

Legal Options for a Horse-Drawn Vehicle Prohibition or Stringent Regulations in the City of Victoria

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Introduction

The national, provincial, and local political contexts around the prohibition of horse-drawn vehicles make the legality of such a prohibition a very relevant and timely issue.

Federally, municipalities across Canada have either entered or considered entering into horse-drawn vehicle prohibitions.¹ Locally, City Councillors of Victoria have come out publicly in support of getting horses off of the streets of the municipality.² Moreover, the Victoria Horse Alliance has proposed and advocated for a ban on horse-drawn vehicles in Victoria, following the steps of Friends of Animals, who had earlier proposed a ban on horse-drawn vehicles to council.³ Furthermore, a petition to ban horse-drawn vehicles has reached 38 480 votes, and the BC SPCA has made formal recommendations to substantially change the regulations of the horse-drawn vehicles.⁴ It is important to note that this municipal issue has arisen in the midst of larger discussions around animals provincially and federally. Regarding the larger national

¹ Katie Dangerfield, "Horse-drawn carriages draw controversy across Canada – why are advocates pushing for a ban," (29 June 2018) *Global News*, online: <<https://globalnews.ca/news/4299637/montreal-bans-horse-drawn-carriage-canada/>> [https://perma.cc/T874-HCP4].

² CBC News, "Horse-drawn carriages not appropriate for Victoria, councillor says," 14 March 2018, *CBC News* source: <https://www.cbc.ca/news/canada/british-columbia/ben-isitt-horse-drawn-carriages-victoria-1.4575944> [https://perma.cc/96EK-YJGV].

³ Shannon Elliot, "Victoria's Horse-Drawn Carriages: Concerns Over Safety, Health and Appropriateness," (3 April 2007), *Ban Horse Carriages Victoria*, online: *Ban Horse Carriages Victoria* <<http://www.banhorsecarriagesvictoria.org/wp-content/uploads/2015/12/foa-carriage-elliott-report.pdf>> [https://perma.cc/C4FG-FUJS].

⁴ Letter from Craig Daniel to Mayor Helps and Council, May 28. 2019, <https://spca.bc.ca/wp-content/uploads/City-of-Victoria-Mayor-and-Council-05-28-18.pdf>

context, Justice Abella of the Supreme Court of Canada in *R v DLW (DLW)* has recently recognized that there is a “transformed legal environment consisting of more protection for animals.”⁵ Further, both the majority in *Bogaerts v Attorney General of Ontario (Bogaerts)*⁶ and the minority (Chief Justice Fraser) in *Reece v Edmonton (Reece)*⁷ have recognized the vulnerability of animals in the administrative and municipal law frameworks (respectively). It is in light of this complex political and legal context that I consider the broader considerations around the prohibition of horse-drawn vehicles in Victoria. In particular, I propose to determine the authorities the City of Victoria could use to prohibit horse-drawn vehicles. Subsequently, I identify particular legal challenges that could arise from a ban or more stringent regulations.

The paper will be divided into five sections. First, it will provide an overview of the social, political, and economic context of horse-drawn vehicles within the municipality of Victoria. This will be important not only in terms of providing context but also to determining any municipal purposes that could support increased regulations and/or a ban. The second section will distinguish the difference between the City of Victoria’s enabling legislation and that of the City of Montréal, under which it could enact bylaw 18-041: By-law Prohibiting Calèches [horse-drawn vehicles]⁸ (which enters into force December 31, 2019). The third section will consider three grounds of the City’s ability to prohibit horses or horse-drawn vehicles: the City’s prohibition powers in relation to carnivals, public shows, exhibitions, and performances; the City’s prohibition powers in relation to animals; and the City’s prohibition powers in relation to highways. The fourth section will consider the legal issues that could arise from a prohibition of

⁵ *R v DLW*, 2016 SCC 22, [2016] 1 SCR 402 at para 141.

⁶ *Bogaerts v Attorney General of Ontario*, 2019 ONSC 41, 2019 ONSC (CanLII).

⁷ *Reece v Edmonton*, 2011 ABCA 238, 2011 ABCA 238 (CanLII).

⁸ City of Montréal, by-law No 18-041, *By-law Prohibiting Calèches* (20 August 2018).

horse-drawn carriages or from the adoption of increased regulations, such as those the BC SPCA has proposed. It will end with a short conclusion.

Part One: The Social, Political, and Economic Context of Horse-Drawn Vehicles in Victoria

Sight-seeing horse carriage businesses have a long and historical relationship with the City of Victoria. For example, Tally-Ho has been operating in Victoria since 1903.⁹ They are an income-generating business and hire a number of students throughout the year. Nonetheless, their business has historically comprised of up to 80% of the bylaw enforcement issues in the entire city.¹⁰ In the past three years, there have been 35 incidents recorded around property damage, collisions, personal injury, and other threats to welfare and safety as a result of horse-drawn vehicles in the municipality of Victoria.¹¹ In June 2018, after the collapse of a horse and alleged mishandling by the horse-drawn business organization, the BC SPCA released recommendations around prohibiting horse-drawn carriages in Victoria's downtown core and moving them to Beacon Hill park in the interests of public safety and animal welfare.¹² Following these recommendations, the municipality of Victoria updated only one term of their regulations, which was to require identification criteria on each of the horses. The matter was reportedly submitted to staff for a broader re-consideration of the issues that the recommendations was raised, but there has been no reported change as of yet.¹³

Part Two: Comparing Montréal to Victoria on the Horse-Drawn Vehicle Prohibition Issue

⁹ Tally-Ho Carriage Tours, "Our History," *Tally-Ho Carriage Tours* (2019), online: <<https://www.tallyhotours.com/about-us/#history>> [https://perma.cc/XL7V-SM7T]

¹⁰ Shannon Elliot, *supra* note 3 at 7.

¹¹ Jordan Reichert, "2019 Report on the Operation of Horse-Drawn Carriages in Victoria B.C.," (2019) Victoria Horse Alliance and Animal Alliance of Canada at 7.

¹² Craig Daniel, *Letter from Craig Daniel to Mayor Helps and Council*, (28 May 2019), online: <<https://spca.bc.ca/wp-content/uploads/City-of-Victoria-Mayor-and-Council-05-28-18.pdf>> [https://perma.cc/8ZZ4-2F8R].

¹³ Jordan Reichert, "2019 Report on the Operation of Horse-Drawn Carriages in Victoria B.C.," (2019) Victoria Horse Alliance and Animal Alliance of Canada at 4.

Because the City of Montréal has prohibited horse-drawn vehicles, some proponents may wonder if that enables the City of Victoria to prohibit them as well. In response to this claim, I summarize and distinguish the legislation that enabled the City of Montréal's prohibition on horse-drawn vehicles Bylaw 18-041 from that of the City of Victoria.¹⁴ Bylaw 18-041 was enabled by three pieces of legislation, two of which are relevant to this discussion. Provision 68, section C, of the *Charter of the City of Montréal (Charter)* established that Montréal has various powers with regard to the regulation of horse-drawn carriages.¹⁵ Section ten of the *Municipal Powers Act*¹⁶ gives the City of Montréal the ability to regulate with regard to economic activities. Section six of the same act states that Montréal's regulatory powers include the power to prohibit. The definition's inclusion of prohibition powers is important because it effectively means that Montréal has the ability to prohibit both in terms of its regulatory powers in regard to horse-drawn carriages and its regulatory power in relation to economic activities. This is distinguishable from the City of Victoria, whose ability to regulate businesses under *Community Charter* section 8(6) is limited to a definition of regulate that only "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 being regulated."¹⁷ In addition to its enabling legislation, another factor militating in favour of supporting a bylaw for the City of Montréal is the Québec provincial Government's recent recognition of animal sentience in section 898.1 of its 2015 Bill 45: *An Act to improve the legal situation of animals*.¹⁸ This provision has been read in cases such as *Montréal (Ville de) c Lours*, to strike down some

¹⁴ Bylaw 18-041, *supra* note 8.

¹⁵ *Charter of the City of Montréal*, SQ 1996, c 102.

¹⁶ *Municipal Powers Act*, CQLR 2009, C-47.1.

¹⁷ *Community Charter*, SBC 2003, c 26 at schedule sec 1.

¹⁸ *An Act to improve the legal situation of animals* (Bill 54), SQ 2015, c 35.

sections of the City of Montréal's breed specific bylaw as a result of its incompatibility with this legislation.¹⁹ While this legislation is new, and so far has only been used to limit municipal authority, it is possible that such legislation could help to bolster municipal confidence around regulating and prohibiting animals. Given that the municipality of Victoria cannot look to a sentence provision in support of prohibitions or regulations for animals, or a broader power to prohibit economic activities, the comparison of the legal ability for Montréal to enact horse-drawn vehicle prohibitions is of limited assistance.

Part Three: Identifying Municipal Powers that May Support a Horse-Drawn Vehicle

Prohibition in Victoria

Moving on from this case study, this section will look at three powers municipality of Victoria to prohibit horse-drawn vehicles: 1) its power to prohibit in relation to carnivals, public shows, exhibitions, and performances, 2) its prohibition powers in relation to animals, and 3) its prohibition powers in relation to highways.

Prohibition powers in relation to carnivals, public shows, exhibitions, and performances

Municipalities inability to prohibit in relation to business under the *Community Charter* in British Columbia has one exception: the ability to prohibit in relation to carnivals, public shows, exhibitions and performances.²⁰ This section (59(1)(d)) of the *Community Charter* enables Victoria to prohibit in relation to “prohibit the operation of a public show, exhibition, carnival or

¹⁹ *Lours c Montréal (Ville de)*, 2016 QCCS 4770, 2016 QCCS 4770 (CanLII). Note that this case never went back to court on the issue of whether breed specific legislation was incompatible with the provisions as a result of the fact that breed specific provisions was repealed by the subsequent government Laura Marchand, “Project Montréal has vowed to repeal the pit bull ban, but dangerous dogs still euthanized, (26 October 2017) *CBC News*, online: <<https://www.cbc.ca/news/canada/montreal/projet-montreal-has-vowed-to-repeal-the-pit-bull-ban-what-would-happen-next-1.4374155>> [https://perma.cc/CH9E-Z492].

²⁰ *Community Charter*, SBC 2003, c 26 at 59(1)(d).

performance of any kind or in any particular location.”²¹ Under this power, the City of Victoria has enacted section 16 of the *Animal Responsibility Bylaw*, which provides that

- (1) A person must not operate or carry on a public show, exhibition, carnival or performance in which animals are required to perform tricks, fight or otherwise participate for the amusement or entertainment of an audience.
- (2) Despite subsection (1), a person may operate or carry on: 1. (a) an exhibition or performance involving horses or in which individuals ride horses or ponies. . . . if the person does not use or treat any animal in an inhumane manner for profit or advantage.²²

One could argue that horse-drawn vehicles could be understood to fit under this power given that the City of Victoria phrases section 16(2)(1)(a) as an exception to the broader prohibition on shows, exhibitions, carnivals, or performances. To accomplish this, however, one would be required to consider whether individuals riding horses or using carriages could be interpreted as a “public show, exhibition, carnival or performance” as considered in the *Community Charter*.²³

Prohibition powers in relation to animals and in relation to property

Under section 8(3)(k) of the *Community Charter*, the City of Victoria has the ability to “regulate, prohibit, and impose requirements in relation to animals.”²⁴ In addition, section 8(8)(b) of the *Community Charter* gives the City of Victoria the ability to “prohibit persons from doing things with their property.”²⁵ An example of municipal legislation made under this bylaw is section 27 of the *Animal Responsibility Bylaw* of the City of Victoria, which prohibits the keeping of “(1) . . . (a) farm animal[s], (b) rooster, or (c) peafowl” but exempts from this regulation “(2) . . . (a) a person who is licensed to operate a business using a horse drawn sightseeing vehicles pursuant to the Vehicles for Hire Bylaw with respect to horses used in the

²¹ *Community Charter*, SBC 2003, c 26 at 59(1)(d).

²² City of Victoria, by-law No 11-044, *Animal Responsibility Bylaw* (13 August 2018), s 16.

²³ *Community Charter*, SBC 2003, c 26 at 59(1)(d).

²⁴ *Community Charter*, SBC 2003, c 26 at 8(3)(k).

²⁵ *Community Charter*, SBC 2003, c 26 at 8(8)(b).

business.”²⁶ One could argue that, because the City of Victoria has included horse-drawn sightseeing vehicles as an exception to the bylaw, that they would equally be able to rescind this exception and prohibit them in relation to their ability to prohibit in relation to animals. The later section on issues raised in the use of prohibition powers will discuss the extent of the City of Victoria’s power to prohibit in relation to these sections and whether or not section sixteen of the *Animal Responsibility Bylaw* could help to address whether such a prohibition would be *intra vires* in relation to common law in British Columbia.

Prohibition power in relation to highways

Section 36 of the *Community Charter* gives municipalities the ability to “regulate and prohibit in relation to all uses of or involving a highway or part of a highway” in accordance with the *Motor Vehicles Act* (MVA) section 124(13)²⁷ and municipalities’ ability to prohibit in relation to extraordinary traffic. Section 124(13) of the MVA states that

The council of a municipality may, by bylaw not inconsistent with or derogatory to this Part, provide for the following:

...

(b) the regulation, control or prohibition of . . . ridden or herded animals, vehicular traffic and traffic by other conveyances, either singly or together, on sidewalks, walkways or boulevards, or in or on lanes or ways separating the rear property lines of parcels of land fronting on highways running more or less parallel to and on each side of the lanes or ways, and at intersections of the lanes or ways, and at intersections of the lanes or ways with each other or with highways;

(c) the regulation, control or prohibition of the stopping, standing or parking of vehicles in the municipality²⁸

If we consider horse-drawn vehicles to be interpreted as either “ridden or herded animals” or to fall within the understanding of “vehicular traffic and traffic by other conveyances,” then this provision could be interpreted to give the municipality of Victoria sufficient prohibitory powers

²⁶ *Animal Responsibility Bylaw*, *supra* note 21 s 27.

²⁷ *Community Charter* *supra* note 17 at 36(2)(a); *Motor Vehicle Act*, RSBC 1996, c 318 at 124(13).

²⁸ *Motor Vehicle Act*, RSBC 1996, c 318 at 124(13).

in relation to horse-drawn vehicles. Importantly, however, 124(13)(13) states that municipal bylaws that regulate, control, or prohibit traffic on arterial highways “as defined in the *Transportation Act*” must have the approval of the “minister responsible for the administration of the *Transportation Act*.”²⁹ As a result, a municipality hoping to apply a bylaw prohibiting horse-drawn vehicles in Victoria would likely need to seek the approval of the minister when they apply to arterial highways. The next section will consider how the City of Victoria’s ability to prohibit is potentially limited by the broader common law context and division of powers around businesses.

Prohibition Power in Relation to Public Safety

The *Community Charter* also enumerates that the municipality of Victoria has the power to prohibit in relation to “the health, safety or protection of persons or property in relation to matters referred to in section 63.”³⁰ Given the finding of the number and severity of events impacting horse-drawn carriages, this may constitute another valid ground on which to prohibit horse-drawn vehicles in the municipality. Considerations around this will also be discussed below.

Part Four: Issues that Could Arise in the Prohibition or Regulation of Horse-Drawn Vehicles

There are numerous issues that could arise in the face of a prohibition or increased regulations to horse-drawn vehicles in Victoria. This section will address five issues: claims that a prohibition or increased regulation effectively prohibits a business (contrary to its limited powers to regulate under *Community Charter* section 8(6)), claims that the prohibition would be made in bad faith, claims that the contractual relationship between the City and the municipality

²⁹ *Community Charter* *supra* note 17 at 36(2)(a); *Motor Vehicle Act*, RSBC 1996, c 318 at 124(13)(13).

³⁰ *Ibid* at 8(3)(g)

could fetter the municipality's lawmaking power, claims that compensation would need to be paid to the horse carriages, and claims that the Municipality is enacting legislation that was also motivated by concerns outside of its jurisdiction.

Claims that the Prohibition Effectively Prohibits a Business

As outlined earlier, the City of Victoria could prohibit horses used for profit under *Community Charter* sections 8(3)(k) (in relation to animals),³¹ 8(8)(b) (in relation to property),³² and 36 (in relation to highways), and 8(3)(g) (the safety of persons).³³ Nonetheless, these prohibitory powers may be at odds with the City of Victoria's more limited ability to regulate in relation to business under section 8(6) of the *Community Charter* (with the exception of section 68 ability to regulate carnivals, performances, and so on). As a result, we must look to case law to consider whether creating a bylaw prohibiting horse-drawn carriages would be *ultra vires* for effectively prohibiting a business.

In *International Bio Research*, the Court found that "Municipal regulation of the conduct of business, including prohibiting certain types of transactions, is an established aspect of valid business regulation."³⁴ For example, in *Try-san International Co and the City of Vancouver*, the court found that municipalities can create regulations that mean that businesses will lose 90% of their revenue, but that those regulations are valid nonetheless.³⁵ This was affirmed in *International Bio Research* which found that the Court may uphold regulations that "may set conditions for the operation of a business that make it uneconomic to continue" when they do not

³¹ *Ibid* at 8(3)(k).

³² *Ibid* at 8(8)(b).

³³ *Ibid* at 36.

³⁴ *International Bio Research*, 2011 BCSC 471 (CanLII) 2011 BCSC 471 (CanLII) at 37.

³⁵ *Try-san International and the City of Vancouver, Re* (1978), DLR 83 DLR (3d), Carswell BC 1190 at 15. This authority was later affirmed in *British Columbia Lottery Corp v Vancouver City* (1997), 46 BCLR (3d) 24 at para 44.

amount to a prohibition.³⁶ In that case, the Court found that a bylaw against selling dogs in pet stores “does not prohibit retail pet stores. It regulates the animals that can be sold by them.”³⁷ One could therefore make the argument that the City of Victoria could validly regulate horse carriages to keep in check with BC SPCA recommendations on horse carriages in the interests of public health and safety and also out of concern for animals, despite its potentially devastating economic effects.

If the City of Victoria created a prohibition in relation to its power to prohibit in relation to animals or highways, the municipality could argue that they are not prohibiting the actual business of sight-seeing, just the manner in which that business is done. However, one issue with this argument is that horse-drawn carriages have historically depended upon animals in a way that pet stores³⁸ or shops selling shark fin soup do not.³⁹ Nonetheless, one could argue that their vehicles are primarily sight-seeing and that this could be accomplished by other means.

Claims that the Prohibition is in Bad Faith

Bad faith, in the municipal sense of the term, is used when “council exercises a statutory power for a purpose other than that envisaged by the statutory power.”⁴⁰ In *Shell Canada Products Ltd v Vancouver (City) (Shell)*, the Court found that a municipal purpose needs to be valid not only in terms of the words expressly stated in the enabling statute but also in the purpose and objectives of the enabling statute.⁴¹ Consequently, the municipality would need to find a valid municipal purpose that could give the municipality valid grounds to effect a

³⁶ *International Bio Research*, *supra* note 34 at para 41.

³⁷ *International Bio Research*, *supra* note 34 at para 41

³⁸ *International Bio Research*, *supra* note 33.

³⁹ *Eng v Toronto (City)*, 2012 ONSC 6818, 2012 ONSC 6818 (CanLII).

⁴⁰ *International Bio Research*, *supra* note 34 at para 61; Also see *Grosvenor v East Luther Grand Valley (Township)*, 2007 ONCA 55, 84 OR (3d).

⁴¹ *Shell Canada Products Ltd v Vancouver (City)*, [1994] 1 SCR 231, 110 DLR (4th) (SCC).

regulation or prohibition⁴² that affected the community itself. While the court in *Xentel DM Inc v Windsor (City)* (*Xentel*) found that morality concerns around animals do not necessarily disqualify bylaws from being considered valid,⁴³ a bylaw, which prohibited the “conducting, operating, taking part in or carrying on of any entertainment whatsoever which involves the participation of exotic animals,”⁴⁴ was found *ultra vires* because it was primarily motivated by animal welfare or general morality instead of public safety to protect individuals from animal attacks.⁴⁵ In the words of the court, the bylaw

was primarily motivated by consideration of animal welfare and an examination and assessment of any evidence to support the public safety purpose of s. 236(7) was virtually ignored by Council in reaching its decision. Therefore, in accordance with my earlier discussion of the evidence, I find that the resulting ban on the performance of circus animals was primarily (or in pith and substance) motivated by considerations of morality and is therefore *ultra vires* Council as an infringement of the criminal law power.⁴⁶

This case is differentiable from the municipality of Victoria in that, in the past 18 years leading up to the by-law, there had been no reports of incidents that threatened the public’s safety whereas, in the Case of Victoria, there have been 35 such incidents in the past year.⁴⁷ In contrast, a more recent (2011) case from British Columbia, *International Bio Research* found that a bylaw prohibiting the sale of pets from pet stores to reduce “the number of unwanted and abandoned dogs” and improve “the conditions of dogs sold as pets in Richmond” was found to be valid in light of the fact that the bylaw was created in light of the “cost to Richmond in caring for unwanted dogs.” Additionally, in this case, the municipal purpose was considered broadly, in

⁴² Municipal purposes are laid out in section 7 of the *Community Charter* and include “(a) provide for good government of its community, (b) providing for services, laws, and other matters for community benefit, (c) providing for stewardship of the public assets of its community, and (d) fostering the economic, social and environmental well-being of its community” *Community Charter*, SBC 2003, c 26 at 7.

⁴³ *Xentel DM Inc v Windsor (City)*, 243 DLR (4th) 451, [2004] OJ No 3656 (QL) (ONSC).

⁴⁴ *Xentel*, *supra* note 31 at para 2

⁴⁵ *Xentel*, *supra* note 31 at para 5.

⁴⁶ *Xentel*, *supra* note 31 at para 125.

⁴⁷ *Ibid* at 10; Reichert *supra* note 11 at 7.

keeping with *Nanaimo v Rascal Trucking (Nanaimo)*,⁴⁸ *Shell*,⁴⁹ and section 4(1) of the *Community Charter*.⁵⁰ Unlike in Richmond, the authority of the City of Victoria does not carry a legislative history of prohibition of horse-drawn vehicles;⁵¹ nonetheless, a valid municipal purpose may be found to in terms of the cost of the municipality saved in regard to regulating and enforcing requirements with regard to horse drawn vehicles and through the broader interpretation enabled by *Nanaimo*, *Shell* and Section 4(1).

Another argument that the municipality could raise is that the by-law is being created to enhance the wellbeing of its community under 7(d) of the *Community Charter*.⁵² This line of argument was used in *Eng v Toronto (Eng)*.⁵³ In that case, the City argued that the bylaw against the selling of shark meat in Toronto gave “voice and effect to social and environmental values of Toronto pertaining to the natural environment, including animals.”⁵⁴ However, this argument was struck down on the basis that the shark finning practice that was offensive to the municipality occurs outside of the municipality and therefore “cannot be considered to relate to their social well-being.”⁵⁵ Although earlier prohibitions and regulations in relation to animals (for example, in *Xentel*) have identified animal welfare issues as an invalid basis for municipal legislation, it is possible that the municipality of Victoria could find support in the social well-being purpose given the widespread support for such a prohibition and the changing Canadian context with regards to concern around animals (see para 1), and given that the City of Victoria case is distinguishable from *Eng* in that the offending act is taking place within municipal limits.

⁴⁸ *Nanaimo (City) v Rascal Trucking Ltd*, 2000 SCC 13, [2000] 1 SCR 342.

⁴⁹ *Shell Canada Products Ltd v Vancouver (City)*, [1994] 1 SCR 231, 110 DLR (4th) (SCC).

⁵⁰ *Community Charter* *supra* note 17 at 4(1).

⁵¹ *International Bio Research* *supra* note 32 at para 36.

⁵² *Community Charter*, *supra* note 17 at 7(d).

⁵³ *Eng v Toronto*, 2012, ONSC 6818, ONSC 6818 (CanLII) at para 70.

⁵⁴ *Ibid* at para 70.

⁵⁵ *Ibid* at para 74.

Whether the Contractual Relationship Between the City of Victoria and the Horse-Drawn Vehicles Businesses Fetter Municipal By-Law Making Authority?

The Court in *Ocean Wise Conservation Association v Vancouver Board of Parks and Recreation* found that municipalities cannot fetter their bylaw making power in contracts with others.⁵⁶ Moreover, section 14(f) of “Schedule E: Parking Stand Agreement” of the *Vehicles for Hire Bylaw* states that “Nothing in this Agreement will be construed to create a relationship of partners, joint ventures, fiduciaries or any other similar relationship between the Licensee on the one hand and the City on the other.”⁵⁷ Consequently, the City likely need not be worried that they have fettered their by-law making power by entering into contractual relationships with horse-drawn vehicle businesses.

Whether compensation would need to be paid to the horse-drawn carriages?

Section 31 of the *Community Charter* provides that municipalities can expropriate property in accordance with the *Expropriation Act*. Further to that, section 33 of the *Community Charter* provides that

- (1) Unless expressly provided otherwise, if a municipality expropriates real property or works under this or any other enactment, compensation is payable to the owners, occupiers or other persons interested in the property for any damages necessarily resulting from the exercise of those powers beyond any benefit that the person claiming the compensation may derive from the work resulting in the expropriation.

In keeping with the legislation, “Schedule E: The Parking Stand Agreement” clearly states in section 13 that

The Licensee will not be entitled to compensation for any loss or injurious affectation or disturbance resulting in any way from the termination of this Agreement or the application of sections 2 or 3 of this Agreement.⁵⁸

⁵⁶ *Ocean Wise Conservation Association v Vancouver Board of Parks and Recreation*, 2019 BCCA 58, 2019 BCCA 58 (CanLII) at 61-63.

⁵⁷ City of Victoria, by-law no 03-060, *Vehicles for Hire Bylaw* (1 May 2016) at Schedule E s 14(f).

⁵⁸ *Ibid* at 13.

Consequently, it is likely that the City of Victoria would not be required to provide compensation to the Horse-drawn carriages businesses for the expropriation of their property.⁵⁹

Whether the Municipality of Victoria could prohibit or regulate if it was also motivated by other concerns?

Another challenge that could arise against the City of Victoria if it created a ban with the purpose of increasing public safety, whether it could do so given that it was also motivated by the welfare of animals. *Canadian Plastic Bag Association v Victoria (City)* (*Canadian Plastic Bag Association*), affirmed that a municipal bylaw could have another purpose that was outside of municipal jurisdiction as long as “the Court is satisfied that Council does in fact have a lawful purpose and it acts in good faith.”⁶⁰ While it is unclear that the finding of *Canadian Plastic Bag Association* stretches to accommodate for the protection of the welfare interests of animals, this could be an interesting argument given the changing legal context noted by Justice Abella in *DLW* that detailed how interpretations of existing laws around animals are changing.

Conclusion

This paper has covered a number of issues in relation to the prohibition powers that the City of Victoria has in relation to prohibiting horse-drawn vehicles. It addressed the differences between the City of Montréal’s enabling legislation to that of the City of Victoria to provide insight into the differences in these regimes. Subsequently, it considered the various powers that could be used to enable a prohibition on horse-drawn vehicles in the City of Victoria. Finally, it considered the challenges that the City of Victoria could face on creating such a ban.

⁵⁹ Nonetheless, something the municipality may want to consider is case law around the expropriation of property when there is an express statement, and guidelines for expropriating such property.

⁶⁰ *Canadian Plastic Bag Association v Victoria (City)*, 2018 BCSC 1007, 2018 BCSC 1007 (CanLII) at para 30.