

Delegate to Nanaimo City Council Monday July 13/2015 on Collier Dams

Good evening Mayor McKay and Council,

My name is Bill McCallum and I reside at 31 Kanaka Place, Nanaimo.

Had the people of Nanaimo NOT howled out loud, this whole process revolving around the Collier Dams would have slipped through and an expenditure of \$6, \$10 or more millions been approved by Council! Yes, people made noise about the preservation of the Park but the closer we looked the more of a farce this became. The process that flowed through city staff; from the tendering documents to the engineers, through to the final recommendations made by staff to Council, was incredibly flawed. A pile of 'assumptions' became the invented 'facts' to support the vital need of a project to "save hundreds of lives and tens or even 100's of millions of dollars of property". ALL this was originated from an initial request from the regulator to evaluate the SAFETY of the DAM to complete a risk assessment at that time. The conclusion reached in the initial engineer's report predicted a "catastrophic failure" should the seismic event the province had set as the standard occur. This has ALL been totally disproven. The parameters then changed to what I believe is now a 23,000 year event FLOOD from the original seismic event. I haven't plowed through anywhere near enough of the paper trail to say with any certainty that the FLOOD investigation of the dam was NOT an investigation prompted by the flawed actions and communications from staff and the engineers with the regulator, rather than it being initiated by the regulator. To do that I'd need access to all of the paperwork and communications in a big room with a couple of helpers for several days. Coincidentally the numbers kept coming back \$6, \$10 Million and more, in spite of the dam being built like a brick you know what! It is a struggle to be polite when expressing how incredibly overbuilt and sound the structure is! In spite of this, more flawed and unsubstantiated data was sent to the regulator and now we find ourselves in our current mess.

The argument in favor of complying with the regulator's order is based on the fear of consequences for being in violation of the order rather than doing what is best for the citizens and taxpayers of Nanaimo. We have heard that we should cut our losses at the \$2 Million and counting. To just accept this and add the cost of the staff recommendation of X Millions more. Just build the damn dam and get it over with.

Well, we are now certain that we DO NOT need to spend MILLIONS more! Perhaps one Million including mitigation and park improvements, but quite possibly far closer to a ½ million more! But the regulator does not believe us because they have ALL this flawed data city staff has sent them, including the initial hysterical reports predicting massive loss of life and property. This has the regulator confused and digging in to say FIX IT NOW or else! If city Council caves in and wastes another \$6-10 MIL instead of the \$1/2 - 1 MIL currently being bounced around, they are abandoning their promises to act in the best interests of the citizens and taxpayers of Nanaimo.

REMEMBER there are 9 more dams to waste many more MILLIONS on! We MUST fix the process NOW and get the truth out before we compound this error and continue Nanaimo's recent history of big budget bricks & mortar projects all incredibly over budget, overbuilt and perhaps unnecessary.

Council and the Mayor knew that this was THE HOT election issue when they ran for office.

CITY OF NANAIMO BYLAW NO. 7002 A BYLAW TO INDEMNIFY MUNICIPAL PUBLIC OFFICERS

3 Indemnity Against Members of Council, Officers or Employees For any action of a member of Council, officer or employee that results in a claim for damages against the City, in accordance with the Local Government Act the City may seek indemnity or reimbursement from that person where a court makes a finding that the person has been guilty of dishonesty, gross negligence or malicious

or wilful misconduct.

<http://www.nanaimo.ca/ByLaws/ViewBylaw/7002.pdf>

Please NOTE – voting for the truth even in violation of the Order of a Regulator is neither dishonest, grossly negligent or malicious or willful misconduct. The Regulators Order is in violation of the Charter of Rights and Freedoms as it violates the principals of 'fundamental justice'.

In Canadian law, **fundamental justice** is the fairness underlying the administration of justice and its operation. The **principles of fundamental justice** are specific legal principles that command "significant societal consensus" as "fundamental to the way in which the legal system ought fairly to operate", per ***R v Malmo-Levine; R v Caine***. These principles stipulate basic procedural rights afforded to anyone facing an adjudicative process or procedure that affects fundamental rights and freedoms, and certain substantive standards related to the rule of law that regulate the actions of the state (e.g., the rule against unclear or vague laws). The degree of protection dictated by these standards and procedural rights vary in accordance with the precise context, involving a contextual analysis of the affected person's interests. In other words, the more a person's rights or interests are adversely affected, the more procedural or substantive protections must be afforded to that person in order to respect the principles of fundamental justice. A legislative or administrative framework that respects the principles of fundamental justice, as such, must be fundamentally fair to the person affected, but does not necessarily have to strike the "right balance" between individual and societal interests in general.

The term is used in the Canadian Bill of Rights and the Canadian Charter of Rights and Freedom.

You are involved in a high stakes game of Bluff poker with a Provincial Regulator acting on flawed information and data. A judgement has been made that was not fact based and your ability to appeal is both limited in scope and has little or no independence from the initial process and decision. There can be no other conclusion other than the City of Nanaimo has not received fundamental justice. You have a strong case for legal action under the Charter and it is noteworthy that a similar matter will be before the Canada Supreme Court early next year <http://thetyee.ca/News/2015/04/30/Ernst-Heads-to-Supreme-Court/> with a number of municipalities and Regional Districts awaiting the Supreme Court's judgement before filing their appeals with Provincial Regulators.

I do not believe that a legal challenge will ever be necessary. This city Council has done all its due diligence to ensure the safety of all of its citizens and the responsible expenditure of the taxpayers' limited resources. There are more dams and many other city facilities that must meet risk assessment standards and it is neither prudent nor responsible to knowingly waste millions more dollars on the first. The regulator and the Province of BC will eventually come to the table to resolve this issue and IMO that will occur far sooner if more councillors vote responsibly and for the Mayor to <reflect the will of the majority of Council> per Section 116 of the BC Municipal Act.

If the Mayor and some councillors are too afraid of illusionary personal consequences they should never have run for the Office. There is no way to portray the obeying of an order from the regulator that they know is wrong and that will cost the citizens and taxpayers of Nanaimo many unnecessary millions of dollars, as the responsible act of an elected official.

There is a time to stand up and do the right thing for those who believed and trusted you when they cast their Vote. This is that time. vote for what is right and vote for the truth with the confidence that the citizens and taxpayers of Nanaimo support you.