

April 11, 2024

BY EMAIL

City of Parksville
100 Jensen Ave E
Parksville, BC V9P 2H3

Attention: Keeva Kehler, Chief Administrative Officer

Dear Sirs / Mesdames:

Re: City of Parksville – Breach of Duty of Religious Neutrality

I am litigation counsel for the BC Humanist Association (“BCHA”).

I write further to the November 30 and December 13, 2023 letters from Ian Bushfield, executive director of the BCHA. Mr. Bushfield asked for a response to his most recent letter by December 31, 2023. As of the date of this letter, the City of Parksville has not responded to Mr. Bushfield’s letter.

The BC Humanist Association wrote to the City of Parksville to convey its concern that the City of Parksville was breaching its duty of religious neutrality by opening inaugural meetings of the city council with prayer.

By writing to the City of Parksville about this matter, the BCHA was hoping to engage in a dialogue with the City of Parksville with the goal of ensuring the City complies with its legal duty of religious neutrality. BCHA takes the City of Parksville’s silence to mean it is not interested in this dialogue and that it does not intend to change its practices to comply with its duty of religious neutrality.

The BCHA alerted the City of Parksville to the Supreme Court of Canada’s ruling in *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16. In the *Saguenay* decision, the Supreme Court of Canada unanimously held that the City of Saguenay committed an unjustifiable breach of the *Quebec Charter of Human Rights and Freedoms* by commencing municipal meetings with a prayer, and later passing a bylaw making the prayer optional for members but explicitly authorizing its recitation.

While the decision in *Saguenay* was an application of the *Quebec Charter*, the Supreme Court of Canada relied heavily on decisions under the *Canadian Charter*. The Supreme Court of Canada has recognized in *Saguenay* (at para. 68) and in previous cases (e.g. *Syndicat Northcrest v. Amselem*, 2004 SCC 47 at para. 37) that the approach to freedom of religion under the *Canadian Charter and Quebec Charter* is interchangeable.

The British Columbia Court of Appeal has adopted *Saguenay* and relied on it extensively in its own decisions under BC law and the *Canadian Charter*. See, for example, *Servatius v. Alberni School District No. 70*, 2022 BCCA 421 at paras. 48-76.



There is no doubt the same decision in *Saguenay* would have been made under the *Canadian Charter*. Even if not technically binding on a BC court, the conclusions in *Saguenay* would be effectively determinative in a case against the City of Parksville. Moreover, the *Charter* principles from the case law decided under the *Canada Charter* and relied on in *Saguenay* to support the result are binding on everyone in BC.

The circumstances and content of the City of Parksville's prayers are not legally distinguishable from the facts in *Saguenay*. The inaugural prayers give the clear impression that the council is empowered and guided by an overtly religious authority. Any reasonable person observing the prayer would readily conclude the City of Parksville is explicitly guided by religious faith. Including prayer in meetings risks making non-believers, non-religious people, atheists, agnostics, humanists, and people from other faith traditions feel isolated, uncomfortable, and excluded.

It is unlikely that the City of Parksville could successfully defend its conduct in court. By attempting to do so, the City would put itself at significant risk of paying increased costs or special costs because of its refusal to recognize and apply conclusively established constitutional principles.

We are instructed to commence legal proceedings seeking all available relief and costs against the City of Parksville without further notice. Because the BCHA's past correspondence has been ignored, we are preparing to file legal proceedings and will not provide a deadline for a response to this letter. If the City wishes to avoid litigation, the BCHA will consider delaying the commencement of litigation if the City promptly responds to this letter with a commitment to obey its duty of religious neutrality and a concrete plan for preventing future breaches of the *Charter of Rights and Freedoms*.

Yours truly,

Allen / McMillan Litigation Counsel

Per: Joel V. Payne