



#FaceTheChange Changing Communities in a Changing Climate



Report:

Climate Change & Air Pollution Warning Labels on Gas Pumps

Legal Backgrounder for Municipalities in British Columbia



***“The medium is the message because
it is the medium that shapes and controls
the scale and form of human association and action.”***

Marshall McLuhan

Published by *Our Horizon Society*

<http://ourhorizon.org>

January 25, 2015, v. 1

A digital copy of this document is available at our website.

This work is licenced under a *Creative Commons Attribution-NonCommercial-ShareAlike 3.0 Unported License*. For more information, please visit: <http://creativecommons.org/licenses/by-nc-sa/3.0/>. If you are using this work, please provide credit to “Our Horizon” and include a link to our website at www.ourhorizon.org. Donations are appreciated.

TABLE OF CONTENTS

Part I – INTRODUCTION AND SUMMARY	i
1.1 Executive Director’s Letter to Municipal Councillors and Staff.....	i
1.2 Environmental Law Club’s Letter to Municipal Councillors and Staff.....	ii
1.3 Executive Summary	4
1.3 Highlights: Climate Change and Warning Labels (Parts II and III).....	5
1.4 Highlights: Legal Research (Part IV)	6
1.5 About <i>Our Horizon</i>	7
1.6 Our TEDx Talk.....	7
Part II – CLIMATE CHANGE & AIR POLLUTION.....	8
2.1 Our Use of Fossil Fuels Causes Climate Change	8
2.2 A Global Carbon Budget.....	8
2.3 Unburnable Carbon	9
2.4 Fossil Fuel Use by Automobiles in British Columbia.....	10
2.5 Municipalities Contribute To and are Impacted By Climate Change	11
Part III – WARNING LABELS ON GAS PUMPS	13
3.1 The Proposed By-law Amendment	13
3.2 Nozzle Talkers	13
3.3 Warning Label Design	14
3.4 Successful Experience with Tobacco Warning Labels.....	14
3.5 How the Warning Labels Uniquely Address Climate Change	15
3.6 A Disruptive Tool to Broaden Engagement and Catalyze Action	17
3.7 Identifiable Benefits to the Municipality	17
Part IV – LEGAL RESEARCH	21
4.1 Regulation of Emission, Air Quality and Climate Change in Canada	21
4.1.1 Tri-Level Regulation	21
4.1.2 Federal, Provincial & Municipal: Relationships within the “Tri-Level Regime”	22
4.1.4 The Precautionary Principle.....	22
4.2 Regulation of Emissions, Air Quality and Climate Change in British Columbia	23
4.2.1 Climate Action in B.C.: A Shared Responsibility.....	23
4.2.2 Provincial Climate Change and Air Pollution Legislation	24
4.2.3 Municipal Empowerment in B.C.: the Community Charter.....	24
4.2.4 Municipal Action on Climate Change and Air Quality: Anti-Idling By-laws	25
4.3 Municipal Authority in British Columbia to Regulate on Emissions, Air Quality & Climate Change.....	26
4.3.1 Power to Regulate Business.....	27
4.3.2 Fundamental Powers: Community Well-being, Public health & Environmental Protection.....	29
4.3.3 Precedent for Municipalities’ Jurisdiction to Reduce Greenhouse Gas Emissions.....	31
4.4 Treatment and Limitations of Municipal Decisions	32
4.4.1 Broad Interpretation.....	32
4.4.2 Judicial Deference to Decisions by Municipalities	32
4.4.3 Power to Differentiate	34
4.4.4 Limit on the Boundaries of the Municipality	35
4.5 Judicial Treatment of Similar Forms of Municipal Action.....	35

4.5.1 Warning Labels on Tobacco and Compelled Speech	35
4.5.2 Consumer Information Labels on Business Property.....	36
4.5.3 Shark fin Bans.....	37
4.6 Additional Implications of Gasoline Warning Labels	39
4.6.1 Interference with Business	39
4.6.2 Gasoline Retailers Pay for Reasonable Licensing Cost.....	40
4.6.3 Consultation	40
Part V – NEXT STEPS.....	42
5.1 Strategy	42
5.2 Complimentary Presentation to your Council	42
5.3 Funding.....	43
5.4 Frequently Asked Questions (FAQs)	43

Part I – INTRODUCTION AND SUMMARY

1.1 Executive Director's Letter to Municipal Councillors and Staff

Dear Mayors, Councillors, and Staff,

April 18, 2016
(updated intro letter)

Three years ago, I launched a campaign to advocate for an idea to de-normalize a habitual, automatic behaviour to create greater impetus for both individual and collective reform. Since then, climate change and air pollution disclosure labels for gas pumps have been endorsed by leading academics at universities across North America and have appeared in media around the world.

In early 2015, the District of West Vancouver unanimously passed a resolution "...that all vendors of retail petroleum products in Canada be legislated to provide warning labels on all pump handles." In the months that followed, Councils in communities across Canada passed similar resolutions in support of the idea. In September, mayors and councillors from across the province voted in favour of the labelling proposal where it passed at the Union of British Columbia Municipalities' annual convention. Finally, in late 2015, the City of North Vancouver became the first jurisdiction in the world to mandate climate change risk disclosures on gas pumps within its municipal boundary. Several other communities across Canada and the United States are now at various stages in pursuing the concept.

The North Vancouver vote was covered by media around the world. With similar disclosures already on cigarette packaging all over the world, our idea has been primed to go global. To accelerate the idea's adoption, volunteers across Canada have helped us to develop a database of thousands of politicians' emails from around the world. This spring, we will be sending out an email to elected representatives who are members of *C40*, *Compact of Mayors*, *Under 2 MOU*, and politicians in countries that have tobacco warnings to encourage them to pursue the idea in their own jurisdiction. We want to share examples of Canadian leadership with the world.

The first step in addressing any challenge is to honestly face it and our campaign presents you with an opportunity to do just that. As an elected representative, you find yourself in a position where you have the opportunity to make an historic contribution to the fight against climate change. Let us choose to bravely confront the greatest challenge of our time so that we can accelerate our transition to a more sustainable future.

To learn more about our idea, please visit www.ourhorizon.org. I encourage you to watch my complete lecture to fully appreciate the thinking behind the concept.

With hope for a better world,



A handwritten signature in black ink that reads "R. Shirkey". The signature is fluid and cursive.

Rob Shirkey, BBA, LLB
Executive Director
Our Horizon

1.2 Environmental Law Club's Letter to Municipal Councillors and Staff

Dear Councillors and Staff,

In May 2013, Rob Shirkey contacted the Environmental Law Club (ELC) at the University of Victoria. He was looking for volunteers in B.C. to help with his initiative to put warning labels on gas nozzles. Rob is an alumnus of UVic Law and, not surprisingly, he was a member of the ELC during his time as a student. We students at the ELC immediately put forth our support. Law can be rather theoretical at times, and this seemed like a great opportunity to get involved with something practical: an environmental initiative where we could put the law into action and hold the outcome in our hands. We wanted to be where the rubber hits the road (bicycle tire rubber, that is.)

Over the next few months we followed Our Horizon's progress and watched the idea attract community and media attention across Ontario, Canada and beyond. In November 2013, we hosted Rob at UVic as part of Our Horizon's promotional cross-Canada tour. We were finally able to experience first-hand his enthusiasm and energy as he proposed this simple, yet elegant, idea.

Fast forward to May 2014: Rob had just released his #FaceTheChange Report for municipalities in Ontario and had received positive feedback from a number of councillors across Canada. Then, Emily Kelsall, a grade 10 student from West Vancouver, delivered a brilliant presentation to the District of West Vancouver council about the need for these labels. We knew it was time to translate the #FaceTheChange Report into B.C. law to assist our municipalities to implement the warning labels here.

Under the guidance of Deborah Curran, Hakai Professor in Environmental Law and Sustainability at UVic, seven ELC students stepped up to get the job done. This is why:

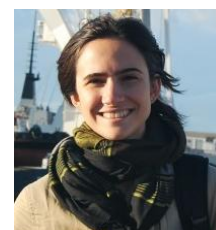
Climate change threatens the beauty that surrounds us on Vancouver Island, and *Our Horizon* addresses its single largest contributor: the burning of fossil fuels – and in such a simple, common sense way. I also find the idea of local governments taking steps to combat climate change empowering, as action at the federal and provincial levels can seem out of reach for ordinary citizens. But anyone can go speak to city council with ideas on helping their community (like warning labels on gas nozzles)! - *Erin Gray* -



This idea was a no-brainer for me and I had to be a part of it. It's not going to solve climate change tomorrow, but it will get more people talking, not only about the problem, but how they can be a part of the solution. That is what is so exciting, whether it's riding a bike or demanding our politicians to do more, these labels will encourage people everywhere to do their part. That's what climate change needs: collective action. - *Matt Hulse* -



This is a great initiative to get people engaged with climate change and environmental issues. These warning labels will hopefully plant a seed of interest in local residents, and push them to become more informed about greenhouse gas emissions. As this report advocates, change needs to come from all levels of government. This is a step that all municipalities should take, to take a stand in protecting our environment. - *Gabriella Jamieson* -



I'm an outdoorsy guy, but I acknowledge that we live in an increasingly urban world. And that's not all bad. Cities are where people can, as a group, best see the link between our daily choices and the outcome of those choices. The more clear that link is, the more sensible our choices will become. - *Josh Nobleman* -



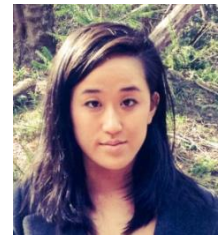
I grew up in the car heaven that is Los Angeles and have witnessed both the negative environmental effects of automotive dependence and the positive effect of emissions regulations (the air in LA is much less smoggy than it used to be). I find the arguments for putting warning labels on gas pumps compelling and I am excited to be involved in this project advocating for their use in British Columbia. - *James Parker* -



I got involved with this project because I wanted to contribute to a pragmatic solution to climate change; one that holds people accountable for their actions every time they go for a fill up, and reminds them that they as individuals can take steps to stop climate change. - *Mae Price* -



Consumer education and information is simple, direct, and respects the opinion of all sides in a contentious issue such as the role of fuel consumption in climate change. I wanted to be involved in the project because I want to contribute to initiatives that seek to strike a common ground for all sides, in communities that want to build towards a sustainable future. - *Dora Tsao* -



Municipalities of British Columbia, it's over to you. Show Canada the environmental leadership that it needs right now.

For our shared future,

G. Jamieson
Gabriella Jamieson

Josh Nobleman
Josh Nobleman

Dora Tsao
Dora Tsao

James Parker
James Parker

Erin Gray
Erin Gray

Mae Price
Mae Price

Matt Hulse
Matt Hulse

The legal research in this document is not legal advice and is only applicable to municipalities in British Columbia. It does not apply to Regional Districts, nor does it address the Vancouver Charter (to which the City of Vancouver is subject). Our Horizon Society, its staff, board of directors and volunteer researchers assume no responsibility for reliance on the research contained herein. Municipalities are encouraged to consult their legal departments or seek independent legal advice before taking any action to pursue the proposed by-law amendment. This document should be considered as a starting point for your own analysis.

1.3 Executive Summary¹

Climate change has been described by Ban Ki-moon, the Secretary-General of the United Nations, as our “only one truly existential threat” and “the greatest moral challenge of our generation.” The *Intergovernmental Panel on Climate Change* has attributed climate change to emissions from our use of fossil fuels. Research shows that we must leave the vast majority of fossil fuel reserves undeveloped if we are to avoid catastrophic climate change.

The transportation sector accounts for approximately 40% of greenhouse gas emissions in British Columbia. These emissions also contribute to poor air quality that compromises the health and well-being of citizens in municipalities across the province. The sources and impacts of these emissions are both experienced locally.

To address these harms, we are proposing climate change and air pollution warning labels for gas pump nozzles. Research shows that similar labels used on tobacco products help to change attitudes and behaviour. Our warning labels become even more compelling when considered in the context of climate change and air pollution as they help to address some of the basic psychological and economic causes of these problems. The labels are disruptive of the status quo and have the potential to catalyze meaningful action on climate change and air pollution.

Municipalities in British Columbia can require gasoline retailers to place these labels on their gas pump nozzles. The warning labels would be a new condition for a gasoline retailer to obtain, continue to hold or renew its business licence. The *Community Charter* provides the authority to require such labels through its *Part II* - Municipal Purposes and Powers, which enable municipalities to regulate in relation to Business, Public Health, and the Protection for the Natural Environment. These powers are broad and the Supreme Court of Canada has recognized that municipal by-laws are to be given a broad and purposive interpretation.² Given restrictions around areas of concurrent jurisdiction, it may also be prudent to request ministerial approval.

Climate change and air pollution is the exact sort of major environmental challenge that is contemplated by the Supreme Court of Canada in *Spraytech v. Hudson*. The reduction of emissions that contribute to these problems is an effort that needs to be undertaken by all levels of government. This view is consistent with provincial and federal messaging on climate change and long-standing practice in cities and towns across Canada. Unlike the recent shark fin ban decision in *Eng v. Toronto*, or that relating to targeted and discriminatory business practices in *Shell Canada v Vancouver*, our by-law amendment does not seek to “affect matters in another part of the world;” indeed, it addresses a matter that is both local in its causes and its impacts. The labels have the potential to yield numerous benefits to municipalities and they do not appear to conflict with any provincial or federal legislation.

Please contact us to arrange a presentation in your community.

¹ *DISCLAIMER: The legal research in this document is applicable to municipalities in British Columbia. It does not apply to Regional Districts, and does not address the Vancouver Charter (to which the City of Vancouver is subject). Our Horizon Society, its staff, board of directors, and volunteer researchers assume no responsibility for reliance on the research contained herein. Municipalities are encouraged to consult their legal departments or seek independent legal advice before taking any action to pursue the proposed by-law.*

² *Nanaimo (City) v. Rascal Trucking Ltd*, 2000 SCC 13 (CanLII), [2000] 1 S.C.R. 342, at para 18.

1.3 Highlights: Climate Change and Warning Labels (Parts II and III)

- **Climate change:** Our use of fossil fuels has increased CO₂ concentrations in our atmosphere and acidified our oceans. Unmitigated climate change would likely exceed our capacity to adapt. The United Nations observes that cities are important places for mitigation initiatives.
- **Unburnable carbon:** Governments have agreed to limit the increase in average global temperature to 2 degrees Celsius. This ceiling has effectively created a global carbon budget. The result is that humanity must now leave the vast majority of our fossil fuel reserves underground.
- **Fossil fuel use by automobiles:** The transportation sector in British Columbia accounts for 40% of our greenhouse gas emissions. Exhaust from automobiles contributes to poor air quality and has been associated with cardiovascular disease, stroke, lung cancer, leukemia, and other health concerns.
- **Municipal concerns:** Cities both contribute to and are impacted by air pollution and climate change. Globally, cities are responsible for approximately 70% of carbon emissions. Municipal government in Canada has control over close to half of our country's greenhouse gas emissions. To date, cities across Canada have taken hundreds of initiatives to reduce their GHGs. Municipal action on climate change is well-established and is integral to addressing the issue.
- **The proposed by-law amendment:** We propose that municipalities require gasoline retailers to place climate change and air pollution warning labels on their gas pump nozzles.
- **Nozzle talkers:** The labels would be affixed to nozzle talkers. A nozzle talker is a sort of rubber sock that fits over standard gas nozzles and is equipped with a flat display for advertising purposes. The medium is recognized by advertisers to be highly effective.
- **Tobacco warning labels:** The most comprehensive meta-study on the effectiveness of tobacco warning labels concludes that they help to change consumer attitudes and behaviour. Tobacco companies have effectively acknowledged this by fighting labelling laws all over the world.
- **Warning label features:** The warning labels address some of the root problems of climate change and air pollution. First, they counteract cognitive biases by bringing faraway consequences into the here and now. Second, they address the problem of diffusion of responsibility by showing impacts right in the palm of our hand. Third, they capture and communicate negative externalities in a qualitative way.
- **Warning label impacts:** The labels take an act that has been normalized for several generations and problematize it. They disrupt the status quo, shake us out of our sense of complacency, and provide impetus for us to do better. They will cause some individual behavioural change but, more importantly, they will contribute to the creation of social conditions that favour meaningful action on climate change.

1.4 Highlights: Legal Research (Part IV)

- **Statutory authority:** The general municipal powers and the specific licensing powers in the *Community Charter* provide a municipality with the authority to pass the herein proposed by-law amendment. These provisions are interpreted broadly. The warning labels would be a new condition for a gasoline retailer to obtain, continue to hold, or renew its business licence.
- **Judicial deference:** Courts have established a deferential approach to decisions of municipal councils.
- **Tri-level regulation:** Climate change is the exact sort of major environmental challenge that is contemplated by the Supreme Court of Canada in *Spaytech v. Hudson*. The issue requires action by governments at all levels. This view is consistent with federal and provincial messaging and long standing practice in municipalities across Canada. Indeed, the B.C. provincial government has required municipalities to establish objectives and goals for the reduction of GHG emissions in their official community plans.
- **Consumer information labels:** Warning labels on tobacco packaging have been upheld by the Supreme Court of Canada. The Ontario Court of Appeal ruled in *ORHMA v. Toronto* that cities can use their licensing powers and their general powers to impose consumer advisories at restaurant entrances. Our warning labels draw on these precedents.
- **Shark fin bans distinguished:** The Ontario Superior Court of Justice found a shark fin ban to be outside the jurisdiction of the City of Toronto as it did not relate to a proper municipal purpose (note: the provisions in the *City of Toronto Act* are roughly equivalent to the *Community Charter's* ss. 7(d), 8(3)(i) and (j)). The issue of finning sharks appears to have had no historic consideration by local government prior to becoming a cause célèbre in 2011; in comparison, municipal action on climate change is a long accepted practice in Canada. Moreover, the shark fin bans addressed a harm that occurred in distant oceans, whereas our by-law amendment addresses a harm that originates from within a municipality and whose impacts are experienced locally.
- **Identifiable benefits:** The warning labels foster the economic, social, and environmental well-being of communities, protect the natural environment, and advance public health.
- **Anti-idling by-laws:** The preamble from numerous municipal anti-idling by-laws reference greenhouse gas emissions, climate change, and local air quality. Implicit in these ubiquitous by-laws is an accepted recognition of vehicular emissions as a matter of local concern. The rationale behind our labelling by-law amendment is identical.

1.5 About *Our Horizon*



Our Horizon is a federally-incorporated not-for-profit organization that empowers people and communities across Canada to change the world. We think globally and act municipally.

Our name is a rejection of the system that made BP's offshore drilling rig the *Deepwater Horizon* a reality. This rig drilled over 10 km deep in the Gulf of Mexico only to burst and spill 4.9 million barrels of crude oil into our oceans in the summer of 2010.

Our Executive Director recalls being stuck in traffic that summer while listening to radio pundits blame BP for the tragedy. As he sat there, he counted 14 lanes of barely-moving vehicles, all burning fossil fuel. There were thousands of vehicles idling within eyesight and millions more stuck in traffic at that very moment all over the world. While most seemed content to blame BP, he recognized that he was complicit; in fact, we were all responsible.

It is the decisions that we each make on a daily basis that shape our collective reality and make such tragedies possible. It is only when we first acknowledge our role in this unsustainable system that we will be able to take meaningful steps to create a much more desirable future. It's time we #FaceTheChange.

This document is a primer in support of a municipal by-law amendment to require warning labels on gas pumps. We first explore the issue of climate change and air pollution. Next, we discuss our proposal and its intended effects. We then proceed to discuss the legal basis for the by-law amendment, and explain our view that it is impervious to legal challenge. Finally, the document outlines future steps we can take together to make this proposal a reality.

1.6 Our TEDx Talk

Rob Shirkey was invited to deliver a TEDx talk in Toronto in late 2013. The 10-minute video explores some of the psychology and economic theory of our proposal. Rob also shares some of his personal motivations for launching the campaign. The TEDx talk represents a brief introduction to our project and can be viewed online from our website at: <http://ourhorizon.org/TEDx>. A longer, more thorough lecture can be viewed at: <http://ourhorizon.org/CIGI>.



Part II – CLIMATE CHANGE & AIR POLLUTION

This section provides the global context for municipal action on climate change. It discusses research that concludes the vast majority of fossil fuels reserves must remain underground if we are to avoid catastrophic climate disruption. This section also explores climate change and air pollution as being local matters in both cause and impact.

2.1 Our Use of Fossil Fuels Causes Climate Change

The *Intergovernmental Panel on Climate Change* (“IPCC”) is the global authority on climate science. In its 2007 report, the IPCC was unequivocal that “global increases in CO₂ concentrations are due primarily to fossil fuel use” and that “carbon dioxide (CO₂) is the most important anthropogenic [human] GHG.”³ This report notes that “changes in atmospheric concentrations of greenhouse gases... alter the energy balance of the climate system” and that the “warming of the climate system is unequivocal.”⁴

The report recognizes that we are unlikely to successfully adapt to climate change and that we need to reduce our CO₂ emissions: “Unmitigated climate change would, in the long term, be likely to exceed the capacity of natural, managed and human systems to adapt.”⁵ The IPCC observes that cities “are at the forefront of climate change.”⁶ Cities both contribute to the problem and are vulnerable to its impacts and are thus important points for mitigation and adaptation.⁷ With respect to mitigation – and of particular relevance to our proposal – the IPCC notes that “information instruments” and “a wide variety of policies and instruments are available to governments to create the incentives for mitigation action.”⁸

Our warning labels are information instruments that bring IPCC research on the risks of fossil fuel consumption to a broader audience. They link cause with effect at the point of purchase and are consistent with the global authority’s recommendations to avoid exceeding “the capacity of natural, managed and human systems to adapt” to climate change.

2.2 A Global Carbon Budget

In 2009, national governments met at the *United Nations Framework Convention on Climate Change* conference in Copenhagen. The consensus achieved through these negotiations is to limit the increase in average global temperature to 2 degrees Celsius.⁹ While many scientists say this figure is dangerously

³ IPCC Fourth Assessment Report: *Climate Change 2007*, online: Intergovernmental Panel on Climate Change, <http://www.ipcc.ch/publications_and_data/publications_and_data.shtml> (Note: this language is from IPCC AR4. The IPCC’s Fifth Assessment Report was released in phases from September 2013 to October 2014. The language in the IPCC AR5 is even more conclusive.) [IPCC AR4].

⁴ *Ibid.*

⁵ *Ibid.*

⁶ IPCC Working Group III Co-Chairs, *Scoping for the IPCC 5th Assessment Report: Concept paper for an IPCC Expert Meeting on Human Settlement, Water, Energy and Transport Infrastructure – Mitigation and Adaptation Strategies*, online: <https://www.ipcc.ch/scoping_meeting_ar5/doc16.pdf>.

⁷ *Ibid.*

⁸ IPCC AR4, *supra* note 3.

⁹ UNFCCC, 15th Sess., *Report of the Conference of the Parties on its fifteenth session*, FCCC/CP/2009/11/Add.1.

high, it nevertheless remains our current political consensus.¹⁰ Researchers estimate that we can emit roughly 565 Gigatons (Gts) of CO₂ until we reach this 2°C threshold.¹¹ By setting a ceiling on temperature increase, we have effectively created a global carbon budget.

Annual CO₂ emissions help to put this 565 Gts figure into perspective. In 2011, global emissions of CO₂ amounted to 31.6 Gts; this figure represents a 3% increase over the year before.¹² At this rate, we have a little over a dozen years until we commit our planet to this 2°C increase in temperature.¹³ Fatih Birol, the *International Energy Agency's* ("IEA") chief economist, observes that "the door to a two- degree trajectory is about to close."¹⁴

2.3 Unburnable Carbon

In 2011, a group of financial analysts from the UK examined the annual reports of the world's major fossil fuel companies to estimate our global "proven coal, oil, and gas reserves."¹⁵ This calculation represents the total amount of fossil fuels that businesses plan to extract to bring to market for us to burn. The analysts' research revealed that if we were to burn all of these fuels, we would emit 2,795 Gts of CO₂ – *an amount five times greater than the amount that brings us to the 2°C upper limit.*¹⁶ The inescapable conclusion is that we must transition away from fossil fuels or we will commit to catastrophic climate disruption. With current technologies, if we are to remain below this 2°C limit, we will need to leave approximately 80% of our proven fossil fuel reserves undeveloped.¹⁷

In the fall of 2013, the *IPCC* endorsed the concept of a "carbon budget" for humanity.¹⁸ In early 2014, the United Nations climate chief acknowledged that "there is no doubt that most of the fossil fuel reserves we have world-wide will have to stay in the ground."¹⁹ The *International Energy Agency* has come to a similar conclusion.²⁰ The *World Bank* and the *International Monetary Fund* are also calling for measures that would transition economies away from fossil fuels.²¹ Recently, the head of the *World*

¹⁰ Dr. James Hansen *et al*, "Assessing 'Dangerous Climate Change': Required Reduction of Carbon Emissions to Protect Young People, Future Generations and Nature," *PLOS ONE* 8:12 (2013), at 2, online: <<http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0081648>>.

¹¹ Carbon Tracker Initiative, "Unburnable Carbon - Are the world's financial markets carrying a carbon bubble?" (2012), at 6, online: <<http://www.carbontracker.org/report/carbon-bubble/>> [*Carbon Tracker*].

¹² "Global carbon-dioxide emissions increase by 1.0 Gt in 2011 to record high", *International Energy Agency* (24 May 2012), online: <<http://www.iea.org/newsroomandevents/news/2012/may/name,27216,en.html>>.

¹³ If we assume annual CO₂ emissions of 31.6 Gigatons and a 3% rate of growth, it would take approximately 15 years to reach 565 Gigatons of cumulative CO₂ emissions. Since this calculation begins at year 2011, we have approximately a dozen years from 2014 until we reach this threshold. While estimates will vary, the point remains that we have a relatively short period of time to avoid catastrophic climate disruption.

¹⁴ Bill McKibben, "Global Warming's Terrifying New Math", *Rolling Stone Magazine* (01 September 2012), online: <<http://www.rollingstone.com/politics/news/global-warmings-terrifying-new-math-20120719>>.

¹⁵ *Carbon Tracker*, *supra* note 11.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Justin Gillis, "U.N. Climate Panel Endorses Ceiling on Global Emissions", *The New York Times* (27 September 2013), online: <<http://www.nytimes.com/2013/09/28/science/global-climate-change-report.html>>.

¹⁹ Suzanne Goldenberg, "UN climate chief calls for tripling of clean energy investment," *The Guardian* (14 January 2014), online: <<http://www.theguardian.com/environment/2014/jan/14/un-climate-chief-tripling-clean-energy-investment-christiana-figueres>>.

²⁰ "North America leads shift in global energy balance, IEA says in latest World Energy Outlook," *IEA* (12 November 2012), online: <<https://www.iea.org/newsroomandevents/pressreleases/2012/november/name,33015,en.html>>.

²¹ Sophie Yeo, "World Bank and IMF stress urgency of climate action", *RTCC* (18 October 2013), online: <<http://www.rtcc.org/2013/10/08/world-bank-and-imf-we-must-think-about-climate-change-every-day/>>.

Bank even appeared to encourage divestment from the fossil fuel sector.²² While it may seem inconceivable, we are witnessing the decline of the fossil fuel era and the beginning of a period of massive transition. Communities that acknowledge this reality sooner will have a head start at developing the solutions of tomorrow and will prosper in the long run.

2.4 Fossil Fuel Use by Automobiles in British Columbia

In the 2007 Speech from the Throne, the British Columbia government took one of its first major steps in addressing climate change by acknowledging that “[t]he science is clear. It leaves no room for procrastination. Global warming is real.”²³ The Lieutenant Governor then proceeded to note the major contribution, “about 40 percent”, that the transportation sector makes to B.C.’s total greenhouse gas (“GHG”) emissions and outlined 20 promises to reduce the sector’s impact.²⁴

In the years that followed, though not all of these promises were fulfilled, B.C. has been active in addressing climate change and has encouraged municipal involvement on this issue through initiatives such as the Climate Action Charter and the *Local Government (Green Communities) Statutes Amendment Act*.²⁵ Indeed, while the transportation sector has experienced a 24% overall increase in emissions in the past two decades, from 18.6 megatonnes (Mt) in 1990 to 23.1 Mt in 2011, there has been a slight downward trend since 2007.²⁶

However, as of 2012, the transportation sector still accounts for almost 40% of the province’s total GHG emissions.²⁷ Within this sector, on-road transportation is the major polluter, producing 14.6 Mt of GHG emissions.²⁸ That is, our cars and trucks produce the majority (63%) of emissions attributed to the transportation sector, or roughly a quarter (24%) of B.C.’s total emissions.²⁹ In fact, emissions from on-road transportation have actually *increased* since 2007.³⁰ This is because improvements in fuel efficiency have been offset by an increase in average vehicle size.³¹

Beyond the climate impact, exhaust from automobiles also contributes to poor air quality. According to a 2013 report by Metro Vancouver, cars and light trucks are one of the main contributors to smog-forming pollutants (as well as GHG emissions) in the Lower Fraser Valley.³²

²² Ed King, “World Bank chief backs fossil fuel divestment drive”, *RTCC* (27 January 2014), online: <www.rtcc.org/2014/01/27/world-bank-chief-backs-fossil-fuel-divestment-drive/>.

²³ British Columbia, *Speech from the Throne*, 3rd Session, 38th Parliament, (13 February 2007) Hon. I. Campagnolo, Online: <<http://www.leg.bc.ca/38th3rd/4-8-38-3.htm>>.

²⁴ *Ibid.*

²⁵ BC Ministry of Community Services (15 April 2008) *News Release: “Green Legislation Supports Local Governments*. Online: <http://www2.news.gov.bc.ca/news_releases_2005-2009/2008CS0061-000539.htm>

²⁶ BC Ministry of Environment, (2012) *Summary of GHG Emissions, 1990 – 2011*, Online: <http://www2.gov.bc.ca/gov/topic.page?id=50B908BE85E0446EB6D3C434B4C8C106&title=British%20Columbia%20Greenhouse%20Gas%20Inventory%20Report#1>> (*BC Summary of GHG Emissions*).

²⁷ BC Ministry of Environment *British Columbia Greenhouse Gas Inventory Report 2012*, at 11. Online: <<http://www2.gov.bc.ca/gov/DownloadAsset?assetId=19484040723540AA8CFFD28097BCAB3A&filename=pir-2012-full-report.pdf>> [*BC GHG Inventory Report 2012*].

²⁸ *Ibid.*, at 27.

²⁹ *Ibid.*, at 26.

³⁰ *BC Summary of GHG Emission*, *supra* note 26.

³¹ *BC GHG Inventory Report 2012*, *supra* note 27, at 29.

³² Metro Vancouver (2013) “2010 Lower Fraser Valley Air Emissions Inventory and Forecast and Backcast” at 10. Online: http://www.metrovancouver.org/services/air-quality/_layouts/15/WopiFrame.aspx?sourcedoc=/services/air-quality/AirQualityPublications/2010LowerFraserValleyAirEmissionsInventoryandForecastandBackcast.pdf&action=default&DefaultI

Vehicle emissions have been associated with cardiovascular disease, stroke, lung cancer in adults, leukemia in children, reduced fertility in men, low birth weight, and other health concerns.³³ In B.C. alone, air pollution was associated with 306 acute premature deaths and 1158 hospital admissions in 2008.³⁴ The Canadian Medical Association estimates that the economic damages of air pollution in B.C. in 2008 were \$91.5 million.³⁵ This accounted for costs due to lost productivity, healthcare, effects on quality of life, and loss of life. These health costs are expected to continue rise in the coming years; it is estimated that between the year 2008 and 2031 there will be a total of 10,483 acute premature deaths, 37,204 hospital admissions, and a total cost of \$30.1 billion due to air pollution in B.C.³⁶ Nationally, about 10 million Canadians, 32% of the population, live in areas with high exposure to traffic-related air pollution and it has been suggested that 21,000 premature deaths can be attributed to air pollution in Canada each year.³⁷

2.5 Municipalities Contribute To and are Impacted By Climate Change

According to C40, a network of “megacities taking action to reduce greenhouse gas emissions”³⁸, cities are responsible for approximately 70% of global carbon emissions.³⁹ In Canada, research from the Federation of Canadian Municipalities shows that “up to half of Canada’s greenhouse gas emissions are under the direct or indirect control or influence of municipal governments.”⁴⁰ These figures mean that, without municipal activities to reduce GHGs, we are effectively unable to address climate change.

Cities and towns across Canada have responded to the threat of climate change by undertaking hundreds of initiatives that are explicitly directed at the reduction of GHG emissions.⁴¹ These activities are consistent with federal and provincial messaging that encourages municipalities to reduce GHGs.⁴² Indeed, municipal action aimed at the reduction of GHGs is a well-established practice in communities across Canada and around the world.

temOpen=1.

³³ Monica Campbell *et al.*, “Air Pollution Burden of Illness from Traffic in Toronto - Problems and Solutions”, *Toronto Public Health* (November 2007), online: <<http://www.toronto.ca/legdocs/mmis/2007/hl/bgrd/backgroundfile-8046.pdf>> [Air Pollution Burden of Illness from Traffic]

³⁴ Canadian Medical Association (2008) “No Breathing Room: National Illness Costs of Air Pollution” at 31-32. Online: <http://www.healthyenvironmentforkids.ca/sites/healthyenvironmentforkids.ca/files/No_Breathing_Room.pdf>

³⁵ *Ibid.*, at 31-32.

³⁶ *Ibid.*, at 31-32.

³⁷ Brauer, M., Reynolds, C., Hystad, P. (2013) “Traffic-related air pollution and health in Canada” *Canadian Medical Association Journal* 185(18) (1557-8).

³⁸ “About C40”, C40 Cities, online: <www.c40.org/about>.

³⁹ Ryan Koronowski, “While The World Waits For A Real Climate Deal, Megacities Are Taking Action”, *Climate Progress* (5 February 2014), online: <<http://thinkprogress.org/climate/2014/02/05/3244311/megacities-cutting-carbon-emissions/>> [Megacities Are Taking Action].

⁴⁰ “About Climate Change: why act locally on climate change?”, *Federation of Canadian Municipalities*, online: <www.fcm.ca/home/programs/partners-for-climate-protection/about-climate-change.htm>, citing: “Act Locally: The Municipal Role in Fighting Climate Change”, *Federation of Canadian Municipalities* (8 December 2009), online: <www.fcm.ca/Documents/reports/Act_Locally_The_Municipal_Role_in_Fighting_Climate_Change_EN.pdf> [Act Locally].

⁴¹ “Partners for Climate Protection, Demonstrating Results”, *Federation of Canadian Municipalities*, online: <www.fcm.ca/home/programs/partners-for-climate-protection/demonstrating-results.htm> [FCM Partners for Climate Protection].

⁴² An internet search reveals a variety of examples. For example, former Minister of the Environment John Baird’s spokesperson said: “We’ve said all along that all levels of government are going to have to work together to address climate change and to fight air pollution... Certainly it’s critical all three levels are on-board with this fight.” Source: Michael Oliveira, “Cities can fight climate change best: Report”, *Toronto Star* (23 May 2007), online: <http://www.thestar.com/news/2007/05/23/cities_can_fight_climate_change_best_report.html> [Fed and Prov support].

Communities across the country will be affected by climate change in a variety of ways.⁴³ In B.C, climate change will place ecosystems that support the local economy and communities at risk, affect population health and safety, and lead to increased frequency and intensity of extreme weather events that will increase costs and insurance related to building and infrastructure.⁴⁴ Examples of impacts to municipalities in B.C. include:

- Extreme weather events such as heavy rain and snow falls, heat waves, and drought which are linked to flooding, landslides, water shortages, forest fires, and reduced air quality.⁴⁵ These events also have health implications; for example, heat waves are associated with heat stroke and an increase in respiratory illness.
- Decreased snow packs resulting in less runoff in summer and less water for agriculture, hydropower, industry, community, and fisheries.⁴⁶
- Increased risk of floods to coastal communities from precipitation, river flows, sea-level rise, and storm surges. “An estimated 3,000 to 12,000 B.C. homes near the coast could be at risk of flooding by mid-century.”⁴⁷
- Longer forest fire seasons resulting in the increased likelihood of forced evacuations from homes, air quality warnings, and loss of life.⁴⁸
- Continued infestation of the mountain pine beetle in our forests expanding northward, eastward and to higher elevations as warming in North America increases the range of suitable habitats for this destructive pest.⁴⁹

For a list of climate change and air pollution impacts in your community, please consult your local board of health.

⁴³ Natural Resources Canada, “Adapting to Climate Change: An Introduction for Canadian Municipalities” *Government of Canada* (2010), online: <<http://www.nrcan.gc.ca/earth-sciences/climate-change/community-adaptation/municipalities/373>>.

⁴⁴ BC Ministry of Environment, “Climate Change Impacts and Adaptation” (accessed January 2015). Online: <<http://www2.gov.bc.ca/gov/topic.page?id=BE3D1E436EE14ADE8255FA0AD060659C&title=Climate%20Change%20Impacts%20%26%20Adaptation>>.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ Carroll *et al.*, 2004. “Effects of Climate Change on Range Expansion by the Mountain Pine Beetle in British Columbia”. In: T.L. Shore, T.L., Brooks, J.E., Stone, J.E. (Eds.), *Mountain Pine Beetle Symposium: Challenges and Solutions*, October 30–31, 2003. Natural Resources Canada, Canadian Forest Service, Pacific Forestry Centre, Information, Report BC-X-399, Kelowna, British Columbia, at 223-232. Online: <http://www4.nau.edu/direnet/publications/publications_c/files/Carroll_et_al_2003.pdf>.

Part III – WARNING LABELS ON GAS PUMPS

This section explores *Our Horizon's* proposed by-law amendment, experience from tobacco labeling, our idea's theoretical underpinnings, and anticipated positive results from our enacting plan.

3.1 The Proposed By-law Amendment

The by-law amendment would require gasoline retailers to place 3-inch by 3-inch climate change and air quality warning labels on gas pump nozzles as a condition of obtaining, continuing to hold, or renewing a business licence. Many gas pumps already come equipped with “nozzle talkers” that can be used for this purpose.

3.2 Nozzle Talkers

A “nozzle talker” is a sort of rubber sock that fits over standard gas nozzles and is equipped with a flat display area for advertising to face the consumer. Nozzle talkers retail for approximately \$15. A sticker that fits on the 3-inch by 3-inch display area can be printed at nominal cost. The cost of implementing our proposal is small and can easily be covered by a gasoline retailer (see Part IV for more information).

Nozzle talkers were developed by M&M Displays in 1989.⁵⁰ Their website describes the medium as “highly effective” and notes the power of the concept: “This unique merchandising tool literally puts your advertising right into the customers’ hand.”⁵¹ Phoenix Outdoor, a company that specializes in such advertising, observes:

*[Nozzle Talkers] provide a unique and highly effective exposure for the advertiser. With the ability to reach millions of people on a monthly basis and with up to 4 minutes of direct interaction with the consumer, this medium guarantees a captive audience. They may be the smallest signs in the Phoenix network but they command 100% attention and deliver big. [They] provide the perfect opportunity to capture the consumer’s attention like no other medium... [and] have proven results in increasing brand awareness and product sales.*⁵²

It is clear that the medium is a particularly effective means for communicating information to influence attitudes and behaviour.

⁵⁰ M&M Displays, “Gas Nozzle Marketing”, online: <<http://www.mmdisplays.com/nozzle-talker/>>.

⁵¹ *Ibid.*

⁵² Phoenix Outdoor, “Nozzle Talkers”, online: <<http://www.phoenixoutdoor.com.au/ambient/>>.

3.3 Warning Label Design

The warning labels designed by *Our Horizon* have a look and feel that is similar to those used on tobacco packages. The labels are designed to communicate the risks of burning gasoline. It is recommended that municipalities develop their own labels to reflect local impacts of air pollution and climate change as well as more global concerns (see Part IV for more information). Please visit our website for samples.



3.4 Successful Experience with Tobacco Warning Labels

In 2001, Canada became the first country in the world to require pictorial warning labels on tobacco packages.⁵³ Our innovation has since spread all over the world. Now more than 60 countries have pictorial warning labels on their tobacco packages.⁵⁴ In 2009, the European Union commissioned a meta-study that reviewed the scientific literature on the effectiveness of tobacco warning labels.⁵⁵ The report included over 200 studies and is the most comprehensive analysis on the subject. The report concludes:

*There is clear evidence that tobacco package health warnings increase consumers' knowledge about the health consequences of tobacco use and contribute to changing consumers' attitudes towards tobacco use as well as changing consumers' behaviour. They are also a critical element of an effective tobacco control policy.*⁵⁶

⁵³ "Canada", Tobacco Labelling Resource Centre, online: <<http://www.tobaccolabels.ca/countries/canada/>>.

⁵⁴ "Cigarette Package Health Warnings: International Status Report", *Canadian Cancer Society*, 3rd ed. (September 2012) at 2, online: <http://global.tobaccofreekids.org/files/pdfs/en/WL_status_report_en.pdf>.

⁵⁵ "A review of the science base to support the development of health warnings for tobacco packages", *Sambrook Research International* (2009) at 1, online: <http://ec.europa.eu/health/tobacco/docs/warnings_report_en.pdf>.

⁵⁶ *Ibid.*

Tobacco companies have acknowledged the impact of these labels by fighting labelling laws all over the world. More generally, there is an entire industry that employs psychologists and runs focus groups to tinker with the images, text, colours, fonts, shapes and textures of packaging – all with the explicit purpose of influencing consumer choices. Clearly, the way a product is presented impacts consumer attitudes and behaviours.

3.5 How the Warning Labels Uniquely Address Climate Change

While there is certainly an analogy to be made with tobacco warning labels, our labels are even more compelling when considered in the context of climate change.

1) The Labels Create Feedback

Climate change can be understood as a problem of *no feedback*. There is a delay between cause and effect: we burn fossil fuels today but do not get feedback from our actions to signal a need to change our behaviour. This lack of feedback is compounded by what psychologists call ‘hyperbolic discounting’ or the ‘current moment bias.’⁵⁷ This is our tendency to prefer interests that are small and proximate in time relative to interests that are significant but experienced in the future.

Our warning labels compress time to counteract the effects of the current moment bias. They bring faraway consequences – property damage, extreme weather, and drought – into the here and now. In doing so, they introduce critically important feedback to help us respond to climate change and air pollution in a more adaptive way.

2) The Labels Locate Responsibility

Climate change can also be understood as a problem of *diffusion of responsibility*. As individuals, our contribution to the problem is small; collectively, our actions dangerously alter the chemistry of our planet. Social psychologists know that when responsibility for something is shared among many, we often fail to act.⁵⁸ The antidote is intuitive: “the key” to addressing problems of diffusion of responsibility is “getting others to feel personally responsible for helping to solve problems they may not consider their own.”⁵⁹

So where responsibility for a problem is diffuse, one must simply locate responsibility. The placement of the warning label on a gas pump nozzle takes a problem of diffuse origins and locates responsibility right in the palm of your hand. Our idea is not another documentary or vague awareness campaign; there is absolutely nothing like it that connects us to the problems of climate change and air pollution in such a direct way. While our concept may be simple, it truly is a game-changer.

⁵⁷ Adam Kingsmith, “The Psyche Behind Canada’s Environmental Apathy”, *DeSmog Canada* (27 August 2013), online: <<http://www.desmog.ca/2013/08/27/psychology-behind-canada-s-environmental-apathy>>.

⁵⁸ “Diffusion of responsibility”, *Wikipedia*, online: <http://en.wikipedia.org/wiki/Diffusion_of_responsibility>.

⁵⁹ Dr. Alex Lickerman, “The Diffusion Of Responsibility: Why assigning responsibility to groups doesn't work”, *Psychology Today* (14 June 2010), online: <<http://www.psychologytoday.com/blog/happiness-in-world/201006/the-diffusion-responsibility>>.

3) The Labels Communicate Externalities in a Qualitative Way

Climate change is also a problem of negative externalities. Externalities are costs or benefits that result from the use of a product but are not reflected in its price. In the context of fossil fuels, we often hear negative externalities expressed as “hidden costs”. Carbon taxes and cap-and-trade regimes seek to internalize these harms to convey the “true cost” of fossil fuels to the market.

While we are able to determine the costs of the concrete and rebar required to adapt our infrastructure to the impacts of climate change and reflect these costs in the price of fossil fuels, how do we capture externalities like the loss of a species or human suffering? While economists have actually developed models for pricing human life, we recognize that price is a deficient language for communicating these values to the marketplace.⁶⁰ Our warning labels are simply a qualitative way of capturing and communicating externalities to the marketplace: what price seeks to convey in quantitative terms (using dollars and cents), our idea communicates in qualitative terms (using image and text). In the abstract, they both achieve the same thing. On the ground, our idea nurtures a focus that engages our sense of humanity in a way that a price signal never could.

Behavioural economists observe that pricing externalities can switch off moral cues that otherwise regulate human behaviour.⁶¹ Ban Ki-moon, the Secretary General of the United Nations has called climate change the “moral challenge of our generation.”⁶² If climate change truly is a moral challenge, why not treat it as such? Our warning labels convey important moral information to the marketplace to help transform communities. It is a market signal that can take us from complaining about the price of gas to demanding that governments and businesses do more to address climate change and air pollution.

As world-renowned communications theorist Marshall McLuhan observed, “The medium is the message.”⁶³ The way in which people typically consume information on climate change is through media such as newspapers, internet, TV and film. While important vehicles for communication, these media, by virtue of their form, unavoidably present the problem as distant or separate and are consumed in a passive manner. By contrast, our form of communication links our consumption of fossil fuels to the impacts of climate change in an unparalleled manner; the medium (i.e. the gas pump nozzle) is the message. Our proposal engages the user in a manner that transitions them from *passive observer* to *active participant* to create a much stronger impetus for change.

For more information on the psychology, economics, and communications theory behind our proposal, please visit our website or read our writings at the [Huffington Post](#).

⁶⁰ To paraphrase Oscar Wilde: we have come to know the price of everything and the value of nothing.

⁶¹ Diana Zlomislic, “Daycare late fees no deterrent, study finds”, *Toronto Star* (4 July 2008), online: <http://www.thestar.com/life/health_wellness/2008/07/04/daycare_late_fees_no_deterrent_study_finds.html>.

⁶² Ban Ki-Moon, “We cannot steal our children’s future” (Speech at United Nations Climate Change Conference in Bali, Indonesia, 12 December 2007), online: <<http://www.un.org/News/Press/docs/2007/sgsm11325.doc.htm>>.

⁶³ Marshall McLuhan, *Understanding Media: The Extensions of Man*, McGraw-Hill (1964).

3.6 A Disruptive Tool to Broaden Engagement and Catalyze Action

We may worry about climate change, oil sands, pipelines, etc., but we rarely question the simple act of pumping gas. There is a complete disconnect. The act of going to a gas station and filling up a car has been normalized for several generations. The warning labels take this unexamined, automatic act and problematize it. In creating a sense of dissatisfaction with the prevailing mobility solution, they stimulate demand for alternatives. The labels disrupt the status quo, shake us out of our sense of complacency, and provide impetus for us to do better. They are a catalyst for change.

Discourse around climate change in Canada tends to overlook end-use in favour of focusing on oil companies, points of extraction (e.g. oil sands, offshore drilling) or means of transportation (e.g. pipelines, shipping). Unfortunately, the uncomfortable reality is that we all share in responsibility for this problem.⁶⁴ Indeed, the vast majority of GHGs come from end-use; emissions from extraction and processing pale in comparison to emissions from vehicle combustion.⁶⁵ While a diversity of approaches is important, there is a risk that in framing the issue as an exclusively upstream problem, we actually distance ourselves from it and perhaps unintentionally perpetuate the status quo through demand-side complacency. A complacent, disconnected marketplace is unlikely to affect change upstream; engaging consumer demand can help us to finally address these issues in a more meaningful way.

The warning labels are pro-market and non-prescriptive; they simply provide relevant information to the marketplace and rely on the market to respond. The labels will cause some individuals to reduce their emissions but, more importantly, they will result in a shift in our collective demand to facilitate meaningful action on climate change and air pollution. Politicians will have more support to pass climate legislation, invest in public transit, build bike lanes and develop complete communities. Businesses will also innovate to meet the needs of a shifting market. The labels can be thought of as a prerequisite for action on climate change and air pollution; they contribute to social conditions that favour reform. After all, if we can't even honestly acknowledge our problem, what hope do we have in actually addressing it?

3.7 Identifiable Benefits to the Municipality

The examples below are just some of the ways in which our proposed warning labels benefit a municipality. It is not intended to be an exhaustive list.

1) Reduction in Vehicular Emissions

The reduction of air pollution and GHGs from vehicular emissions is in itself an identifiable benefit to a municipality. This awareness is already evidenced by anti-idling by-laws (discussed in Section 4.2.4) and by hundreds of municipal initiatives directed at reducing these harmful emissions.⁶⁶

⁶⁴ George Marshall, "Climate-change activists are playing a dangerous game with their 'enemy' narrative", *The Guardian* (16 November 2013), online: < <http://www.theguardian.com/commentisfree/2013/nov/16/climate-change-dangerous-game-enemy-narrative>>.

⁶⁵ "Setting the Record Straight: Lifecycle Emissions of Tar Sands", *Natural Resources Defense Council* (November 2010) at 7, online: <http://docs.nrdc.org/energy/files/ene_10110501a.pdf> [*Lifecycle Emissions*].

⁶⁶ *FCM Partners for Climate Protection*, *supra* note 41.

The proposed by-law amendment is aimed at a sector that is a significant source of GHGs and air pollution and is rationally connected to the objective of reducing these harmful emissions. Our research suggests that the by-law amendment will help to change attitudes and behaviours. Changes in behaviour would result in a direct reduction of harmful emissions while shifts in attitude would facilitate further initiatives to enhance the environmental well-being of a community.

Cities are responsible for approximately 70% of global carbon emissions.⁶⁷ In Canada, up to half of our GHG emissions are under the “control or influence of municipal governments.”⁶⁸ If a court were to conclude that municipalities have no authority to reduce these emissions, it would effectively be consigning us to unmitigated climate disruption. Such a decision would fly in the face of federal and provincial calls for municipal action, delegitimize years’ worth of municipal GHG reduction efforts, and risk opening up existing municipal initiatives to judicial challenge. Such a ruling seems implausible.

2) Shifts in Attitude that Directly Benefit the Municipality

A June 2014 *Globe and Mail* article on the Lower Mainland’s 10-year transit plan captures an example of the political pressures of environmental action in our communities:

“All but one of the region’s 21 cities have agreed to a sweeping \$7.5-billion plan to improve transit over the next 10 years... But the way to pay for it is still a murky mess. Within hours, [the] Transportation Minister shot down one of the main new sources of revenue mayors recommended – the carbon taxes that Lower Mainland residents pay. “I am certainly not going to be the person who goes out and says, ‘We’re going to jack up your income taxes.’”⁶⁹

The vast majority of people in British Columbia commute by car.⁷⁰ If a city like Vancouver implements our by-law amendment, hundreds of thousands of citizens would be exposed to the warning labels on a regular basis. Citizens would become less satisfied with existing mobility solutions and more interested in supporting alternatives, like the upcoming referendum on transit improvements. This shift in attitude gives an elected representative the political capital they need to fund public transit, increase bike lanes, and implement various sustainability initiatives. A councillor could rise and say, “Look, I’ve been getting your calls and I’ve seen these labels too. I’m just as frustrated and worried as you are. Let’s finally invest in public transit and more sustainable infrastructure.” The labels would advance core municipal subject matter to enhance the economic, social, and environmental well-being of a city.

3) Health, Safety and Well-Being of Persons

⁶⁷ *Megacities Are Taking Action*, *supra* note 39.

⁶⁸ *Act Locally*, *supra* note 40.

⁶⁹ Frances Bula, “B.C. Cities Approve Transit Revamp, but funding still unclear”, *The Globe and Mail* (12 June 2014), online: <<http://www.theglobeandmail.com/news/british-columbia/dazzling-pricey-transit-plan-proposed-for-bc-lower-mainland/article19142741/>>.

⁷⁰ “Majority of Toronto commuters still get in cars to get to work: census”, *CBC News* (10 March 2008), online: <<http://www.cbc.ca/news/canada/toronto/majority-of-toronto-commuters-still-get-in-cars-to-get-to-work-census-1.701205>>; Statistics Canada (2013) *2011 National Household Survey*. The commuter statistics for particular cities and regions can be found via a search of the Statistics Canada National Household Survey webpage. Online: <<http://www12.statcan.gc.ca/nhs-enm/index-eng.cfm>>.

Climate change presents a myriad of health and safety concerns. Citizens in cities and towns will face an increased risk of contracting West Nile Virus, Lyme disease, and malaria; risks to water quality and supply; more extreme weather, heat waves, etc. Vehicle emissions have also been associated with cardiovascular disease, stroke, lung cancer in adults, leukemia in children, reduced fertility in men, low birth weight, and other health concerns.⁷¹ The World Health Organization has identified local air pollution as “the most important environmental carcinogen, more so than passive smoking.”⁷² The warning labels address these concerns by reducing harmful emissions and advance the health, safety and well-being of persons.

Impacts from extreme weather events have been related to higher rates of depression, anxiety, violence, and suicide.⁷³ Mental health experts also observe that “at the deepest level, the debate about the consequences of climate change gives rise to profound questions about the long-term sustainability of human life and the Earth's environment.”⁷⁴ Climate change as an existential threat causes many to “commonly [respond with] distress and anxiety. People may feel scared, sad, depressed, numb, helpless and hopeless, frustrated or angry.”⁷⁵ Children and adolescents are among groups that appear particularly at risk to “experience more intense worry that causes distress and or interferes with normal day to day life.”⁷⁶ Our use of fossil fuels is having a profound impact on the health and well-being of an entire generation.

The *Community Charter* refers to “well-being” in s. 7. The purpose of a municipality includes “fostering the economic, social and environmental well-being of its community”.⁷⁷ Studies show that taking measures to address climate change can result in a variety of psychological benefits.⁷⁸ Interestingly, these positive health outcomes “derive from actions that people believe address the climate problem – even if the actual effect on climate is minimal or nonexistent.”⁷⁹ Thus, when it comes to health and well-being, it would appear that an identifiable benefit to a municipality exists in the very act of passing climate legislation, no matter how small the impact.

4) Economic, Social and Environmental Well-Being of the Municipality

The economic impact of congestion in large Canadian cities can cost billions of dollars in lost productivity. For example, Transport Canada conservatively estimates the total cost of congestion in the Lower Mainland at \$1.5 billion annually.⁸⁰ To the extent that the labels can help change commuter behaviour and shift attitudes to facilitate investment in public transit, they help to reduce this economic loss and

⁷¹ *Air Pollution Burden of Illness from Traffic*, *supra* note 33.

⁷² “Air pollution causes lung cancer, WHO agency decides” *Associated Press* (17 October 2013), online: <<http://www.cbc.ca/news/health/air-pollution-causes-lung-cancer-who-agency-decides-1.2100862>>.

⁷³ Jessica Fritze *et al.*, “Hope, despair and transformation: Climate change and the promotion of mental health and wellbeing” *International Journal of Mental Health Systems* 2:13 (17 September 2008), online: <www.ijmhs.com/content/pdf/1752-4458-2-13.pdf> [*Climate Change and Mental Health*].

⁷⁴ *Ibid.*, at 9.

⁷⁵ *Ibid.*, at 6.

⁷⁶ *Ibid.*, at 7.

⁷⁷ *Community Charter*, SBC 2003, c.26, s.7(d) [*Community Charter*].

⁷⁸ Dr. Janet Swim *et al.*, “Psychology and Global Climate Change: Addressing a Multi-faceted Phenomenon and Set of Challenges”, *American Psychological Association* (2011), online: <<http://www.apa.org/science/about/publications/climate-change.aspx>>, at 49.

⁷⁹ *Ibid.*

⁸⁰ Jonathan Arnold, “Congested and Nowhere to Go: Congestion, Road Infrastructure and Road Pricing in Metro Vancouver” (October 2013), at 1 (Adobe PDF p. 7), online: <http://www.bcbc.com/content/1027/RoadPricingPaper_FINAL.pdf>.

provide a direct benefit to the community. The health costs of vehicular emissions are also significant: researchers at the University of British Columbia say that chronic exposure to air pollution causes almost nine times as many deaths as traffic crashes.⁸¹ And the health costs of exposure to air pollution cost Canada an estimated \$8 billion per year.⁸² A reduction in vehicular emissions provides economic, social and environmental benefits to municipalities.

The B.C. fires of 2010 consumed 330,000 hectares of forest in the B.C. interior, with damages estimated at \$220 million.⁸³ As a result of fires, pests and diseases, all exacerbated by climate change, the timber supply in B.C. will decrease by 5-8% by the 2050's.⁸⁴ Forest fires also affect our homes; the fires of 2003 destroyed more than 334 homes and many businesses with an estimated cost of \$700 million.⁸⁵ Flooding will also have a serious economic impact. Based on existing coastal flood protection measures, it is estimated that climate change would lead to damages from flooding of more than \$2000 per British Columbian per year by the 2050.⁸⁶

Carbon pollution also contributes to heat waves, which can cause social unrest.⁸⁷ Climate change will make extreme weather events more frequent and more severe. As explored in previous sections, a reduction in GHG emissions is directed at the root cause of extreme weather and is a legitimate exercise of municipal authority.

⁸¹ *Air Pollution Burden of Illness from Traffic*, *supra* note 33, at 31.

⁸² Scott Sutherland, "UBC researchers find one third of Canadians at risk from traffic pollution" (21 October 2013), online: <<https://ca.news.yahoo.com/blogs/geekquinox/ubc-researchers-one-third-canadians-risk-traffic-pollution-011322071.html>>, citing the Canadian Medical Journal.

⁸³ BC Ministry of Environment (2012) "Making Progress on BC's Climate Action Plan", at 5. Online: <<http://www.env.gov.bc.ca/cas/pdfs/2012-Progress-to-Targets.pdf>> [*Making Progress on BC's Climate Action Plan*].

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ Courtney Humphries, "Climate change may mean more crime", *Boston Globe* (2 March 2014), online: <<http://www.bostonglobe.com/ideas/2014/03/02/climate-change-may-mean-more-crime/dZCKg5nx7mUcj513lwAEyO/story.html>>.

Part IV – LEGAL RESEARCH

This section explores the legal authority for a municipality in British Columbia to require gasoline retailers to place warning labels on gas pump nozzles advising consumers of the harms associated with the product they dispense. The *Community Charter*, SBC 2003, c 26 provides the authority to require such labels through the municipal authority to regulate business, and specific municipal powers to regulate, prohibit and make requirements concerning protection of the natural environment and public health. The warning labels would be a new licence condition for a gasoline retailer to obtain, continue to hold or renew its business licence.

The legal research in this document is not legal advice and is only applicable to municipalities in British Columbia. It does not apply to Regional Districts, nor does it address the *Vancouver Charter* (to which the City of Vancouver is subject). Our Horizon Society, its staff, board of directors, and volunteer researchers assume no responsibility for reliance on the research contained herein. Municipalities are encouraged to consult their legal departments or seek independent legal advice before taking any action to pursue the proposed by-law amendment. This document should be considered as a starting point for your own analysis.

4.1 Regulation of Emission, Air Quality and Climate Change in Canada

4.1.1 Tri-Level Regulation

We live in an era where senior levels of government appear to be functionally incapable of addressing climate change.⁸⁸ To expect municipalities to suffer the impacts of climate change while at the same time depriving them of the opportunity to respond to its underlying causes would be patently unjust. In *Spraytech v. Hudson*, the Supreme Court of Canada acknowledged the importance of municipal efforts in addressing such global environmental challenges:

The context of this appeal includes the realization that our common future, that of every Canadian community, depends on a healthy environment... This Court has recognized that "[e]veryone is aware that individually and collectively, we are responsible for preserving the natural environment . . . environmental protection [has] emerged as a fundamental value in Canadian society"...

The case arises in an era in which matters of governance are often examined through the lens of the principle of subsidiarity. This is the proposition that law-making and implementation are often best achieved at a level of government that is not only effective, but also closest to the citizens affected and thus most responsive to their needs, to local distinctiveness, and to population diversity. La Forest J. wrote for the majority in R. v. Hydro-Québec, 1997 CanLII 318 (SCC), [1997] 3 S.C.R. 213, at para. 127, that "the protection of the environment is a major challenge of our time. It is an international problem, one that requires action by governments at all levels" [emphasis in original]. His reasons in that case

⁸⁸ Michael Oliveira, "Cities can fight climate change best: Report", *Toronto Star* (23 May 2007), online: <http://www.thestar.com/news/2007/05/23/cities_can_fight_climate_change_best_report.html>.

also quoted with approval a passage from Our Common Future, the report produced in 1987 by the United Nations' World Commission on the Environment and Development. The so-called "Brundtland Commission" recommended that "local governments [should be] empowered to exceed, but not to lower, national norms" (p. 220) [emphasis in original].⁸⁹

Climate change is the exact sort of major environmental challenge that is contemplated by *Spraytech*. The reduction of GHG emissions is an effort that needs to be undertaken by all levels of government. This view is consistent with provincial and federal messaging on climate change⁹⁰ and long-standing practice in cities and towns across Canada.⁹¹ The "validity of tri-level regulation" as noted by the Ontario Court of Appeal in *Croplife Canada v. Toronto (City)* has been "unambiguously endorsed by the Supreme Court of Canada... as the accepted model in our federal system."⁹²

4.1.2 Federal, Provincial & Municipal: Relationships within the "Tri-Level Regime"

Municipalities are "creatures of statute" and can only exercise powers that have been delegated to them from the provincial government, such as through the provisions of the *Community Charter* or another Act.⁹³ Further, municipalities cannot enact by-laws that are inconsistent with a Provincial enactment.⁹⁴ To be inconsistent means that by complying with the municipal by-law a person would contravene the provincial enactment.⁹⁵ The following sections explore some of the provincial legislative context that could impact our by-law. A review of federal legislation that addresses climate change, air pollution, vehicle emissions, and gasoline retailers does not reveal any areas of operational conflict with our proposed by-law.

4.1.4 The Precautionary Principle

The precautionary principle is "a principle of customary international law" that is "codified in several items of domestic legislation" and was quoted with approval by the majority in *Spraytech v. Hudson*:⁹⁶

*In order to achieve sustainable development, policies must be based on the precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*⁹⁷

While the science is unequivocal that our use of fossil fuels alters our atmosphere, affects our air quality, etc., it is useful to recall the precautionary principle when considering our by-law amendment. Lack of full scientific certainty should not hinder a municipality's efforts to reduce its GHG emissions and improve its air quality.

⁸⁹ 114957 *Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40, [2001] 2 SCR 241, paras. 1-3 [*Spraytech v. Hudson*].

⁹⁰ *Fed and Prov support*, *supra* note 42.

⁹¹ *FCM Partners for Climate Protection*, *supra* note 41.

⁹² *Spraytech v. Hudson*, *supra* note 89, at para. 39.

⁹³ *R v Greenbaum*, [1993] 1 SCR 674, at para 22.

⁹⁴ *Community Charter*, *supra* note 77, s. 10.

⁹⁵ *Community Charter*, *supra* note 77, s. 10(2).

⁹⁶ *Spraytech v. Hudson*, *supra* note 89, at paras. 31-32.

⁹⁷ *Ibid*, at para. 31.

4.2 Regulation of Emissions, Air Quality and Climate Change in British Columbia

4.2.1 Climate Action in B.C.: A Shared Responsibility

In 2007, the Province of British Columbia, the Union of British Columbia Municipalities, and a number of local governments signed the British Columbia Climate Action Charter.⁹⁸ There are now 180 (of a possible 189) local governments across the province that have signed the Charter, including the Capital Regional District and all of its municipalities, and Metro Vancouver and the majority of its municipalities.⁹⁹ In signing the Charter, the Parties acknowledged the reality of anthropogenic climate change, their role in contributing to the issue, and their responsibility to address it. The Charter also outlined a set of common goals necessary to combat climate change. These goals include:

- (a) fostering co-operative inter-governmental relations;
- (b) aiming to reduce GHG emissions, including both their own and those created by others;
- (c) removing legislative, regulatory, policy and other barriers to taking action on climate change;
- (d) implementing programs, policies, or legislative actions within the respective jurisdictions that facilitate reduced GHG emissions, where appropriate;
- (e) encouraging communities that are complete and compact and socially responsive; and
- (f) encouraging infrastructure and a built environment that supports the economic and social needs of the community while minimizing its environmental impact.¹⁰⁰

While the Charter is not legally binding on the signatories, it nevertheless demonstrates the extensive commitment of provincial and local governments to work together to combat climate change and build a clean, healthy environment for present and future generations. It also carries with it potential benefits to its signatory local governments, including participation in the Climate Action Revenue Incentive Program (“CARIP”). CARIP is a conditional grant program that provides funding equivalent to 100 percent of the carbon taxes a local government pays directly – the conditions being: having signed on to the Climate Action Charter, committing to take actions and develop strategies to achieve three stated climate change goals, and reporting on their progress.¹⁰¹ Implementing our proposed by-law amendment can contribute to a local government’s progress toward the climate change goals mandated by CARIP.

A British Columbia Ministry of Environment publication on air quality regulation notes that the “responsibility to protect air quality is a shared effort between local, regional, provincial, and federal jurisdictions in Canada. Local and regional governments influence air quality as a result of community planning and bylaw development with the authority granted under the *Community Charter*.”¹⁰²

⁹⁸ BC Office of the Premier (26 September 2007) “News Release: BC Communities Commit to Carbon Neutrality by 2012”. Online: <http://www2.news.gov.bc.ca/news_releases_2005-2009/2007OTP0139-001194.htm>.

⁹⁹ BC Climate Action Toolkit (2011) *Status of Consideration of the BC Climate Action Charter*. Online: <http://www.cscd.gov.bc.ca/lgd/library/CAC_Signatories_2011.pdf>.

¹⁰⁰ BC Climate Action Charter (2007) s. 4. Online: <http://www.cscd.gov.bc.ca/lgd/library/BC_CLIMATE_ACTION_CHARTER.pdf>.

¹⁰¹ Government of British Columbia, Local Government Ministry, “Climate Action Revenue Incentive Program” (CARIP) (accessed 12 June 2014), online: <<http://www.cscd.gov.bc.ca/lgd/greencommunities/carip.htm>>.

¹⁰² Alderson J. (2007) “Inventory of Air Quality Bylaws in BC for: Anti-Idling, Open Burning, and Wood Burning Appliances” Online: <http://www.bcairquality.ca/reports/pdfs/aq_bylaws_bc.pdf>.

4.2.2 Provincial Climate Change and Air Pollution Legislation

The province of B.C. has adopted a number of enactments to combat climate change and air pollution.¹⁰³ These include:

- *Greenhouse Gas Reduction Targets Act* (GGRTA)
- *Carbon Tax Act*
- *Greenhouse Gas Reduction (Cap and Trade) Act*
- *Greenhouse Gas Reduction (Emissions Standards) Statutes Amendment Act*
- *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act*
- *Greenhouse Gas Reduction (Vehicle Emissions Standards) Act*
- *Local Government (Green Communities) Statutes Amendment Act*
- *Utilities Commission Amendment Act*
- *Environmental Management Act*

The Province of BC has also enacted a number of regulations with specific provisions concerning gasoline retailers. These enactments include:

- *Gasoline Vapour Control Regulation*, BC Reg. 321/2004. Enacted under the *Environmental Management Act* (EMA), this regulation requires gasoline storage tanks to be equipped with vapour balancing systems¹⁰⁴.
- *Petroleum Storage and Distribution Facilities Storm Water Regulation*, B.C. Reg. 321/2004. Enacted under the EMA, this regulation exempts petroleum storage and distribution facilities that are part of a retail service station from regulations that permit and regulate the discharge of effluent from the facility.¹⁰⁵
- *Renewable and Low Carbon Fuel Requirements Regulation* B.C. Reg. 335/2012. Enacted under the *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act*, this regulation provides requirements for the labelling of gasoline or diesel fuel that contain renewable fuels such as ethanol and biodiesel.¹⁰⁶

However, it would appear that none of these enactments regulate climate change, air pollution, vehicle emissions, or gasoline retailers in a manner that would cause the placement of warning labels on gas nozzles to be a contravention of provincial legislation.

4.2.3 Municipal Empowerment in B.C.: the Community Charter

¹⁰³ For a list of “Climate Action Legislation”, please visit the Ministry of Environment’s website:

<<http://www2.gov.bc.ca/gov/topic.page?id=60E1E7810BC145C6B6FC00EE31F41EC5&title=Climate%20Action%20Legislation>>.

¹⁰⁴ *Gasoline Vapour Control Regulation*, BC Reg. 321/2004, s.2. Online:

<http://www.bclaws.ca/civix/document/id/complete/statreg/226_95/search/+CIVIX_DOCUMENT_ROOT:%22service%20station%2%20+CIVIX_DOCUMENT_ANCESTORS:statreg#section2>

¹⁰⁵ *Petroleum Storage and Distribution Facilities Storm Water Regulation*, B.C. Reg. 321/2004, s.2(5)(c). Online:

<http://www.bclaws.ca/civix/document/id/complete/statreg/168_94/search/+CIVIX_DOCUMENT_ROOT:%22service%20station%2%20+CIVIX_DOCUMENT_ANCESTORS:statreg>.

¹⁰⁶ *Renewable and Low Carbon Fuel Requirements Regulation* B.C. Reg. 335/2012, s.7.3. Online:

<http://www.bclaws.ca/civix/document/id/complete/statreg/394_2008/search/+CIVIX_DOCUMENT_ROOT:%22service%20station%22%20+CIVIX_DOCUMENT_ANCESTORS:statreg#section7.3>.

When it was enacted in 2003, the *Community Charter* was hailed as “the most empowering local government statute in Canada. It goes further than any provincial legislation in recognizing municipalities as an order of government.”¹⁰⁷ The Charter is an answer to “[l]ocal governments [who] have long spoken out about their common desire to have a real say about the present and future of their communities”.¹⁰⁸ Section 3 of the *Community Charter* states that the purposes of the legislation include providing municipalities and their councils with:

- ...
- b) The authority and discretion to address existing and future community needs, and
 - c) The flexibility to determine the public interest of their communities and to respond to the different needs and changing circumstances of their communities.¹⁰⁹

4.2.4 Municipal Action on Climate Change and Air Quality: Anti-Idling By-laws

Local governments have long recognized that emissions from internal combustion vehicles negatively affect local air quality and contribute to climate change. Anti-idling by-laws are one of many ways by which municipalities have responded to the multiple harms of vehicular emissions. Approximately 25% of B.C. municipalities, which together account for over 50% of the B.C. population, have anti-idling by-laws.¹¹⁰ These include larger municipalities such as Vancouver, North and West Vancouver, and Victoria, and smaller municipalities such as Penticton, Merritt, and Whistler.¹¹¹ A number of other municipalities have anti-idling policies and initiatives in place. Many of these municipalities are supported by initiatives such as Idle-Free BC.¹¹² Implicit in these ubiquitous by-laws is an accepted recognition that exhaust from automobiles contributes to climate change and air pollution, both of which are matters of local concern.

While some of the anti-idling by-laws were created under the municipal power to regulate noise, some of the by-laws, such as that of the City of Victoria,¹¹³ have been enacted under the s.8(3)(i) [*public health*] and the s.8(3)(j) [*protection of the environment*] powers. It is clear that municipalities regard vehicle emissions as a threat to public health and the environment.

Other municipalities, such as the Town of Gibsons, explicitly ground their anti-idling by-law under *Community Charter* s.8(3)(h)¹¹⁴ and s.64(c).¹¹⁵ The by-law notes that the pursuant to these provisions:

¹⁰⁷ BC Ministry of Community, Aboriginal and Women’s Services (11 March 2003) *Backgrounder: Benefits of the Community Charter*. Online: <<http://www2.news.gov.bc.ca/archive/2001-2005/2003mcaws0033-000250-attachment1.htm>>.

¹⁰⁸ British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, vol 14, no. 10 (29 April 2003) at 6295 (Hon T. Nebbeling).

¹⁰⁹ *Community Charter*, *supra* note 77, s. 3.

¹¹⁰ BC Ministry of Environment (2012) *2011 Inventory of Air Quality Bylaws in British Columbia: Vehicle Idling, Open Burning, and Wood Burning Appliances*, at 16, Online: <<http://www.bcairquality.ca/reports/pdfs/bylaws-2011.pdf>> [*Inventory of Air Quality Bylaws in BC*].

¹¹¹ *Ibid* at 13-14; see also Idle-Free BC (2014) *Who’s on Board?* Online: <<http://www.idlefreebc.ca/onboard/index.php>> [*Idle-Free BC*].

¹¹² *Ibid*.

¹¹³ City of Victoria, *Idling Control Bylaw No. 07-069*. Accessed on 16 June 2014. Online: <[http://www.victoria.ca/assets/City~Hall/Bylaws/bylaw-07-069.pdf](http://www.victoria.ca/assets/City%20Hall/Bylaws/bylaw-07-069.pdf)>

¹¹⁴ *Community Charter*, s. 8(3): “A council may, by bylaw, regulate, prohibit and impose requirements in relation to the following:...(h) the protection and enhancement of the well-being of its community in relation to the matters referred to in section 64 [*nuisances, disturbances and other objectionable situations*]”.

¹¹⁵ *Community Charter* s. 64: “The authority of a council under section 8 (3) (h) [*spheres of authority — nuisances disturbances and other objectionable situations*] may be exercised in relation to the following:...(c) the emission of smoke, dust, gas, sparks, ash, soot, cinders, fumes or other effluvia that is liable to foul or contaminate the atmosphere”

“a municipality may, by bylaw, regulate prohibit and impose requirements with respect to the protection and enhancement of the well-being of its community in relation to the emission of smoke, fumes and other effluvia that is liable to foul or contaminate the atmosphere.”¹¹⁶

Section 64(c) of the *Community Charter* specifically addresses the authority of municipalities to regulate air pollution. It is understandable that an anti-idling by-law would invoke this power to achieve its objective of reducing harmful vehicle emissions that contribute to a number of human health risks. Our gas labels seek to curb emissions for this very same reason.

However, our labels also seek to combat climate change, and s.64(c) seems to support this objective as well. This section states that a council may exercise their s.8(3)(h) authority to regulate in relation to “the emission of smoke, ...fumes or other effluvia that is liable to foul or contaminate the atmosphere”. According to the Merriam-Webster Online Dictionary, “contaminate” means to “make something dangerous ...by adding something harmful or undesirable to it”.¹¹⁷ Vehicle emissions contaminate the atmosphere by adding harmful and undesirable CO₂ and other GHGs to it, thereby making it more dangerous for human (and other) life.

It is worth observing that, from a citizen’s perspective, the warning labels are much less restrictive than anti-idling by-laws. The anti-idling by-laws require citizens to stop running their engines after a prescribed period of time; they proscribe freedom. Our warning labels simply provide information; citizens are free to respond as they like or can ignore the message altogether. While the idea of warning labels on gas pumps is ‘new’ and sure to be challenging for many, it is actually much less restrictive than measures directed at the same harms that are already commonplace.

4.3 Municipal Authority in British Columbia to Regulate on Emissions, Air Quality & Climate Change

The authority for a municipality to implement warning labels on gas nozzles can be found in a number of sources of power within the *Community Charter*. While each municipality has the discretion to choose which power they will rely on, we envision the following possibilities:

- Under the s.8(6) power to regulate in relation to business;
- Under the s.15 business licensing power;
- Under the s.8(3) authority to regulate, prohibit and impose requirements in relation to:
 - (h) the protection and enhancement of the well-being of the community in relation to nuisances and contaminating the atmosphere;
 - (i) public health; and
 - (j) protection of the natural environment.

Each of these possibilities could be implemented as a new regulation or, as an amendment to an existing by-law or business licence. We believe that an amendment to an existing by-law is the most simple and effective option, and for this reason we refer to our proposal as a “by-law amendment”.

We shall explore each of these possibilities in the sections below.

¹¹⁶ Town of Gibsons, Bylaw No. 1010, 2005. *A bylaw to regulate the idling of vehicles*, online: <<http://www.gibsons.ca/bylaws>>.

¹¹⁷ Merriam Webster Online, *Contaminate* (accessed 12 June 2014): <<http://www.merriam-webster.com/dictionary/contaminate>>.

4.3.1 Power to Regulate Business

4.3.1.1 Regulating in Relation to Business

Section 8(6) of the *Community Charter* provides that a council “may by bylaw, regulate in relation to business”.¹¹⁸ “Regulate” is defined in the *Community Charter* as follows:

"regulate" 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.¹¹⁹

As discussed in *International Bio Research v Richmond (City)*,¹²⁰ a municipality's power to regulate in relation to business is more restrictive than its other powers under *Community Charter* s. 8(3). However, the case suggests that a by-law regulating a business will be properly within the jurisdiction of the municipality if the by-law:

- Regulates, but does not prohibit, a business;¹²¹
- Has a valid municipal purpose. This will be determined by reference to those purposes stated in the by-law as well as those stated in the enabling statute, s.7 of the *Community Charter*. Municipal by-laws are presumed to be enacted in good faith and for proper municipal purposes, and only one proper purpose is necessary, even if the council had other motivations;¹²²
- Is reasonable and is rationally connected to achieving its objective. However, as long as there is a valid municipal purpose, courts will not generally assess the effectiveness of the by-law;¹²³ and
- Does not impose a discriminatory distinction unless in accordance with s.12 of the *Community Charter* and there is regard to the public interest.¹²⁴

Requiring warning labels on gas nozzles would simply be a condition that a gas station must follow, either as a requirement under a by-law or (as discussed below) as a term or condition of holding a business licence. This would not result in a prohibition of their business. The stated purpose of the by-law is up to each individual municipality. However, given that our warning labels seek to address the drivers of climate change and air pollution, both which have serious consequences for municipalities everywhere, any prospective gas label by-law seems likely to have a valid purpose. Indeed, the purpose of such a by-law would seem to complement the municipal purposes stated in the *Community Charter*, most notably s.7(d): “fostering the economic, social and environmental well-being of its community”. Placing a warning label at the point of purchase of fossil fuels seems like a reasonable way to generate awareness of the harms arising from their use and help to foster community well-being. Any alleged discrimination is justified by the clear public interest in combating climate change and, as discussed in section 4.4.3 below,

¹¹⁸ *Community Charter*, s. 8(6). However, before adopting a by-law under 8(6) of the *Community Charter*, s. 59(2) requires council to give notice of its intention to do so, and to provide an opportunity for persons who consider themselves to be affected by the by-law to make representation to council. This notice requirement permits council to determine the form and manner of notice that council considers reasonable. See section 4.6.3.

¹¹⁹ *Community Charter*, *supra* note 77, Schedule, s. 1.

¹²⁰ *International Bio Research v. Richmond (City)*, 2011 BCSC 471 (CanLII).

¹²¹ *Ibid*, at para. 43.

¹²² *Ibid*, at paras. 45-47.

¹²³ *Ibid*, at para. 55-58.

¹²⁴ *Ibid*, at paras. 72-74.

under s.12 of the *Community Charter*.

As per s.59(2) of the *Community Charter*, before enacting the proposed by-law amendment under the s.8(6) business regulation power, a municipality must give notice of its intention to do so, and provide an opportunity for persons who consider they are affected by the by-law to make representations to council.¹²⁵

4.3.1.2 Business Licensing Powers

The business licensing power under s.15 of the *Community Charter* is one way that a municipality may exercise their s.8(6) power to regulate businesses. Under this power, a municipality may establish terms and conditions that must be met in order for a business to obtain, continue to hold, or renew a licence.¹²⁶ A business must have a valid licence to operate.

There does not appear to be reported case law from British Columbia interpreting the s.15 licensing power, though as a form of business regulation, any licensing conditions must fall within the parameters of a valid regulation outlined in the section above.

In Ontario, however, courts have “grant[ed] wide authority to the City [of Toronto] to pass business licensing by-laws that advance the public interest and respond to the needs of the City.”¹²⁷ They “attract an expansive and deferential interpretation.”¹²⁸ Under Ontario’s *Municipal Act*, Ontario municipalities also have authority to pass by-laws regarding “business licensing”.¹²⁹ The Ontario Court of Appeal held in *118143 Ontario Inc. v. Mississauga (City)* that a business licensing system includes “the ability to regulate business premises and the equipment and other personal property used or kept for hire in the business.”¹³⁰

Section 194 of the *Community Charter* permits municipalities to impose business licence fees that cover the cost of administering the regulatory scheme. The municipality must make available to the public, on request, a report explaining how the fee was determined. In the case of warning labels, the cost to implement may be passed on the gas station retailers, if the municipality chose to do so.

4.3.1.3 Current Municipal Regulation of Gas Stations

As noted, all businesses in B.C. are regulated by by-laws and can be required to obtain a licence before they can operate. Gas stations are no exception. From a survey of business regulation across B.C. municipalities, there is usually a single business licence by-law that outlines a general set of rules for all businesses in the district and fixes licence fees.¹³¹ This by-law generally requires that, as a condition of holding a licence, a business must comply with the municipality’s land use or zoning by-law and all other

¹²⁵ *Community Charter*, *supra* note 77, s. 59(2).

¹²⁶ *Community Charter*, *supra* note 77, s. 15(d).

¹²⁷ *Toronto Livery Association v. Toronto (City)*, 2009 ONCA 535 (CanLII), at para. 28 (Note: the equivalent to s. 8(2) in the *City of Toronto Act* is s. 8(3) in the *Community Charter*).

¹²⁸ *Ibid*, at para. 29.

¹²⁹ *Municipal Act*, S.O. 2001, c 25, s. 10(2), 11(3).

¹³⁰ *118143 Ontario Inc. v. Mississauga (City)*, [2004] O.J. No. 4143 (ONCA), at para 12.

¹³¹ The Corporation of the District of Saanich, *Business Licence Bylaw 2002*, No. 8213. Online: <<http://www.saanich.ca/living/pdf/buslicence8213.pdf>>.

applicable municipal by-laws.¹³² Zoning and land use by-laws not only indicate where in a community a gas station may be located, but provide additional regulations including the use of the gas station, building specifications, and parking.¹³³ Other applicable by-laws may regulate such things as the installation and removal of gas pumps.¹³⁴

Working with this existing framework, a municipality might chose to implement out labels in one of the following ways:

- An amendment to the business licensing by-law, inserting a specific provision pertaining to warning labels on gas nozzles;
- An amendment to an existing by-law, inserting specific provision pertaining to warning labels on gas nozzles; or
- The enactment of a new by-law with a specific provision pertaining to warning labels on gas nozzles.¹³⁵

4.3.2 Fundamental Powers: Community Well-being, Public health & Environmental Protection

Section 8(3) of the *Community Charter* empowers a municipality to pass by-laws that “regulate, prohibit and impose requirements in relation to” a list of subject matters. These are considered to be the ‘fundamental powers’ of a municipality and, despite some defined limitations, these powers are to be given a “broad interpretation” so as to empower the municipality.¹³⁶ The powers that would most likely support our proposed by-law amendment include:

- (h) The protection and enhancement of the well-being of its community in relation to the matters referred to in section 64 [*nuisances, disturbances and other objectionable situations*]
- (i) Public health
- (j) Protection of the natural environment

While these powers are broader than the s.8(6) power to regulate businesses, both s.8(3)(i) [*public health*] and (j) [*protection of the natural environment*] are subject to “concurrent jurisdiction” restrictions under s.9 of the *Community Charter*. This means that both the provincial government and the municipality have the ability to regulate in relation to them.¹³⁷ The s.9 provisions are meant to ensure that municipal by-laws are consistent with provincial regulation.¹³⁸ As such, when regulating in these areas, municipalities can only enact a by-law in accordance with relevant provincial regulations, or with the agreement or approval of the responsible cabinet minister.¹³⁹ ¹⁴⁰ It may be prudent to request ministerial approval regardless of whether the by-law is in accordance with a regulation, as previously-enacted by-laws have been overturned in court

¹³² *Ibid* at s. 4.1(i).

¹³³ Township of Esquimalt, Zoning Bylaw 1992 No. 2050 , s. 49. Online: <http://www.esquimalt.ca/files/PDF/Bylaws/Bylaw_2050_-_Zoning_Bylaw_Consolidated_2014.pdf>.

¹³⁴ City of Victoria, *Fuel Equipment and Storage Bylaw*, 2007 No. 07-049. Online: <<http://www.victoria.ca/assets/City~Hall/Bylaws/bylaw-07-049.pdf>>

¹³⁵ While we have referred to a “by-law amendment” throughout this report, we acknowledge that a new by-law may be enacted.

¹³⁶ *Community Charter*, *supra* note 77, s. 4 and *Interpretation Act*, s. 8.

¹³⁷ *Community Charter*, *supra* note 77, s. 9.

¹³⁸ *Inventory of Air Quality Bylaws in BC*, *supra* note 110, at 13.

¹³⁹ *Community Charter*, *supra* note 77, s. 9(3).

¹⁴⁰ *Community Charter*, *supra* note 77, s. 9(3).

due to their lacking ministerial approval.¹⁴¹ This approval should be obtained after the by-law's third reading by Council.¹⁴²

4.3.2.1 Public Health

Section 8(3)(j) of the *Community Charter* permits municipal by-laws that "regulate, prohibit and impose requirements in relation to... public health."¹⁴³

This is an obvious source of jurisdiction for possible by-laws dealing with air pollution; however, it is subject to the "concurrent jurisdiction" of the provincial government.¹⁴⁴ Again, this requires that the enacting municipality ensure that the by-law is (a) in accordance with a regulation; (b) in accordance with an agreement; or (c) approved by the Minister responsible.¹⁴⁵

The province has enacted the *Public Health By-Law Regulation*, B.C. Reg. 42/2004 in relation to this power. In order to pass a public health by-law, municipalities must adhere to the requirements of the regulation. Those that would apply to our proposed by-law amendment include:

- The by-law must concern the "the protection, promotion, or preservation of the health of individuals";¹⁴⁶
- The council must deposit a copy of the by-law with the Minister;¹⁴⁷ and
- Before adopting the by-law, the council must consult with the regional health board or medical health officer responsible for public health matters within the municipality.¹⁴⁸

It appears that our proposed by-law amendment would meet these requirements. As discussed in 2.4 above, it is clear that air pollution has a direct impact on the health of B.C. citizens, and from 2.5, it is becoming increasingly evident that climate change has a similar effect. It is also unlikely that a local health board or health officer would have any serious objections to our initiative, and may even welcome it, given the health burden that vehicle emissions have. Notably, the health board or officer does not have a veto over by-laws, and is consulted for their views.¹⁴⁹

4.3.2.2 Protection of the Natural Environment

Section 8(3)(i) of the *Community Charter* permits municipal by-laws that "regulate, prohibit and impose requirements in relation to... the protection of the natural environment".¹⁵⁰

This authority is also subject to the "concurrent jurisdiction" of the provincial government; municipalities

¹⁴¹ See *Peachland (District) v Peachland Self Storage Ltd.*, 2013 BCCA 273.

¹⁴² *Community Charter*, *supra* note 77, s. 135(4).

¹⁴³ *Community Charter*, *supra* note 77, s. 8(3)(j).

¹⁴⁴ *Community Charter*, *supra* note 77, s. 9(1)(a).

¹⁴⁵ *Community Charter*, *supra* note 77, s. 9(3).

¹⁴⁶ *Public Health Bylaws Regulation*, B.C. Reg. 2/2004, s. 2(1)(a) [*Public Health Bylaws Reg.*].

¹⁴⁷ *Ibid*, s. 2(2)(a).

¹⁴⁸ *Ibid*, s. 2(2)(c).

¹⁴⁹ West Coast Environmental Law (2006) *The Clean Air Bylaws Guide*, at 36. Online:

<<http://wcel.org/sites/default/files/publications/The%20Clean%20Air%20Bylaws%20Guide.pdf>>

¹⁵⁰ *Community Charter*, *supra* note 77, s. 8(3)(i).

can only enact by-laws under this power in accordance with relevant provincial regulations, or with the agreement or approval of the responsible cabinet minister.¹⁵¹ The province has enacted the *Spheres of Concurrent Jurisdiction – Environmental and Wildlife Regulation*, BC Reg. 144/2004, however, this regulation does not provide for by-laws concerning air pollution or climate change.¹⁵² A municipality may still be able to pass a by-law requiring warning labels on gas pumps with the agreement or approval of the Minister of Environment. This would require convincing the Minister of the value of this initiative.

4.3.2.3 Community Well-Being

Lastly, s.8(3)(h) of the *Community Charter* permits municipal by-laws that “regulate, prohibit and impose requirements in relation to... the protection and enhancement of the well-being of its community in relation to the matters referred to in section 64 [nuisances, disturbances and other objectionable situations].”¹⁵³ Section 64 of the *Community Charter* provides a number of matters upon which the municipality can exercise their s.8(3)(h) power. The following two matters are relevant to our proposed by-law amendment:

(c) the emission of smoke, dust, gas, sparks ash, soot, cinders, fumes or other effluvia that is liable to foul or contaminate the atmosphere.¹⁵⁴

Section 64(c) specifically provides for the authority of municipalities to regulate air pollution.¹⁵⁵ It does not appear to have been judicially interpreted; however, as noted in 4.2.4 above, an analogy may be drawn with other valid municipal bylaws relating to vehicle emissions. The power provided by s.8(3)(h) and s.64(c) of the *Community Charter* serves to ground the anti-idling bylaw of The Town of Gibsons, B.C.¹⁵⁶ Since gas labels have the same objective as anti-idling bylaws (the reduction of harmful vehicle emissions), this power may perhaps also be used to justify our proposed by-law amendment.

It is also important to note that this power may also be used to support our wider objective of combating climate change. As discussed in 4.2.4 above, vehicle emissions are “smoke, fumes or effluvia” and they contaminate the atmosphere by adding harmful and undesirable CO₂ and other GHGs to it, thereby making it more dangerous for human (and other) life.

This power is not under the “concurrent jurisdiction” of the provincial government and therefore is not subject to any further provincial oversight.

4.3.3 Precedent for Municipalities’ Jurisdiction to Reduce Greenhouse Gas Emissions

Section 53 of the *Community Charter* provides explicit authority for municipalities to exercise their authority under s. 8(3)(l) in relation to buildings to reduce GHG emissions.¹⁵⁷ The fact that this has been contemplated, and deemed to be a valid municipal action, at least in the context of regulating buildings,

¹⁵¹ *Community Charter*, supra note 77, s. 9(1)(b).

¹⁵² *Spheres of Concurrent Jurisdiction – Environmental and Wildlife Regulation*, BC Reg. 144/2004, s.2.

¹⁵³ *Community Charter*, supra note 77, s. 8(3)(h): “(h) the protection and enhancement of the well-being of its community in relation to the matters referred to in section 64 [nuisances, disturbances and other objectionable situations].”

¹⁵⁴ *Community Charter*, supra note 77, s. 64(c).

¹⁵⁵ *Inventory of Air Quality Bylaws in BC*, supra note 110, at 12.

¹⁵⁶ Town of Gibsons, Bylaw No. 1010, 2005. A bylaw to regulate the idling of vehicles, online: < <http://www.gibsons.ca/bylaws>>.

¹⁵⁷ *Community Charter*, supra note 77, s. 53(2)(c).

bodes well for the authority to do so in relation to regulating business (or through another head of authority).

4.4 Treatment and Limitations of Municipal Decisions

The powers of a municipality are defined by the *Community Charter* (or other provincial legislation) as well as by the need to avoid inconsistencies with existing provincial legislation, as noted above. However, there are some additional rules regarding the interpretation and extent of municipal powers and the treatment of municipal decisions. These parameters have been set out by both legislation and case-law and relate to interpretation, deference, discrimination, and scope of application.

4.4.1 Broad Interpretation

Section 4(1) of the *Community Charter* provides that:

*“the powers of a municipality and their councils under this Act or the Local Government Act must be interpreted broadly in accordance with the purposes of those Acts and in accordance with municipal purposes.”*¹⁵⁸

As noted, the purposes of the *Community Charter* include the authority to address community needs, and to afford flexibility in the interpretation of municipal enabling statutes.¹⁵⁹ Municipal purposes include good government, laws for community benefit, and fostering the economic, social and environmental well-being of the community.¹⁶⁰

The Supreme Court of Canada endorsed a “broad powers” approach to municipal regulation, after a group of Calgary taxi drivers challenged the jurisdiction of the city of Calgary to enact a by-law limiting the number of taxi plate licences available in the municipality. Mr. Justice Bastarache found that “modern municipalities... require greater flexibility in fulfilling their statutory purposes”.¹⁶¹ Further, a municipality need only have one proper purpose for the by-law to be valid, even if members of Council may have other motivations.¹⁶²

4.4.2 Judicial Deference to Decisions by Municipalities

Our courts have complemented this broad approach by adopting a high degree of deference in the judicial review of decisions of municipal councils. When a municipal decision to enact a by-law is challenged in court by a person affected by that by-law, a court may judicially review whether the decision was within the municipality's power to carry out, and whether the decision was reasonable.

The question of whether the decision was within the jurisdiction of the municipality to make, as described by statute, will be determined by the courts on a low standard of deference, known as “correctness”.¹⁶³ In our case, the court might ask: does the *Community Charter* provide the municipality with the power to pass

¹⁵⁸ *Community Charter*, supra note 77, s. 4(1).

¹⁵⁹ *Community Charter*, supra note 77, s. 3.

¹⁶⁰ *Community Charter*, supra note 77, s. 7.

¹⁶¹ *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, at para. 6.

¹⁶² *International Bio Research v Richmond (City)*, 2011 BCSC 471, at para. 47.

¹⁶³ *Ibid* at para 18.

a by-law amendment relating to vehicle emissions, air pollution, and climate change – yes or no?

If the Court finds that the action was within the municipality's jurisdiction as it is prescribed by statute, the court will then consider whether the municipal action was reasonable. To continue our example, if the court answers "Yes" to the first question, they might then ask: is the gas label by-law amendment reasonable having regard to the process taken by the municipality and, does it fall within a range of possible, reasonable actions that the municipality could have taken to achieve the goal of the by-law?¹⁶⁴

Recently, in the Supreme Court of Canada, in *Catalyst Paper Corporation v. North Cowichan (District)*, a paper manufacturing company sought to judicially review the District of North Cowichan's property taxation by-law that levied a tax rate that was 20 times higher for industrial properties than residential properties. The Court found that when enacting a by-law, a municipality must take into account social, economic, political and other non-legal considerations; as a result, the court will defer to the council's responsibility to serve the people who elected them.¹⁶⁵ Even though the tax rate was very high, due to the additional considerations at issue, the decision by the municipality to enact the by-law was not found to be unreasonable.¹⁶⁶ Indeed, the court confirmed that finding unreasonableness in local government decisions will continue to be very difficult:

*"I conclude that the power of the courts to set aside municipal bylaws is a narrow one, and cannot be exercised simply because a bylaw imposes a greater share of the tax burden on some ratepayers than on others."*¹⁶⁷

This confirms the decision in *Nanaimo (City) v. Rascal Trucking Ltd.*, in which the Supreme Court of Canada concluded that courts may review municipal actions that are made within the bounds of the enabling statute on a *highly deferential* standard:

"A by-law is not unreasonable merely because particular judges may think that it goes further than is prudent or necessary or convenient..."

*... Recent commentary suggests an emerging consensus that courts must respect the responsibility of elected municipal bodies to serve the people who elected them and exercise caution to avoid substituting their views of what is best for the citizens for those of municipal councils..."*¹⁶⁸

Furthermore, due to the global nature of climate change, one might question whether the use of warning labels to encourage a reduction of GHGs by a municipality is reasonable. That is, would the labels have any real impact on climate change? This question is implicit in the larger question of whether climate change can be understood as a municipal issue, a question we believe has already by answered in the affirmative.

¹⁶⁴ *Catalyst Paper Corporation v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 16 [*Catalyst Paper*].

¹⁶⁵ *Ibid*, at para 19.

¹⁶⁶ William A. Buholzer, *Local Government in British Columbia*, 5th ed. (Vancouver: 2013), at para. 104.

¹⁶⁷ *Catalyst Paper*, *supra* note 164, at para 9.

¹⁶⁸ *Nanaimo (City) v. Rascal Trucking Ltd.*, 2000 SCC 13, [2000] 1 SCR 342, at para 36 [*Nanaimo v. Rascal Trucking*].

A stringent test of reasonableness would also require the court to measure the effectiveness of our proposed intervention. However, such a test, one that would require an intervention to ‘solve’ climate change to be reasonable, would be failed by any proposal at every level of government in Canada. Indeed, if the entire province – or even the entire country – stopped emitting GHGs tomorrow, we would still not ‘solve’ climate change. The proper test therefore is simply whether the measure helps to reduce GHG emissions; anything more than this creates an impossible standard for any level of government.¹⁶⁹ This is also the only possible standard that would make practicable federal and provincial calls for action on climate change by all levels of government.¹⁷⁰

The warning labels meet this test. The fact that another level of government can implement climate change or air pollution initiatives with greater impact is irrelevant. Supreme Court of Canada Justice L’Heureux-Dubé, writing for the majority in *Spraytech v. Hudson*, stated:

“As a general principle, the mere existence of provincial (or federal) legislation in a given field does not oust municipal prerogatives to regulate the subject matter.”¹⁷¹

As noted in 4.1.1, L’Heureux-Dubé went on to describe the system of pesticide regulation as a “tri-level regulatory regime”.¹⁷² There is no doubt that this description can be extended to other areas of environmental regulation. Moreover, the local impacts of vehicular pollution on health and well-being also serve to underscore the municipal jurisdiction in this area.

4.4.3 Power to Differentiate

Section 12(1) of the *Community Charter* provides that “by-laws may...:

- b) establish different classes of persons, places, activities, property or things; and
- c) make different provisions, including exceptions, for different classes established under paragraph (b).¹⁷³

The warning labels by-law amendment is non-discriminatory as it applies equally to all gasoline retailers within a municipality’s jurisdiction.¹⁷⁴ Notwithstanding this, climate change is an issue with multiple causes that no single proposal can entirely address. To the extent that our by-law amendment provides differential treatment between sectors that contribute to climate change (for example, the transportation sector rather than the industrial sector), a municipality has legitimate discretion to do so under the *Community Charter*.

¹⁶⁹ More broadly, fossil fuel extraction and infrastructure projects are routinely approved by regulatory bodies on the basis that their incremental environmental impacts are insignificant when compared against global carbon emissions. To suggest that initiatives that reduce GHG emissions must somehow achieve more than marginal reductions would be to hold mitigative initiatives to a double standard. Such a standard would create an unjust, asymmetric legal environment in which activities that increase emissions are explicitly favoured over activities that decrease emissions. The result would be an open endorsement of climate change and air pollution. Such a result strikes the author as absurd.

¹⁷⁰ *Fed and Prov support*, *supra* note 42.

¹⁷¹ *Spraytech v. Hudson*, *supra* note 89, at para 39.

¹⁷² *Ibid.*

¹⁷³ *Community Charter*, *supra* note 77, s. 12(1).

¹⁷⁴ This is unlike the situation in *Shell Canada v. Vancouver*. In that case, the target of a resolution by the City of Vancouver was a particular gasoline company, not the sector as a whole.

4.4.4 Limit on the Boundaries of the Municipality

Section 11(1) of the *Community Charter* states that, unless otherwise authorized by statute:

“a municipality and its council may only exercise or perform their powers, duties and functions with the boundaries of the municipality”¹⁷⁵

The Supreme Court of Canada endorsed this principle in *Shell Canada Products Ltd. v Vancouver (City)*. The Court concluded that there is a territorial limit on the council’s jurisdiction and that the purpose of any action must be to provide a benefit to the citizens of the municipality.¹⁷⁶

Our proposed by-law amendment appears to fit these territorial limits. The gas labels would only be placed within the boundaries of the municipality that have legislated our proposed by-law amendment. Furthermore, municipalities across B.C are currently, and will continue to be, affected by climate change and air pollution. Not only are these issues caused, at least in part, by vehicle emissions from each and every B.C. municipality, but the benefits of combating these issues will be felt by the citizens of each and every B.C. municipality. Therefore, the purpose of the proposed by-law amendment would indeed serve to benefit the citizens of the municipality where it was enacted.

However, the court also noted that the council may make laws that “have regard for matters beyond its boundaries”.¹⁷⁷ This ability of councils to consider extraterritorial matters in their deliberations is important in the context of climate change as the economic, social, environmental, and health issues of climate change are not limited by political borders. Therefore, while a municipality must consider the effects of air pollution and climate change with their boundaries, a council can consider the impacts of climate change across ecosystems.

4.5 Judicial Treatment of Similar Forms of Municipal Action

The placement of warning labels on gas nozzles as a means to combat an important issue such as climate change might seem to be a novel idea, but it is not without precedent in Canada. Neither is the use of municipal by-law power to effect change. The following section will describe a number of Canadian initiatives that serve as inspiration and precedent for our labels, and the municipal power to enact them.

4.5.1 Warning Labels on Tobacco and Compelled Speech

A possible challenge to this proposed by-law amendment will come from oil petroleum companies on the grounds that these labels amount to compelled speech and violate their constitutionally protected right to freedom of expression. This argument was encountered in the case of warning labels on tobacco packages.

In a majority decision in *RJR-MacDonald Inc. v. Canada*, the Supreme Court of Canada held that warning

¹⁷⁵ *Community Charter*, *supra* note 77, s. 11(1).

¹⁷⁶ *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 SCR 231, at para 100 [*Shell Canada v Vancouver (City)*].

¹⁷⁷ *Ibid.*

labels on tobacco packages violated manufacturers' s.2(b) freedom of expression rights under the *Charter of Rights and Freedoms* since "freedom of expression necessarily entails the right to say nothing or the right not to say certain things."¹⁷⁸ The court added that the infringement could have been justified under s.1 of the *Charter* but that the proposed designs were not attributed to the government and could give rise to the inference that the warnings were from the manufacturers themselves. The majority held that the government was unable to justify this non-attribution and struck down the legislation.¹⁷⁹

The federal government responded by revising its legislation such that the warnings were attributed to the government; this is why cigarette packaging in Canada today includes the text "Health Canada". The issue was revisited by the Supreme Court of Canada in *Canada v. JTI-Macdonald Corp.* and the labels were upheld.¹⁸⁰ Our gas pump warning labels anticipate this s.2(b) challenge by including attributions in small print at the bottom of our mock-ups.¹⁸¹ While the tobacco warning labels were a federal initiative, the *Charter* analysis would likely remain the same in the municipal context.

4.5.2 Consumer Information Labels on Business Property

Our initiative differs from warnings on tobacco packages in that the proposed gas labels are located on the property of a business, not directly on the product itself. However, a City of Toronto program provides both a precedent for this concept as well as a good example of successful municipal action. While this example comes from a different jurisdiction, the decision by the Ontario Court of Appeal on the matter will provide some weight in courts here in British Columbia.

In 2001, the City of Toronto launched a program that required restaurant owners to place information notices on their entrances to communicate the results of their health inspections to customers. The City relied on its general health and welfare powers and its licensing powers to pass the by-law.¹⁸²

The by-law was challenged by the Ontario Restaurant Hotel & Motel Association ("ORHMA") on several grounds. The Superior Court held that the City's by-law did not clash with provincial health law.¹⁸³ It also concluded that the notices did not infringe on licence holders' s.2(b) freedom of expression rights, which, even if it did, was held to be justifiable given that the notices were "clearly attributed to the City of Toronto and not to the individual restaurant owner."¹⁸⁴

The Superior Court further observed that the information labels do "not in any way prohibit a restaurant owner from disavowing whatever messages the notices contain. An owner is free to post any message the owner chooses in response to the inspection notice."¹⁸⁵ Similarly, gasoline retailers have much space on which to communicate their own messages in response to the labels proposed for their gas nozzles.

The Court of Appeal found that the by-law was rooted in "significant public health and consumer

¹⁷⁸ *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 SCR 199 at para 113 [*RJR-MacDonald*].

¹⁷⁹ Interestingly, the minority held that the unattributed messages actually did not violate tobacco manufacturers' freedom of expression. La Forest J. wrote that the expression in question was commercial in nature and far from "the 'core' of freedom of expression values" and "must then be accorded a very low degree of protection."

¹⁸⁰ *Canada (Attorney General) v. JTI-Macdonald Corp.*, 2007 SCC 30, [2007] 2 SCR 610.

¹⁸¹ A possible attribution might read: "Required by Municipality of ABC by-law 2014-058."

¹⁸² *Ontario Restaurant Hotel & Motel Ass. v. Toronto (City)*, 2004 CanLII 34445 (ON SCDC) at para 15.

¹⁸³ *Ibid.* at para 20.

¹⁸⁴ *Ibid.*, at para 46.

¹⁸⁵ *Ibid.*, at para 47.

protection imperatives” and merely required the licence holder to disclose risks associated with the consumption of its product.¹⁸⁶ It upheld the Superior Court’s decision and added that “the Charter does not prohibit governments from communicating messages that contradict commercial messages.”¹⁸⁷ Our warning labels are similarly rooted in significant public health and consumer protection concerns.¹⁸⁸ The labels merely disclose the risks associated with consumption of the licence holders’ product.

4.5.3 Shark fin Bans

Unsuccessful precedent case law can be as informative as successful case law. *Eng v Toronto (City)* 2012 ONSC 6818 (CanLII) and *Shell Canada Products Ltd. v Vancouver (City)* [1994] 1 SCR 231, both of which concern municipal by-laws that were struck down by the courts, have been helpful in delineating the scope of the municipal law power in Canada. They are distinguishable from our proposed by-law in a number of ways.

The City of Toronto recently had its shark fin ban overturned in *Eng v. Toronto (City)*. Part of Justice Spence’s reasoning was based on his finding that the ban would not “have any identifiable benefit for Toronto with respect to the environmental well-being of the City.”¹⁸⁹ He held the city was seeking to affect matters outside the boundaries of Toronto, without benefiting inhabitants within the City itself.⁹⁹

In his judgment, Justice Spence referred to *Shell Canada Products Ltd. v. Vancouver (City)*, a Supreme Court of Canada decision. The case addressed a resolution by the City of Vancouver not to do business with Shell Canada, a petroleum company, due to its investments in apartheid South Africa. The purpose of the resolution was to encourage Shell to withdraw from doing business in South Africa and express moral outrage against the apartheid regime.¹⁹⁰ However, it was disputed whether the resolution fell within the powers of the City of Vancouver as provided by the *Vancouver Charter*.¹⁹¹

Section 189 of the *Vancouver Charter* states that “Council may provide for the good rule and government of the city.”¹⁹² The court found this provision instructive, indicating that while there is a territorial limit on the Council’s jurisdiction, the council can make laws that “have regard for matters beyond its boundaries” though the purpose of these laws must be to benefit the citizens of the city.¹⁹³ The court also found that the Resolution was discriminatory because it singled out Shell for doing business in South Africa, while taking no action against other corporations who were also doing business in South Africa at the time.¹⁹⁴

It should be noted that there was a very strong minority judgment in this case, written by Justice McLachlin (as she was at the time) who found the Resolution was within the powers of the Vancouver municipal government. Some of Justice McLachlin’s reasons concerning the interpretation of municipal legislation were subsequently adopted by the Supreme Court of Canada in *Spraytech v. Hudson (City)* and *Nanaimo*

¹⁸⁶ *Ontario Restaurant Hotel & Motel Association v. Toronto (City)*, 2005 CanLII 36152 (ON CA) at para 14.

¹⁸⁷ *Ibid*, at para 11.

¹⁸⁸ Public Health Agency of Canada, “Climate Change and Public Health Factsheets”, Government of Canada, online: <<http://www.phac-aspc.gc.ca/hp-ps/eph-esp/fs-fi-a-eng.php>>.

¹⁸⁹ *Ibid*, at para 66.

¹⁹⁰ *Shell Canada v Vancouver (City)*, *supra* note 176, at para 74.

¹⁹¹ *Ibid*, at para 75.

¹⁹² *Vancouver Charter*, SBC 1953, c 55, s.189.

¹⁹³ *Shell Canada v Vancouver (City)*, *supra* note 176, at para 100.

¹⁹⁴ *Ibid*, at para 105.

(City) v. Rascall Trucking Ltd.¹⁹⁵

The shark fin decision and the Shell Canada decision can be distinguished from our proposed initiative on a number of grounds. Three grounds are of particular interest:

1) The labels merely provide information, they are not a ban or prohibition

Eng v. Toronto (City) concerns an outright ban on an otherwise legal product. Our labelling by-law amendment is not a ban; it is merely the provision of information to consumers. It is more akin to *RJR-MacDonald* and *Ontario Restaurant Hotel & Motel Association v. Toronto*. *Shell Canada v. Vancouver (City)* concerned a prohibition against doing business with a law-abiding company. Relative to the shark fin ban or the resolution against Shell Canada, our proposal is not restrictive at all; citizens would be free to consume gasoline exactly as they did in the absence of the labelling by-law amendment. The unobtrusive nature of our by-law amendment is made even more evident when considered against the “existential threat” that is climate change.¹⁹⁶

2) Greenhouse gas reduction efforts by municipalities are customary

The practice of finning sharks quickly became a cause célèbre in municipal circles in 2011. Prior to this period, the subject matter appears to have had no historic consideration by local governments in Canada. However, in 2011, the question of whether there existed a valid municipal purpose was very much a live issue. In the end, only a handful of municipalities actually passed bans on shark fin products.

The context for our labelling by-law amendment is entirely different. Municipalities across our country have undertaken hundreds of initiatives directed at the reduction of GHG emissions over the course of many years.¹⁹⁷ Federal and provincial governments are explicit in their encouragement for all levels of government to act on climate change.¹⁹⁸ The practice of municipal action to reduce GHG emissions is an accepted custom; it would seem highly unlikely for a court to rule to the contrary.

3) Location of the act and location of the harm

In *Eng v. Toronto (City)* and *Shell Canada v Vancouver (City)*, there was a weak nexus to matters of local concern. The act that caused the harm (eg. a person finning a shark) and the harm itself (eg. a shark being finned) occurred in distant oceans. As with the prohibition against *Shell*, the shark fin ban in *Eng* sought to “affect matters in another part of the world.”¹⁹⁹ This distance was compounded by an intervention whose intended impact was mediated by abstract principles of supply and demand.²⁰⁰ In the context of our proposal, both the location of the act that causes the harm and the location where the harm is experienced occur entirely within a municipality’s borders. The connection is direct: as soon as I finish pumping gas and turn my key in the ignition, I am causing the harm. Indeed, our by-law amendment does not seek to “affect matters in another part of the world”; it addresses a matter that is happening

¹⁹⁵ References to Justice McLachlin’s judgment in *Shell Canada v Vancouver* can be found in *Spraytech v. Hudson*, at para 23, and *Naniamo v. Rascal Trucking*, at para 36.

¹⁹⁶ “UN Secretary-General in Davos: Climate Change is “only one truly existential threat”, *International Institute for Sustainable Development* (29 January 2009), online: <<http://climate-l.iisd.org/news/un-secretary-general-in-davos-climate-change-is-%E2%80%99Only-one-truly-existential-threat%E2%80%99D/>>.

¹⁹⁷ *FCM Partners for Climate Protection*, *supra* note 41.

¹⁹⁸ *Fed and Prov support*, *supra* note 42.

¹⁹⁹ *Eng v. Toronto (City)*, 2012 ONSC 6816 (CanLII), at para. 51 [*Eng*].

²⁰⁰ *Ibid*, at para. 43.

down the street.

The impacts of GHGs vary from place to place and engage communities as local entities.²⁰¹ Recent examples from British Columbia are illustrative. In February 2014, twenty people were laid off from their jobs in Qualicum Beach on Vancouver Island when a local shellfish producer had to scale back their operations. The plant had to downsize considerably because 95% of its shellfish crop, about 10 million scallops, were lost to ocean acidification – another effect of rising atmospheric CO₂.²⁰²

Logging communities in B.C.'s interior are more concerned with the impacts to forests from the proliferation of the Mountain Pine Beetle due to warmer winters.²⁰³ The local distinctiveness of climate change impacts recalls the principle of subsidiarity from *Spraytech*, and highlights the fact that it is actually the municipal level of government that is best situated to implement our warning labels. The local nexus for our by-law amendment is further strengthened by the fact that air pollution from vehicles impacts health and the environment on a very local level.²⁰⁴

In short, the *Eng* and *Shell* decisions involved sets of facts that were fundamentally different from the herein proposed by-law amendment. However, *Eng* and *Shell* provide some guidance with respect to label design. The reasoning in these decisions that permits a council to "... have regard for matters beyond its boundaries in exercising its powers..."²⁰⁵ supports, by extension, the development of a series of warning labels that reflect local matters which are complemented by a series of label designs that reflect more global concerns.

4.6 Additional Implications of Gasoline Warning Labels

4.6.1 Interference with Business

The question of illegality due to interference in a licence holder's business was explored by the Ontario Court of Appeal in *Toronto Taxi Alliance Inc. v. Toronto (City)*. In this case, restrictions placed on the taxicab industry were upheld. The court found that "the by-law was passed for a proper purpose" and the fact that it "interferes to some extent with the contractual and financial decision making of licence holders does not render the by-law invalid."²⁰⁶ This is consistent with *Re Christie Taxi Ltd. and Doran* where the court observed that a by-law that regulates a business "is valid even though it interferes with private contractual and civil rights."²⁰⁷

In considering warning labels on tobacco packages, La Forest J. wrote for the minority in *RJR-MacDonald* that "[t]he warnings do nothing more than bring the dangerous nature of these products to the attention of the consumer... the only cost associated with the unattributed health warning requirement was a

²⁰¹ "Caring for the Air," Metro Vancouver (2014), online:

< http://www.metrovancouver.org/services/air-quality/AirQualityPublications/Caring_for_the_Air-MV2014.pdf>.

²⁰² John Harding, "10 million scallops are dead; Qualicum company lays off staff", *The Parksville Qualicum Beach News* (25 February 2014), online: <<http://www.pqbnews.com/news/247092381.html>>.

²⁰³ "Mountain pine beetle poised to ravage Eastern Canada", *CBC News* (4 April 2013), online:

<<http://www.cbc.ca/news/technology/mountain-pine-beetle-poised-to-ravage-eastern-canada-1.1339467>>.

²⁰⁴ *Air Pollution Burden of Illness from Traffic*, *supra* note 33.

²⁰⁵ *Eng*, *supra* note 199, at para. 51.

²⁰⁶ *Toronto Taxi Alliance Inc. v. Toronto (City)*, 2005 CanLII 47232 (ONCA), at para. 53.

²⁰⁷ *Re Christie Taxi Ltd. and Doran*, 1975 CanLII 336 (ON CA), 1975 CarswellOnt 894, at para 30.

potential reduction in profits; manufacturers of dangerous products can reasonably be expected to bear this cost.”²⁰⁸

The IPCC and various other organizations have concluded that we must leave the vast majority of fossil fuels underground or we jeopardize the viability of our planet for future generations. Vehicular emissions also have a direct impact on our health and result in significant economic costs. In this context, any interference with private contractual and civil rights and any reduction in profit can only reasonably be expected given the dangerous and costly nature of the product.

4.6.2 Gasoline Retailers Pay for Reasonable Licensing Cost

Section 8(8) of the *Community Charter* states that a municipality’s power to regulate, prohibit, and impose requirements include powers to:

- (a) Provide that persons may engage in a regulated activity only in accordance with the rules established by bylaw;
- (c) Require persons to do things with their property... [and] and to do things at their expense...²⁰⁹

Section 194(1) of the *Community Charter* also permits a municipal council to impose a fee in respect of the exercise of the authority to regulate, prohibit, or impose requirements.

Therefore, costs incurred by the municipality in administering the warning labels by-law amendment can be recovered via licensing fees. In *Surdell-Kennedy Taxi Ltd. v. Surrey (City)*, the City of Surrey implemented a by-law requiring an auction process for taxi licences, which included a fee. The B.C. Supreme Court stated:

[F]or the auction price to be properly characterized as a license fee the auction price must bear a direct relationship to Surrey's cost of administering the licensing service.²¹⁰

In *Surdell-Kennedy*, the auction fee was deemed to be an invalid form of taxation, as it was not directly related to the City’s costs to administer the licensing service. The Court cited an Ontario Court of Appeal case, *Urban Outdoor Trans Ad v Scarborough (City)*, which states that the fees must “bear a reasonable relation to the cost of providing the service” and are intended to “defray expenses, not to raise revenue”.²¹¹ Fortunately, and of particular interest to fiscally-minded councillors, if the cost for our initiative is passed on via licensing fees to gasoline retailers, it would likely be deemed reasonable as the cost for stickers and nozzle talkers is nominal.

4.6.3 Consultation

²⁰⁸ *RJR-MacDonald*, *supra* note 178.

²⁰⁹ *Community Charter*, *supra* note 77, s. 8(8)(a),(c).

²¹⁰ *Surdell-Kennedy Taxi Ltd. v. Surrey (City)*, 2001 BCSC 1265, at para. 36.

²¹¹ *Ibid*, citing *Urban Outdoor Trans Ad v Scarborough (City)*, 2001 CanLII 24140 (ON CA), at para 31.

In the process of creating a by-law regulating businesses under s. 8(6) of the *Community Charter*, council must give notice of its intention and provide consultation opportunities for persons affected by the bylaw.²¹² The form, manner, time and frequency of the notice are decided as the Council considers reasonable.²¹³ Such efforts help to address procedural concerns.

²¹² *Community Charter*, *supra* note 77, s. 59(2).

²¹³ *Community Charter*, *supra* note 77, s. 59(3).

Part V – NEXT STEPS

5.1 Strategy

In November 2013, a delegate at the United Nations COP19 climate conference in Warsaw, Poland said upon seeing our gas nozzle: “I’ve been to all 19 COP meetings and I’ve never seen an idea so simple yet so powerful.” We believe that our idea has the potential to make a significant contribution in the fight against climate change and we are excited to be leading this groundbreaking effort in Canada.

Our strategy is to continue to meet with councillors to secure support for the by-law amendment in advance of actual votes taking place. We also plan on doing more outreach to grow public support for the by-law amendment so that city and town halls will be packed with citizens wishing to give deputations in support.

We have selected a few cities that we believe are receptive to our by-law amendment and are focusing our resources there. We plan on pushing for votes in these communities and then using these positive examples to empower councillors to support the by-law amendment in other communities.

We will be video recording deputations by youth and uploading them to YouTube so that their examples will inspire others to do the same. In fact, we have already been contacted by people and groups from all around the world about our campaign. Our idea has been primed to go global by the warning labels already on tobacco packaging in numerous countries. We want to bring positive examples of leadership from Canadian communities to the United Nations Climate Change Conference in Paris in December 2015 to share with delegates from all over the world.

Please contact us at communications@ourhorizon.org to learn more or to book Rob as a speaker for your organization or event.

5.2 Complimentary Presentation to your Council

The apparent simplicity of our idea is deceptive; there is a significant amount of research behind it that should be communicated to decision-makers to ensure the idea is given due consideration. If your community is actively considering this by-law amendment, we respectfully ask that our Executive Director be invited to offer a complimentary presentation. This will help to ensure that your council has access to full and relevant information during the course of its deliberations and is able to discharge its duties to your municipality in good faith. If we are unable to be there in person, we would be pleased to provide a presentation and answer questions via teleconference.

5.3 Funding

We are often asked about our sources of funding. Since launching in early 2013, we have successfully raised over \$25,000 from more than 300 individual donors from all over the world. The rest of our campaign has been personally funded by our executive director; unfortunately, he is no longer financially able to do so. Securing funding in 2015 for a small team of dedicated advocates will be crucial to ensuring the success of our campaign. Know any wealthy philanthropists that want to support a grassroots effort at leading change? Send them our info!

As a not-for-profit whose advocacy work means we do not qualify for charitable status, it can be a challenge to fund our work. Your donations are appreciated. Please contact us at supporters@ourhorizon.org to learn how you can help.

5.4 Frequently Asked Questions (FAQs)

This document is intended as a starting point for municipal consideration of our warning labels by-law amendment. We omitted material in an attempt to keep the sections on climate change, the warning labels, and legal research as succinct as possible. Please visit our Frequently Asked Questions (FAQs) page at www.ourhorizon.org for more information and do not hesitate to contact us with questions.

*“Never doubt that a small group of thoughtful,
committed citizens can change the world.
Indeed, it's the only thing that ever has.”*

Margaret Mead

