

Delegation to City of Nanaimo SPECIAL OPEN COUNCIL MEETING Monday July 6/, 2015.

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

I am speaking as Citizen and Voter of Nanaimo who wishes to express his thanks to all of Council for the time and energy they have devoted to the Colliery Dam file. In spite of all the words and actions, I still believe that the Mayor and all the Council members have tried their best to resolve this matter in what they feel are < the BEST interests > of the Citizens of Nanaimo as they promised during their election campaigns and since. I do not doubt that that you all are working to do everything < reasonable > to ensure the Safety of the citizens of Nanaimo. The reasons for < how we got here > are no longer of issue and should be dealt with during the Core Review. What is at issue is what we do now when faced with rejection by the Environmental Appeal Board?

In its ruling, the EAB said although both the city and the water comptroller had put forth a considerable amount of information, the city had not proven it would suffer "irreparable harm" from costs and degradation to Colliery Dam Park if a stay was not granted.

"The panel found that the city had not established that its interests may suffer irreparable harm between now and the time that the appeals are decided, unless a stay is granted," the 15-page decision also says. "However, even if the panel is incorrect on its assessment of irreparable harm to the city, the panel finds that such harm is relatively minor and will not justify a stay of the order."

Board rebuffs city's request regarding dam

Spencer Anderson / Daily News

July 3, 2015 12:00 AM

- See more at: <http://www.nanaimodailynews.com/news/nanaimo-region/board-rebuffs-city-s-request-regarding-dam-1.1988779#sthash.jojMMkty.dpuf>

It is important to remember history. The dams were originally rated as the most at risk in the province, triggering a plan to remove and replace them at a cost of at least \$30 million and forever altering a park cherished by residents. Over 600 people attended the initial public meeting, organized by residents opposed to the plan to remove them and convinced they were not such a risk.

They were right. Subsequent study showed the dams were not a seismic risk. Had the city rushed ahead, based on faulty and meager information, taxpayers would have paid unnecessarily and the park would have been impacted.

Now, a new assumption of risk, based equally on faulty and meager information,

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has been put forward.

Flood risk, even though in their over 100 years of existence the dams have never "over topped," has been identified as potentially creating \$2 million in damages. For this, the city is ordered to spend \$8-10 million to mitigate a \$2 million risk that is not even proven to exist.

Surely, the lesson learned should be that due diligence is required and surely, those who were so right in the first place deserve a chance to be heard. The urgency and the severity seem to be downgraded.

Important to remember history on dams issues

Mla Doug Routley / Daily News

July 6, 2015 12:00 AM

- See more at: <http://www.nanaimodailynews.com/important-to-remember-history-on-dams-issues-1.1990319#sthash.fA9CiCOi.dpuf>

You are now faced with a Political decision, one that you should have been prepared for when deciding to run for office. The facts are clear that the Provincial Regulatory bodies are still acting on faulty information about the Dam structure, flows and Hydrology. The original Risk Assessment that has been shown wrong but is STILL apparently being used for the basis of the rejection of your Stay Request. You can give up, bow to the Regulators' order, ignore the best interests of the Citizens of Nanaimo and knowingly spend Millions of Dollars to fix problems that do not exist or could be rectified with great savings to Nanaimo's Taxpayers. Or you can say no, continue your due diligence to investigate fully the risks and provide a solution in the best interests of those YOU chose to represent.

This is not an isolated decision as there are many more Dams in the City and many City structures and services that can NOT meet the Risk Assessment these Regulatory bodies have imposed on the Colliery Dams. This has gone far beyond the protection of a valuable City Park and the frugal use of the City's limited financial resources. You are now deciding whether to accept the irresponsible and economically ruinous downloading by a higher level of Government. By not providing a fair evidence based hearing, adjudication and appeals process you and the citizens of Nanaimo have been denied your Rights under the

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

You are not alone.

One major legal firm, Borden Ladner Gervais, recently noted in a blog that the Supreme Court decision to hear the case could have a "significant impact on the board, the Alberta Energy

Regulator, any other regulatory tribunal that has statutory protection from civil liability or actions, and any potential future claimants who may consider bringing an action against a statutory body that has legislative protection. We look forward to the guidance from the Supreme Court as to the proper framework for addressing the interplay between statutory immunity provisions and charter damages claims against state actors."

Case to be heard in 2016

The Ernst case will be heard next year by the Supreme Court. Attorney generals from the provinces have until to December to intervene in the case.

If the court rules that the regulator's immunity clause does not protect it from civil action brought under the Charter of Rights of Freedoms, then Ernst's case will return to Alberta's courts where it will resume against Encana, Alberta Environment and the Alberta Energy Regulator.

<http://thetyee.ca/News/2015/07/01/Supreme-Court-Fracking-Case/>

While this is an Appeal to the Canadian Supreme Court by an individual to over rule the Exemption of Provincial Regulatory Bodies from Charter protection, there are Municipal and Regional Government cases that have proceeded through the Appeals Courts that are awaiting this decision before filing their Appeal to the Supreme Court on similar abuses of Power by Regulatory bodies. You are not alone in your frustration.

Do I think you will have to go to the Supreme Court? No, I think you must however prepare to do so as part of your campaign for a fair and just hearing. I am convinced that you are involved in a high stakes game of political BLUFF with the Provincial Government as there are many more pressing and dangerous Dams that have drawn little or no scrutiny. If in doubt I would invite you to drive along Highway 3 the Crow and look right at the Copper Mountain mine tailing pond towering above the Similkameen River. In a seismically active zone above a river that supplies drinking water for dozens of communities on both sides of the border; this is an International issue. You are part of a PR get tough campaign by the Provincial Government to take the heat off of the lack of action on the Mt. Polley spill. The Provincial Government does not want the Collier Dam issue aired in Public. Stick to doing what is BEST for Nanaimo and we will resolve this.