

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *International Bio Research v. Richmond (City)*,
2011 BCSC 471

Date: 20110415
Docket: S107947
Registry: Vancouver

Between:

**International Bio Research dba Pet Habitat
and 3499481 Canada Inc. dba PJ's Pets
and Pets Wonderland**

Petitioners

And:

The Corporation of the City of Richmond

Respondent

Before: The Honourable Mr. Justice Savage

Reasons for Judgment In Chambers

Counsel for the Petitioners:

J. Baker

Counsel for the Respondent:

F. Marzari

Place and Date of Hearing:

Vancouver, B.C.
March 23-24, 2011

Place and Date of Judgment:

Vancouver, B.C.
April 15, 2011

I. Introduction

[1] Three pet stores seek to quash a Richmond bylaw which would ban the sale of puppies and dogs from pet stores. The applicants are International Bio Research doing business as Pet Habitat, 3499481 Canada Inc. doing business as PJ's Pets, and Pets Wonderland (the "Pet Stores"). The respondent City of Richmond ("Richmond") opposes the application.

[2] The application is brought under the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 for an order quashing and setting aside Business Regulation Bylaw No. 7538, Amendment Bylaw No. 8663, which was adopted by Richmond on November 8, 2010 (the "Bylaw"). The Bylaw is to take effect six months from the date of passage, so it is not yet in effect. The Bylaw adds "Canidae...including puppies and dogs" to the list of prohibited animals, that is, those which may not be sold from pet stores. My references to "dogs" in these Reasons includes puppies. Attached hereto and marked as Schedule "A" is a copy of the operative part of the Bylaw.

[3] The Pet Stores also seek a declaration that the Bylaw is void and *ultra vires* the powers conferred on Richmond "on the grounds that the decision to enact it was made on a specious, wholly inadequate factual basis, improperly motivated, enacted in bad faith, discriminatory, contrary to the municipal purposes authorized by the *Community Charter*, [S.B.C. 2003, c. 26] and completely unreasonable".

II. Facts

[4] Each of the applicant Pet Stores is licensed to operate a pet store in Richmond. Although there are ten pet stores in Richmond the Pet Stores are the only ones that sell dogs.

[5] PJ's Pets is a large pet supply store and sells about 50 dogs a year. Pet Habitat had gross sales of close to \$500,000 over the 10 months before adoption of

the Bylaw. Pets Wonderland sells about 150 dogs a year. The dogs sell for \$700 to \$2,500 each.

[6] The parties agree that prior to the adoption of the Bylaw there was extensive public interest and public input into the proposal to ban the sale of dogs from retail establishments. Richmond received two petitions, one supporting a ban on the sale of all animals in pet stores, with some 2,160 signatures, and another opposing a ban on the sale of dogs, with some 1,174 signatures.

[7] The proposal to ban the sale of dogs from retail storefronts was discussed extensively at two Committee of the Whole meetings on March 2, 2010 and October 4, 2010. The Bylaw itself was considered at two regular meetings of Council on October 12, 2010 and November 8, 2010.

[8] Richmond received a substantial number of delegations and written and oral submissions. There are nearly 1,000 pages of written submissions received by Richmond in the material before the Court, excluding the petitions mentioned above.

[9] Some of the material before Richmond was submitted in support of the proposed Bylaw. This included submissions from the BC Society for the Protection of Animals (the “SPCA”), the Richmond Animal Protection Society (“RAPS”), Small Animal Rescue, the Vancouver Humane Society, anecdotal submissions from various residents, a CBC “Marketplace” documentary and a sample of dog abandonment forms from RAPS.

[10] Other material contradicted the material in support of the Bylaw. This included submissions from each of the Pet Stores, the Pet Industry Joint Advisory Council of Canada and the Canadian Federation of Independent Business, anecdotal submissions from various residents and a response to the CBC “Marketplace” documentary from a principal of the Hunte Corporation, an alleged puppy mill.

[11] Overall, the submissions before Council were contradictory.

III. The Bylaw

[12] The Bylaw adds “puppies and dogs” to the list of prohibited canidae which may not be sold from pet stores pursuant to s. 12.8.1(c) of the Bylaw. The Richmond bylaws do not prohibit the sale of dogs in Richmond. Dog sales may still occur by the breeders of dogs and commercial dog kennels. Attached hereto and marked as Schedule “B” is a copy of the provisions of Bylaw No. 7538 related to Kennel Regulation.

[13] There is no official record of Council’s reasons for adopting the Bylaw. An employee of one of the Pet Stores provided some notes of various comments made by Council members during the public events.

[14] That said, I agree with Richmond that the purpose of the Bylaw must be taken from its wording, and the minutes and public submissions surrounding its adoption: see *British Columbia Lottery Corp. v. Vancouver (City)* (1997), 46 B.C.L.R. (3d) 24, 44 M.P.L.R. (2d) 1 (S.C.) at paras. 33-42, aff’d 1999 BCCA 18; *Re Koslowski et al. and District of West Vancouver*, 122 D.L.R. (3d) 440, [1981] 4 W.W.R. 454 (B.C.S.C.) at 449-50.

[15] The primary record is the material before Council when it made its decision: *McLaren v. Castlegar (City)*, 2011 BCCA 134 at para. 24.

[16] The record supports two broad purposes (1) to improve the condition of dogs sold as pets in Richmond, and (2) to reduce the number of unwanted and abandoned dogs in Richmond.

IV. Issues

[17] The issues before the Court include:

1. What is the Standard of Review of Council’s decision to enact the Bylaw?
2. Does Richmond have the legislative authority to prohibit the sale of dogs in retail stores?

3. If Richmond does have the legislative authority is the Bylaw nevertheless void because it was enacted for an unauthorized purpose, was not enacted in good faith, unlawfully discriminates or is so unreasonable as to be invalid?

V. Standard of Review

[18] The parties agree that the standard of review with respect to the question of whether Richmond had the authority to pass the Bylaw is correctness: *Pucci v. North Vancouver (City)*, 2010 BCSC 743.

[19] The parties are also agreed that the standard of review on the substance of the Bylaw is reasonableness. Richmond says that with respect to the discretionary and policy elements of the decision, the Court should give “strong deference” to Council’s decision: see *Nanaimo (City) v. Rascal Trucking Ltd.*, 2000 SCC 13.

[20] In *Catalyst Paper Corporation v. North Cowichan (District)*, 2010 BCCA 199, leave to appeal to S.C.C. granted, 2010 CarswellBC 2909 the Court of Appeal recently reviewed the standard of review applicable to the political – i.e. legislative – functions of municipal councils. Madam Justice Newbury, speaking for the Court, said:

[35] With respect to judicial authorities on the question of standard of review, it is generally assumed that [*Dunsmuir v. New Brunswick*, 2008 SCC 9] applies to the decisions of municipal councils and that therefore the standard of “patent unreasonableness” previously applied in *Rascal Trucking* has been “collapsed” into one of [un]reasonableness *simpliciter* – a standard that under the older case law required the decision be “supported by reasons that can bear even a somewhat probing examination”. (See *Director of Investigation and Research v. Southam Inc.*, [1997] 1 S.C.R. 748 at para. 56; *Baker v. Canada (Minister of Immigration)*, [1999] 2 S.C.R. 817 at para. 63; *Ryan v. Law Society (New Brunswick)*, 2003 SCC 20, [2003] 1 S.C.R. 247 at para. 47; and *R. v. Owen*, 2003 SCC 33, [2003] 1 S.C.R. 779.) It is difficult to imagine how a court could carry out a “probing examination” of a council’s decision adopting a bylaw other than by considering the bylaw itself.

[21] Further, that where decisions of municipal councils are concerned, a standard of patent unreasonableness still forms part of that colour. The Court continued:

[37] It is a central principle of democratic government that elected decision-makers must be given the highest degree of deference by courts of law, provided those decision-makers remain within constitutional and statutory boundaries. As seen earlier, this deference was famously enunciated in [*Associated Provincial Picture Houses, Limited v. Wednesbury Corporation*, [1948] 1 K.B. 223 (C.A.)] where Lord Greene observed that the Court's task when confronted with a municipal decision is not to decide what the Court thinks is reasonable, but to "decide whether what is *prima facie* within the local authority is a condition which no reasonable authority, acting within the four corners of their jurisdiction could have decided to impose." (At 233.) I do not read *Dunsmuir* as departing from this principle where policy-laden or legislative decisions are concerned. While it may be true that 'something is either rational or is not', I suggest that a wider range of decisions will be seen as reasonable by a court than might appear to be objectively justifiable according to any particular economic theory or empirical analysis.

[22] I approach, then, the standard of reasonableness in that light.

VI. Legislative Authority

[23] Before turning to the specific statutory provisions in issue, it may be useful to outline the differences between the provisions of the *Municipal Act*, R.S.B.C. 1996, c. 323 and sections of the *Local Government Act*, R.S.B.C. 1996, c. 323 which were replaced by the *Community Charter*.

A. The Introduction of the *Community Charter*

[24] In general, the *Municipal Act* and *Local Government Act* conferred powers on municipalities and regional districts under very specific heads of authority. In determining whether a matter fell within the jurisdiction of a municipality reference was made to the specific heads of authority. Anything not specifically provided for was outside the jurisdiction of the municipality.

[25] The *Community Charter*, however, contains no such specific provisions. Instead there are broad heads of authority set forth in s. 8, spheres of concurrent

provincial authority set out in s. 9 and provisions dealing with conflict and jurisdiction, such as ss. 10 and 11.

[26] This contrasts with the prior legislation. Formerly ss. 703 and 704 of the *Local Government Act* conferred the following very specific powers:

703. (1) A council may, by bylaw, do one or more the following:
- (a) regulate or prohibit the keeping of dogs, horses, cattle, sheep, goats, swine, rabbits or other animals and define areas in which they may be kept or may not be kept.

...

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

...

- (c) regulate the sale of animals, and the driving of animals through the municipality;
- (d) prohibit cruelty to animals, and provide for the destruction of any animal suffering from an incurable disease;
- (e) require that the owner, possessor or harbourer of a dog, or any class of dog, must keep it, as the bylaw directs,
 - (i) effectively muzzled while at large or on a highway or public place, or
 - (ii) on leash or under control of a competent person while on a highway or public place.

[27] Subsection 8(3)(k) of the *Community Charter* provides only:

- 8 (3) A council may, by bylaw, regulate, prohibit and impose requirements in relation to the following:
- (k) animals.

[28] Subsection 8(6) of the *Community Charter* provides:

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

[29] Subsections 8(7) and 8(8) provide:

- 8 (7) The powers under subsections (3) to (6) to regulate, prohibit and impose requirements, as applicable, in relation to a matter
 - (a) are separate powers that may be exercised independently of one another,
 - (b) include the power to regulate, prohibit and impose requirements, as applicable, respecting persons, property, things and activities in relation to the matter, and
 - (c) may not be used to do anything that a council is specifically authorized to do under Part 26 [*Planning and Land Use Management*] or Part 27 [*Heritage Conservation*] of the *Local Government Act*.
- 8 (8) As examples, the powers to regulate, prohibit and impose requirements under this section include the following powers:
 - (a) to provide that persons may engage in a regulated activity only in accordance with the rules established by bylaw;
 - (b) to prohibit persons from doing things with their property;
 - (c) to require persons to do things with their property, to do things at their expense and to provide security for fulfilling a requirement.

[30] Subsection 12(1) clarifies how bylaws might differ from one another:

- 12 (1) A municipal bylaw under this Act may do one or more of the following:
 - (a) make different provisions for different areas, times, conditions or circumstances as described by bylaw;
 - (b) establish different classes of persons, places, activities, property or things;
 - (c) make different provisions, including exceptions, for different classes established under paragraph (b).

[31] Part 1 of the *Community Charter* refers to principles of municipal governance and recognizes that municipalities within the Province's jurisdiction are democratically elected, autonomous, responsible and accountable (s. 1(1)). One of the purposes of the *Community Charter* is to give municipalities the flexibility to determine the public interest of their communities and to respond to the different needs and changing circumstances of their communities (s. 3(c)).

[32] The Supreme Court of Canada in *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19 noted that this legislative approach signalled a concomitant move away from strict construction:

[6] The evolution of the modern municipality has produced a shift in the proper approach to the interpretation of statutes empowering municipalities. This notable shift in the nature of municipalities was acknowledged by McLachlin J. (as she then was) in *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231, at pp. 244-245. The "benevolent" and "strict" construction dichotomy has been set aside, and a broad and purposive approach to the interpretation of municipal powers has been embraced: *Nanaimo, supra*, at para. 18. This interpretive approach has evolved concomitantly with the modern method of drafting municipal legislation. Several provinces have moved away from the practice of granting municipalities specific powers in particular subject areas, choosing instead to confer them broad authority over generally defined matters: *The Municipal Act*, S.M. 1996, c. 58, C.C.S.M., c. M225; *Municipal Government Act*, S.N.S. 1998, c. 18; *Municipal Act*, R.S.Y. 2002, c. 154; *Municipal Act, 2001*, S.O. 2001, c. 25; *The Cities Act*, S.S. 2002, c. C-11.1. This shift in legislative drafting reflects the true nature of modern municipalities which require greater flexibility in fulfilling their statutory purposes: *Shell Canada*, at pp. 238 and 245.

[33] Thus, in considering the question of jurisdiction the Court construed the provisions of the enactment before it in "a broad and purposive manner". The *Community Charter* here specifically provides that the powers of municipalities "must be interpreted broadly in accordance with the purposes of [the *Community Charter* and the *Local Government Act*] and in accordance with municipal purposes" (s. 4(1)).

B. Section 8(3)(k)

[34] Section 8(3)(k) directly authorizes a municipality to regulate and prohibit with respect to animals. The terms "animal" and "regulate" are defined terms in the Schedule to the *Community Charter*. "Regulate" is defined to include "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 being regulated".

[35] Either a plain or purposive reading of s. 8(3)(k) in my view indicates that municipalities are authorized to regulate and prohibit dogs, which includes “limit and restrict” and to establish “rules respecting what must or must not be done” in relation to the things being regulated. In this case Richmond has established the Bylaw with respect to what must not be done with an animal, namely, that dogs must not be subject to retail sale in pet stores.

[36] That interpretation is supported by considering the history of municipal control over animals. Section 8(3)(k) is the successor to the provisions of Part 22, Division 1 of the *Local Government Act*. Section 704(c) expressly granted local government the authority to regulate the sale of animals. Section 704(d) would clearly have permitted the regulation of the conditions of the sale of dogs.

C. Section 8(6)

[37] Richmond’s power to regulate in relation to business is more restrictive than the power to regulate or prohibit in relation to animals. Regulation of business necessarily involves restrictions on businesses, including setting out rules of what cannot be done by a business. Municipal regulation of the conduct of business, including prohibiting certain types of transactions, is an established aspect of valid business regulation.

[38] For example, in *Jones v. City of Vancouver*, 51 D.L.R. 320, [1920] 1 W.W.R. 1012 (B.C.C.A.), the Court of Appeal upheld a bylaw prohibiting betting transactions in billiard halls. The prohibition was challenged as a prohibition on business rather than regulation, but this argument was rejected by all five members of the Court. The prohibition on one type of transaction at a billiard hall, even a critical one, does not prohibit the lawful operation of billiard halls but merely regulates them.

[39] To like effect are two more recent decisions of our Court of Appeal: *Murray W. Schacher Enterprises Ltd. v. Vancouver (City)*, [1975] 1 W.W.R. 717 (B.C.S.C.), aff’d on appeal (29 October, 1979) Vancouver (C.A.), and *Re Try-San International and City of Vancouver* (1978), 83 D.L.R. (3d) 236, 5 B.C.L.R. 193 (C.A.), leave to

appeal to S.C.C. refused 15082 (29 June, 1978). In *Murray W. Schachter* the challenge was to a City of Vancouver business regulation bylaw that prevented rental agencies from collecting their fee prior to the tenant securing a rental. This Court found that the bylaw did not prohibit business, only one means of doing business, even though the evidence was that not securing an upfront fee would put the agencies out of business.

[40] In *Try-San International* the bylaw required that body rub parlours' service providers be fully clothed. The parlour argued that it would lose 90% of its revenue if it operated under such a restriction. The Court found both that the evidence was inadequate to establish the economic effect of the bylaw on a class of business, and in any event, the restriction was not a prohibition on a class of business but merely regulation of that class. *Try-San International* was applied in *British Columbia Lottery Corp.*

[41] The Supreme Court of Canada has also found that a municipality may set conditions for the operation of a business that make it uneconomic to continue, but this does not amount to a prohibition on the business itself: see *Montréal v. Arcade Amusements Inc.*, [1985] 1 S.C.R. 368 at 398, 18 D.L.R. (4th) 161.

[42] In this case there is evidence concerning the financial impact on one of the three petitioners. The Pet Stores here however are part of a larger class of ten pet stores, seven of which do not sell dogs. Manifestly, the Bylaw does not prohibit retail pet stores. It regulates the animals that can be sold by them.

[43] In my view the Bylaw regulates businesses that sell pets and pet supplies but does not prohibit them and is a lawfully enacted bylaw pursuant to the municipality's power to regulate in relation to business pursuant to s. 8(6) of the *Community Charter*. It was therefore within Council's jurisdiction to pass the Bylaw; it is *intra vires*.

VII. Is there a Valid Municipal Purpose?

[44] Shifting their attack, the Pet Stores argue that even if the Richmond Council had the jurisdiction to pass the Bylaw, it did not have a valid municipal purpose, and thus the Bylaw fails.

[45] The “purposes of the corporation” or “municipal purposes” are determined not only by reference to those expressly stated but must be compatible with the purpose and objects of the enabling statute: see *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231, 110 D.L.R. (4th) 1; and *CMHC v. North Vancouver*, 2000 BCCA 142 at para. 31, leave to appeal to S.C.C. refused, [2000] 2 S.C.R. vi.

[46] Richmond argues that bylaws are presumed to be enacted in good faith and for proper municipal purposes: *MacMillan Bloedel Ltd. v. Galiano Island Trust Committee* (1995), 126 D.L.R. (4th) 449 at para. 144, 10 B.C.L.R. (3d) 121 (C.A.), leave to appeal to S.C.C. refused, [1996] 1 S.C.R. viii. Courts will not find that a democratically elected Council acted in bad faith unless there is no other rational explanation: see *Arcade Amusements* at 395, *Galiano Island Trust Committee* at para. 178.

[47] Moreover, Richmond need have only one proper purpose for the Bylaw to be valid, even if members of Council may have had other motivations: *Arcade Amusements* at 382, 395; *British Columbia Lottery Corp.* at paras. 33-42. In *Koslowski* at 450, in assessing whether land was expropriated for an improper purpose, the Court said:

In such circumstances, did council have an "ulterior" or illegal purpose? There is no doubt, as I have said, that council was determined to prevent the use of lot A for the construction of a residence. But council's opposition was not coloured by an ulterior purpose. It was entitled to be concerned about sewers, and the evidence does not satisfy me that such concern was not legitimate, or that it assumed a lawful purpose just to disguise an ulterior purpose. The fact that council had more than one purpose, and the fact that one of its purposes may have been its predominant purpose, and beyond its power, does not prevent council from acting lawfully if it also has an honest purpose that is within its statutory powers.

[48] In my view the evidence here supports a finding that Council passed the Bylaw based on its conclusion that that preventing retail pet stores from selling dogs would (a) reduce the number of unwanted and abandoned dogs in Richmond, and (b) improve the conditions of dogs sold as pets in Richmond. The Pet Stores do not seriously dispute this characterization of Council's purpose. Richmond funds animal shelters in its jurisdiction that accept returned and abandoned pets. In light of the cost to Richmond in caring for unwanted dogs, at the very least reducing the number of unwanted and abandoned dogs in Richmond is a valid municipal purpose.

[49] It follows that I find that Council enacted the Bylaw for a valid municipal purpose.

VIII. The Effectiveness of the Bylaw

[50] The Pet Stores argue that the information before Council could not support that either of the purposes advanced by Council would be a reasonable consequence of passing the Bylaw. To what extent should the Court review this aspect of the decision-making process?

[51] The Pet Stores point to the information before Council and argue that it falls woefully short of establishing that passage of the Bylaw would affect either of Council's stated purposes. For example, they say that the source of the unwanted and abandoned dogs in Richmond is not well-known; they could be from outside Richmond altogether. Further, the conditions of dogs sold as pets in Richmond by the Pet Stores are good as two of the three stores do not source from "puppy mills" for their stock, and the allegations about the Hunte Corporation being a puppy mill are unfounded.

[52] On this point, in my view, the Pet Stores are asking that this Court in effect adjudicate on the information before Council. They say that the information before Council cannot prove that the Bylaw would have either of the effects suggested. Of course the information before Council was not evidence admissible in a court of law, nor is it required to be.

[53] Council had before it petitions signed by residents for and against the Bylaw. These are, I suppose, expressions of opinions by residents. They had anecdotal evidence from people who had had good and bad experiences purchasing from the Pet Stores. The anecdotal evidence came in by letters and emails. They had information and opinions from agencies dealing with animal welfare including some statistical evidence on early pet abandonments which the Pet Stores discredit as unreliable and unsubstantiated. They had sworn statements from interested parties. They held public hearings at which citizens expressed their opinions orally, for and against the Bylaw. They had a documentary 'expose' on "puppy mills" and a response to that from the Pet Stores and the American corporation involved.

[54] The question that arises here is whether and to what extent should the Court reweigh the "evidence" or reconsider the wisdom of the Council's decision. In *Arcade Amusements* at 395 the Court referred to the supposed consequences of the bylaw at issue there as "...a question of judgment which is certainly a matter for the legislator". In that case what concerned the councillors was that crime and unfortunate influences would be visited on young arcade users.

[55] In considering the reasonableness standard Madam Justice Newbury in *Catalyst Paper* at para. 33 said that "I do not agree, however, that in order to be reasonable, a decision of a municipal council must be founded on a particular set of objective criteria or even a demonstrably "rational" policy". At para. 34 she noted that the legislative function of municipal councils holds them accountable in a way that no court or administrative tribunal is accountable: "at the ballot box".

[56] The fact that councillors are accountable at the ballot box is a consideration in determining the standard of review for decisions that are *intra vires*: see *Rascal Trucking Ltd.* Thus the wisdom of a decision of Council is not a matter for the court to reconsider: *McLaren* at para. 28.

[57] In my view the effectiveness of legislation is not something that can be measured *a priori*. Nor does the democratic process by which bylaws are enacted

lend itself to scientific scrutiny and analysis which could allow a court to make judgments about the probable consequences of municipal legislation. I do not say that it is never open to a court to assess whether there is a connection between the stated purpose of a bylaw and the measures enacted to serve that purpose. There may be instances in which no reasonable council could enact a particular bylaw for its stated purpose. These circumstances will usually be discovered when considering whether the bylaw fulfills a valid municipal purpose. If there is a valid municipal purpose, assessing whether legislation is effective or not is outside the scope of judicial review.

[58] The court is left to examine a bylaw in terms of reasonableness, based on the decision of the Court in *Catalyst* applying the deference alluded to by the Court of Appeal. Viewed in that light, I must determine whether the Bylaw is reasonable; i.e. whether there is a rational connection between the Bylaw and its valid municipal purpose.

[59] In this case, the municipal purpose is to reduce the number of returned or abandoned dogs. There is a rational connection between the objective of reducing the number of unwanted dogs and placing impediments to purchasing a dog.

[60] Therefore while I have declined to assess the effectiveness of the Bylaw, I find that it is rationally connected to achieving its objective and is therefore valid.

IX. Bad Faith

[61] The Pet Stores argue that Richmond acted in bad faith in the municipal sense. Bad faith is shown where a council exercises a statutory power for a purpose other than that envisaged by the statutory power: *Corporation of the Township of East Luther Grand Valley v. Grosvenor et al.* (2007), 278 D.L.R. (4th) 483 at paras. 36-37, 32 M.P.L.R. (4th) 1 (Ont. C.A.); for example, using licensing as a tool to effect zoning: *Dragonwood Enterprises Ltd. v. Burnaby (City)*, 2009 BCSC 1236 at paras. 84-86.

[62] While Richmond may have the power to prohibit the sale of dogs for valid regulatory purposes, it has no power to do so where its purpose is to drive puppy mills out of business or stop impulse buying.

[63] In support of this argument the Pet Stores cite two Ontario decisions: *Southwold (Township) v. Buwalda*, 24 M.P.L.R. (4th) 54, 2006 CarswellOnt 3384 (cited to CarswellOnt) (S.C.J.) and *Xentel DM Inc. et al. v. City of Windsor* (2004), 243 D.L.R. (4th) 451, 50 M.P.L.R. (3d) 165 (Ont. S.C.J.). Both these authorities quash bylaws relating to exotic animals. There is no mention of there being enabling legislation in either decision.

[64] In *Xentel* the Court found *ultra vires* a bylaw it found unrelated to public safety but motivated by concerns over animal welfare or general morality. At para. 48, *Southwold* followed *Xentel* regarding a bylaw the Court found “would prohibit the ownership and possession of a ‘goldfish’, depending on the discretion of the Animal Control Officer”. The Court found that the municipality acted in haste and “failed to exercise the degree of due diligence which the circumstances and complexity of the issue required”. The process by which the council reached its conclusion was flawed and demonstrated an element of bad faith.

[65] I do not find these cases helpful here. In my view Richmond had a valid municipal purpose in enacting the Bylaw, reducing the number of unwanted and abandoned dogs in Richmond. Reducing impulse purchasing was not a purpose of the Bylaw, as the petitioners contend, but one means of achieving the purpose of reducing unwanted dogs. As outlined above, as long as there is a valid municipal purpose, an honest purpose within its statutory powers, it matters not that there are concurrent invalid ones: *Kosłowski* at 450.

[66] Therefore, as I have found that Richmond sought to reduce the number of unwanted dogs and that this was a valid municipal purpose, it is not necessary that I consider whether the municipality might have had other objectives in enacting the Bylaw.

X. Discrimination

[67] The Pet Stores say that the Bylaw unlawfully discriminates against them because it denies the right to pet stores to sell dogs but allows breeders, kennels and others to sell through the internet; it makes no purposive distinction. The Pet Stores also say that the Bylaw is defective because it does not capture all of the problematic behaviour.

[68] In order to find discrimination I must find: (1) that the bylaw gives permission to one person and refuses permission to another; and (2) the factual discrimination is being carried out with an improper motive of favouring or hurting one individual without regard to the public interest: *Century Industries Ltd. v. Dickinson* (1991), 5 M.P.L.R. 2(d) 315, 1991 CarswellBC 628 at para. 12 (S.C.), citing *Lees v. West Vancouver (District)*, [1980] 1 W.W.R. 124, 15 B.C.L.R. 233 (C.A.). *Century Industries* was an application for an injunction preventing the municipality from rezoning certain lands and thereby restraining the plaintiff from developing those lands.

[69] Richmond acknowledges that it is treating kennels and the city's animal shelters differently from retail stores in terms of their ability to sell dogs. Richmond says that it is entitled to make distinctions between businesses and classes of business, and also between retail businesses and the municipality's non-profit animal shelter as there is a rational basis for these distinctions and relies on ss. 8(3)(k), 8(6), 12(1)(a) and 15 of the *Community Charter*. Richmond says that perfection is not required, and cites *Restaurant and Food Services Assn. of British Columbia and the Yukon et al. v. City of Vancouver* (1998), 155 D.L.R. (4th) 587, 43 B.C.L.R. (3d) 178 (C.A.).

[70] In that case the Court of Appeal dismissed an appeal from a decision of Cohen J., upholding a Vancouver bylaw which regulated smoking in licensed establishments. Smoking was only barred in certain classes of establishment. It imperfectly achieved its health objective because some children, who were said to benefit from the restriction, might come into contact with second hand smoke in some of the premises in which smoking remained legal. The bylaw was admitted to

be discriminatory because exemptions permitted smoking in some establishments, but was said to fall within the city's jurisdiction as s. 203 of the *Vancouver Charter*, S.B.C. 1953, c. 55 authorized distinctions and discrimination between groups and classes of businesses.

[71] Finch J.A. (as he then was), found a rational foundation for the distinction which prohibited smoking in premises where minors had free admittance and confined smoking to defined areas from which minors were generally restricted. Based on health reasons the regulation was not perfect – that is it did not protect all minors from all second hand smoke in licensed establishments – but it was a “political compromise” and “half a loaf” is better than none (see *Restaurant and Food Services* at para. 29).

[72] In my view s. 12(1) of the *Community Charter*, although more general in scope, is comparable to the provisions of the *Vancouver Charter* that authorized discrimination in *Restaurant and Food Services*. I repeat that provision here for ease of reference:

- 12 (1) A municipal bylaw under this Act may do one or more of the following:
- (a) make different provisions for different areas, times, conditions or circumstances as described by bylaw;
 - (b) establish different classes of persons, places, activities, property or things;
 - (c) make different provisions, including exceptions, for different classes established under paragraph (b).

[73] Richmond has chosen to enact provisions which differentiate between retail pet stores and hobby kennels and commercial kennels with the goal of reducing the number of returned and abandoned dogs in the city. The *Community Charter* provides Richmond the authority to make distinctions between classes of business and to make distinct provisions for different circumstances to achieve that valid objective.

[74] The Bylaw is not discriminatory because it treats pet stores differently. It is discriminatory if the distinction is not made with reference to the public interest.

Here Council distinguished between businesses which made it relatively easy to purchase a dog and those which made it more difficult. There was some evidence that it was easier to purchase a dog from a pet store; it was possible to buy the dog and take it home the same day with little screening. Breeders and kennels had stricter criteria and often there was a delay between choosing a dog and taking it home.

[75] In my view, imposing an obstacle to purchasing a dog is a rational way to minimize the number of unwanted and abandoned dogs in the city.

[76] In addition, it goes without saying that there is a public interest in ensuring that dogs which have already been abandoned to animal shelters and which are being supported with public funds find a new home, and Richmond cannot be faulted for treating those facilities differently from pet stores.

[77] Council has made the political decision not to ban the sale of dogs in Richmond but to prohibit sales from locations which may encourage impulse buying. The Bylaw will not solve the problem entirely. However, in trying to craft a solution, Richmond is not required to completely eradicate the problem of unwanted dogs. Requiring owners to put additional thought and preparation into their decision to purchase a dog is rationally connected to reducing unwanted dogs in the city.

[78] The Pet Stores have not demonstrated that the Bylaw is impermissibly discriminatory.

XI. Reasonableness

[79] The Pet Stores say that the Bylaw is unreasonable; no reasonable authority acting within the four corners of their jurisdiction could have decided to impose the Bylaw. In their written argument the Pet Stores make the point this way:

The Petitioner says that no reasonable authority acting within its jurisdiction could have come up with this bylaw. There was no evidence before the Council at all relating to impulse buying of Pets. There was opinion of RAPS and SPCA volunteers that people buy on impulse. This is undoubtedly true. People do most things on impulse including getting married. There is no

connection established that people who do things on impulse change their minds. To the contrary decisions made very quickly can be every bit as good as decisions made cautiously and deliberately.

[80] With respect, in my view the Pet Stores have overstated their case. There was some anecdotal evidence regarding purchases of dogs at pet stores including the Pet Stores at issue here. There was some evidence regarding the differences between purchase experiences at the Pet Stores and the adoption procedures at animal shelters, including the SPCA and RAPS.

[81] There was anecdotal evidence from the operators of the animal shelters including the SPCA and RAPS regarding their own adoption procedures and some statistical evidence regarding dog abandonment to shelters, some within a very few months of purchase. There was information before the Council on the Canadian Kennel Club preferred practices. There were also some partially redacted forms that were said to be samples of the kinds of return information given by owners releasing their pets to the animal shelters.

[82] The standard of review of the reasonableness of a municipal council's decision was most recently considered by the Court of Appeal in *Catalyst Paper* at para. 34:

[34] This accords with the obviously political – as opposed to administrative or adjudicative – functions of municipal councils. Members of such councils are elected to act in what they believe is in the best interests of the municipality rather than to play an independent role in adjudicating between specific interests. They bring certain views – on the basis of which they are elected – to bear on municipal decisions. These views may include ideologies that may or may not place value on the presence of industrial enterprises in the municipality, even those that employ large numbers of workers. Other members of the same council may have different views. Compromises are often necessary. Council members do not give reasons in any formal sense. Finally, they are 'accountable' in a way no court or administrative tribunal is accountable – i.e., at the ballot box. As was noted by Ann McDonald in "In the Public Interest: Judicial Review of Local Government" (1983) 9 *Queen's L.J.* 62:

Once elected ... the council is entrusted with responsibility for governing, not just in the interest of those who elected them, but in the interest of the community generally, that is, in *the public interest*. This is a fairly vague and controversial concept, however. It is a generalized judgment of what is best

for individuals, *as a part of a community*. From the perspective of particular individuals and interest groups, the public interest may be conceived differently and, as amongst them, views of the public interest will inevitably conflict. A council making its decision on the public interest will identify and weigh a wide variety of competing considerations: the demands of various interested parties, the advice of its experts, data from its own research resources. And it will undoubtedly be influenced by the preferences expressed by the electorate. The decision is ultimately a matter of choice and what a council decides is necessarily its own collective perception of the public interest.

The voters of a community give their elected council members the final judgment in this controversy. Whether the councillors are right or wrong in their judgment depends on the vantage point of the person making this assessment, but in any event, this is the decision they were elected to make. There may, in fact, be no right or wrong in the matter. Persons displeased with a council's decision have "a remedy at the polls". [At 100, quoted by McLachlin C.J.C. in dissent in *Shell Canada, supra*. at para. 22.]

[83] In my view, the Council's decision was on a policy laden topic on which there is no established "right or wrong in the matter". The decision to prohibit the sale of dogs in pet stores falls within a range of acceptable outcomes that are defensible with regard to the facts and law. There is rational connection between the Bylaw and its objective.

XII. Conclusion

[84] The Petition is dismissed.

[85] The Respondent is entitled to its costs at Scale B.

"The Honourable Mr. Justice Savage"

Schedule "A"
Business Regulation
BYLAW No. 7538

SCHEDULE B to BYLAW NO. 7538

PROHIBITED ANIMALS*:

1. All **animals** whose importation, possession or sale is prohibited because they are designated as protected or endangered pursuant to an international, federal, or provincial law, regulation or agreement.
2. All **venomous** or **toxic animals** (which includes **reptiles** and arachnids), regardless of whether the venom glands have been removed.
3. The following **reptiles**:
 - (a) All snakes that reach a length of two (2) metres or more on maturity and the following snakes:
 - (i) Amethyst python (*morelia amethystina*);
 - (ii) Burmese python (*python molarus bivittatus*);
 - (iii) Reticulated python (*python reticulatus*);
 - (iv) African rock python (*python sebae sebae*);
 - (v) Indian rock python (*python molurus*);
 - (vi) Green anaconda (*eunectes murinus*);
 - (vii) Yellow anaconda (*eunectes notaeus*)
 - (b) All lizards that reach a length of one (1) metre or more (measured from snout to tail) on maturity and the following lizards:
 - (i) African Nile monitor (*varanus niloticus*);
 - (ii) Asian water monitor (*varanus salvator*);
 - (iii) Papuan monitor (*varanus salvadorii*);
 - (iv) Common green iguana (*iguana iguana*);
 - (v) Tuatara (*sphedonitida*);
 - (c) All crocodylians (such as alligators, crocodiles, caimans, and gharial);
 - (d) All aquatic turtles; and
 - (e) All tiger salamanders and axolotyls (Mexican salamanders or 'walking fish').
4. All arachnids falling under the conventional classification of "Old World";
5. All bullfrogs;
6. All scorpions except the *Pandinus* species;

7. All millipedes, centipedes, mantids, stickbugs, and Madagascar hissing cockroaches.
8. The following species:
 - Artiodactyla, (such as cattle, goats, sheep, pigs)
 - Canidae (such as wolves, jackals, foxes and hybrids thereof), including **puppies and dogs**
 - Chiroptera (bats, including flying foxes)
 - Edentates (such as anteaters, sloths and armadillos)
 - Elephantidae (elephants)
 - Erinacidae (except the African pigmy hedgehog)
 - Felidae, except the domestic **cat**
 - Hyaenidae (hyenas)
 - Lagomorpha (such as rabbits, hares and pikas)
 - Marsupials (such as kangaroos, opossums, and wallabies), except sugargliders derived from self-sustaining captive populations
 - Mustelidae (such as mink, skunks, otters, badgers and weasels), except the domestic ferret
 - Pinnipeds (such as seals, fur seals and walruses)
 - Perissodactylous ungulates (such as horses, donkeys, and mules)
 - Primates (such as gorillas, chimpanzees, lemurs and monkeys)
 - Procyonidae (such as raccoons, coatimundi and cacomistles)
 - Raptors, diurnal and nocturnal (such as eagles, hawks and owls)
 - Ratites (such as ostriches, rheas and cassowaries)
 - Rodentia (such as porcupines and prairie dogs), except rodents which do not exceed 1,500 grams and are derived from self-sustaining captive populations
 - Ursidae (bears)
 - Viverridae (such as mongoose, civets, and genets)

*The animals listed in brackets are examples only and do not limit the generality of the listed class of species.

Schedule "B"
Business Regulation
BYLAW No. 7538

PART ELEVEN - KENNEL REGULATION

11.1 Commercial Dog Kennels and Cat Kennels

11.1.1 Parcel Requirements and Restrictions

- 11.1.1.1 A **commercial dog kennel** or **cat kennel** may only be located on a parcel which is at least two (2) hectares (4.94 acres) in size and has a frontage of at least 60 metres (197 feet).
- 11.1.1.2 The **operator** of a **commercial dog kennel** or **cat kennel** must ensure that such kennel is not located:
 - (a) on a **parcel** which contains, or has situated on it, any other building or structure other than a single-family dwelling and necessary outbuildings, including staff living quarters which are ancillary to the single-family dwelling; and
 - (b) within 50 feet of any single-family dwelling located on the same parcel, nor within 80 feet of any other dwelling.
- 11.1.1.3 Every **operator** of a **commercial dog kennel** or **cat kennel** must ensure that the **parcel** on which such kennel is located has:
 - (a) an **outdoor run** which:
 - (i) has minimum dimensions of 4 feet in width, 12 feet in length, and 6 feet in height;
 - (ii) is separated from any other **outdoor runs** by a concrete wall which is not less than 18 inches high and 4 inches wide; and
 - (iii) is enclosed with a metal mesh fence on the top and on all sides;
 - (b) has a fence placed around the portion of the **parcel** on which the kennel is located, which:
 - (i) is at least 6 feet in height, to prevent visibility from the outside;
 - (ii) is situated not less than 10 feet, nor more than 20 feet from the kennel, or from the building and its **outdoor runs**; and
 - (iii) is kept in good repair.

11.1.2 Operator Obligations – Building Standards

11.1.2.1 Every **operator** of a **commercial dog kennel** or **cat kennel** must ensure that the building or part of a building used for kennel purposes:

- (a) has a clean air space of not less than 80 cubic feet, and is installed with a mechanical apparatus to provide at least one complete change of air per hour;
- (b) has a ceiling height of not less than 8 feet measured perpendicularly from the floor;
- (c) has floors which:
 - (i) are constructed of an easily cleaned impervious material;
 - (ii) have a 2 inch fall to a drainage gutter, connected to a sanitary sewer or septic tank; and
 - (iii) have an area of not less of than 10 square feet for each animal kept or kennelled;
- (d) has interior walls and ceilings:
 - (i) constructed of a smooth impervious material to a height of 4 feet above the floor, and
 - (ii) constructed of or containing at least 3 inches of insulation or its equivalent, for the purpose of soundproofing;
- (e) has an adequate supply of running hot water which is available at all times for the purpose of washing the animals and cleaning the premises;
- (f) is adequately heated;
- (g) has an adequate number of animal pens or cages, each of which:
 - (i) is impervious to a height of 4 feet above the floor;
 - (ii) contains suitable bedding on which animals may sleep or rest;
 - (iii) facilitates the provision of an adequate supply of fresh water for each dog and cat;
 - (iv) is of a design, finish and size which does not restrict the movement of the animals unnecessarily,
 - (v) permits easy cleaning;
 - (vi) is kept in good repair at all times; and

- (vii) has a doorway which may be of a dutch-door type, connecting the animal pen or cage to a secured hallway of at least 4 feet in width, and that there is at least one isolation pen or cage for each 20 animals;
- (h) has a suitable **whelping area**;
 - (i) is at all times, together with all animal pens and cages:
 - (ii) kept in a clean and sanitary condition, and free from **vermin** and rodents; and
 - (iii) regularly disinfected and free of offensive and disagreeable odours to the satisfaction of the **Medical Health Officer**;
- (i) has all external openings, other than those used as egress or ingress to an outdoor run, equipped with insect screens;
- (j) is kept free of all animal waste, which the operator must dispose of in a manner approved by the Medical Health Officer;
- (k) contains the following facilities and accommodation:
 - (i) a separate or combined public waiting room and office;
 - (ii) a food storage and preparation room containing adequate refrigeration equipment and a sink with running hot water;
 - (iii) adequate toilets and washbasins for use by employees;
 - (iv) a grooming room having running hot water for the bathing of animals; and
 - (v) a laundry tub connected to running hot water for the cleaning of animal pens and cages.

11.1.3 Operator Obligations – Maintaining of Animal Register

11.1.3.1 Every **operator** of a **commercial dog kennel** or **cat kennel** must:

- (a) maintain for inspection at all reasonable times by the **Licence Inspector**, a register of **dogs** and **cats** in care, which provides the following information:

- (i) the name, address and telephone number of the owner of the **dog** or **cat**;
 - (ii) the name, breed and species of the **dog** or **cat**; and
 - (iii) the dog licence tag number of each **dog** in care;
- (b) prominently display in the public waiting room the rates charged for services rendered.

11.1.4 Operator Obligations –Animal Care

11.1.4.1 Every **operator** of a **commercial dog kennel** or **cat kennel** must ensure that all **dogs** or **cats** in care:

- (a) are fed and watered from utensils which have been washed daily; and
- (b) are properly controlled and restrained from barking, yelping or howling.

11.1.4.2 Every **operator** of a **commercial dog kennel** or **cat kennel** who has a **dog** or **cat** in care, which either is, or appears to be, suffering from a disease transmittable to humans or other animals, must:

- (a) immediately notify the **Medical Health Officer**; and
- (b) ensure that such **dog** or **cat** is kept isolated from healthy **dogs** or **cats**, until it has been determined by the **Medical Health Officer** that such **dog** or **cat** is free from the disease in question.

11.1.4.3 Where an **operator** has received notice from the **Medical Health Officer** in accordance with subsection 11.1.4.2 that a **dog** or **cat**:

- (a) is diseased, the **operator** must not permit such **dog** or **cat** to come into contact with, or be in danger of transmitting the disease to other **dogs** or **cats**; or
- (b) is suffering from an incurable disease, the **operator** must advise the owner of such **dog** or **cat**, who must make arrangements to have it immediately destroyed in a manner approved by the **Medical Health Officer**.

11.1.5 Operator Obligations – Pet Food Sales

11.1.5.1 The **operator** of a **commercial dog kennel** or **cat kennel** is permitted to sell pet food of all kinds, as well as related animalcare products, provided that any fresh and frozen pet food containing animal tissue which is offered for sale:

- (a) has been **purchased** by the **operator** from an approved Government inspected source;

- (b) has been prepared, packaged and stored in a location inspected and approved by Government Inspectors;
- (c) is labelled with the name of the **business** in question at the time of sale to the public; and
- (d) is labelled "Not for Human Consumption – Dog Food" at the time of sale to the public.

11.2 Dog Daycare Facilities

11.2.1 Parcel Requirements and Restrictions

- 11.2.1.1 A **dog** daycare facility may only be located on a **parcel** which is at least one (1) hectare (2.5 acres) in size and has a frontage of at least 38 metres (125 feet).
- 11.2.1.2 The provisions of subsection 11.1.1.2 regarding buildings or structures other than a single-family dwelling, and the provisions of subsection 11.1.1.3 regarding the provision of an **outdoor run** and fencing, apply to the operator of a **dog** daycare facility.

11.2.2 Operator Obligations – Hours of Operation and Maximum Number of Animals

- 11.2.2.1 The **operator** of a **dog** daycare facility:
 - (a) must not care for more than 20 **dogs** at any time; and
 - (b) may only operate between the hours of 7:00 a.m. and 7:00 p.m., Monday to Friday inclusive.

11.2.3 Operator Obligations – Building Standards

- 11.2.3.1 The provisions of subsection 11.1.2.1 regarding building standards apply to the **operator** of a **dog** daycare facility.

11.2.4 Operator Obligations – Maintaining of Animal Register

- 11.2.4.1 The provisions of subsection 11.1.3 regarding the maintaining of an animal register apply to the **operator** of a **dog** daycare facility.

11.2.5 Operator Obligations – Animal Care

- 11.2.5.1 The provisions of subsection 11.1.4 regarding animal care apply to the **operator** of a **dog** daycare facility.

11.2.6 Operator Obligations – Pet Food Sales

- 11.2.6.1 The provisions of subsection 11.1.5 regarding the sale of pet food apply to the **operator** of a **dog** daycare facility.

11.3 Hobby Dog Kennels

11.3.1 Parcel Requirements and Restrictions

- 11.3.1.1 A **hobby dog kennel** may only be located on a **parcel** which is at least 4,050 square metres (1 acre) in size and has a frontage of at least 18 metres (60 feet).

11.3.2 Operator Obligations – Maximum Number of Animals

- 11.3.2.1 The **operator** of a **hobby dog kennel** may keep or own two, but not more than five **dogs** at any time but must not accept any **dog** for the purpose of boarding, grooming, harbouring, training or keeping for any purpose.

11.3.3 Operator Obligations – Buildings

- 11.3.3.1 The provisions of subsection 11.1.2 regarding building standards, with the exception of clause (c)(ii); (d)(i) and (g)(i) and (vii), apply to the **operator** of a **hobby dog kennel**.

11.3.4 Operator Obligations – Animal Care

- 11.3.4.1 The provisions of subsection 11.1.4 regarding animal care apply to the **operator** of a **hobby dog kennel**.