall, Third Floor
453 West 12th Avenue
Vancouver, BC V5Y 1V4

VIA FAX: 604-873-7419

Dear Mayor and Council:

RE: Administrative Report #8: 2010 Olympic and Paralympic Winter Games: Vancouver Charter Amendment Proposals

My name is David Eby and I am the acting Executive Director for the B.C. Civil Liberties Association, Canada's oldest and most active Civil Liberties organization. Our organization works across Canada on issues of human rights, democratic rights and liberty issues. We have a particular and abiding interest in these issues as they relate to the 2010 Olympic Games.

I am writing to you today on behalf of our organization to raise concerns about Administrative Report #8 concerning proposed amendments to the Vancouver Charter. Our dominant concern is that the proposed amendments to the Vancouver Charter, aimed at so-called "ambush marketing," could unduly limit the free political expression of Vancouverites in and around the 2010 Olympic period in Vancouver.

I understand that your legal department advises you that, even if Council wished, the public is not able to review the actual text of the proposed changes to the *Vancouver Charter*. I strongly disagree with this position and question the legal authority for such a lack of transparency in the actions of Council in amending its empowering legislation. I urge you to examine, with your legal department, the authority for refusing to disclose this information against the will of Council.

Despite not being able to review the actual proposed changes to the *Vancouver Charter*, I will do my best to express our organization's concerns around the approach advocated by Administrative Report #8 to these issues.

HONOURARY DIRECTORS

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Olympic history and context

The concerns of the BCCLA do not occur in a vacuum. There is ample context and history to be considered when issues of free expression and the Olympics are evaluated.

The Olympics have a long history of repressed political dissent, whether considering incidents as recent as Beijing's notorious "protest zones"; aggressive enforcement of generic copyright phrases and words like "With glowing hearts", "Winter" or "Gold"; or the dominance of security agendas over social agendas in budgetary and logistical terms.

This context is best illustrated in the International Olympic Committee's *Olympic Charter* at Rule 51, where the IOC demands limits from host cities on what it calls "advertising, demonstrations, propaganda." In particular, Rule 51(3) reads unambiguously: "No kind of demonstration or political, religious or racial propaganda is permitted in any Olympic sites, venues or other areas." The edict expressed in this Rule is antithetical to Canadian democracy as enshrined in Canada's *Charter of Rights and Freedoms*. It is this historical approach to democracy by the IOC in Olympic host cities which concerns our organization deeply.

Identified sections of concern

Given this particular context, while many of the proposed amendments in the staff report are inoffensive on their face, some raise immediate concerns around free speech issues. In particular:

#6 - The section provides for regulating the distribution of advertising-matter on any street, and for prohibiting persons from distributing if likely to be thrown or left on a street. Delete the prohibition because "regulation" includes prohibition.

#11 - Provide that the city, at its cost, may remove graffiti from real property without notice.

#12 - Stipulate that the maximum fine for an offence is \$10,000, and the maximum daily fine is \$10,000.

#16 - Provide that, despite section 324A(1) and (2), the city may remove illegal signs from real property with limited notice, and may charge the owner for the cost of such removal.

These proposed amendments, in the larger context of the history of political speech repression around Olympic Games, raise serious concerns about the potential impact on individuals engaged in various forms of political speech or protest, conduct protected by section 2(b) of the *Canadian Charter of Rights and Freedoms*.

A lack of political protections

There seem to be no protections for political speech (including signage), either in the preamble of the report, or in the recommended amendments, in order to protect Vancouverites or guests that may disagree with Olympic interests. For example, there are no protections that would:

- (a) Ensure by-law officers would not enter a private dwelling to remove a political sign from a condominium or house window that overlooked a venue;
- (b) Ensure by-law officers would not prevent organizations or individuals from handing out leaflets expressing political viewpoints that may not be consistent with the City of Vancouver's position on the Olympics or any other issue;
- (c) Ensure by-law officers would not enter onto private property and remove or deface private art by mistaking it for graffiti; or,
- (d) Ensure that protesters who may wish to erect temporary signs concerning Olympic or other potentially political issues would not face threats, and the chilling effect, of potential fines of up to \$10,000 per day for exercising their constitutionally protected political rights.

Recommendations

The City of Vancouver may have contractual obligations to use best efforts to protect Olympic brands; however, in doing so, the City may not exceed the limits on its jurisdiction put in place by the *Canadian Charter of Rights and Freedoms*. The City is bound to protect free speech that engages *Charter of Rights and Freedoms* protection, and there is no speech that is more protected than political speech.

We recommend that there be unambiguous language in the Administrative Report and in any amendments to the Vancouver Charter that the interpretation of these rules will be guided entirely by the City's obligations under the *Canadian Charter of Rights and Freedoms* to protect the free speech of its citizens. We recommend that, as part of passing the Administrative Report, Council instruct Legal staff to consider and implement protection of *Charter of Rights and Freedoms* values directly in the amended wording as part of their negotiations with the province. In addition, we recommend that during the period of the Games, by-law enforcement officers be briefed on their *Charter of Rights and Freedoms* obligations and concomitant limitations on their jurisdiction in enforcing these bylaws to avoid unnecessary confrontations, and potentially litigation, over these issues in 2010.

Most importantly, we recommend that the City of Vancouver, together with VANOC and the ISU convene the long-promised Civil Liberties table to iron out agreements with the advocacy community – such as it exists – with concrete assurances that free speech will be protected during the Games, and that the sorry Olympic history of political speech repression will not be repeated in Vancouver for 2010.

Yours truly,



David Eby
Acting Executive Director