

# OCCUPY FREDERICTON

225 Smythe Street, Fredericton NB, E3B 3C7  
occupyfredericton@gmail.com | (506) 440-8738 & 461-5898  
Occupy New Brunswick | Occupy Canada | Occupy Wall Street

Tuesday, February 14<sup>th</sup>, 2012

Michelle Brzak  
City Solicitor  
PO Box 103 (City Hall)  
Fredericton, NB E3B 4Y7

Dear Ms. Brzak,

I am one of the individuals who were personally served with notice by the Mayor on December 31<sup>st</sup>, 2011, in Phoenix Square. I am writing to you on behalf of myself, the other individuals who were served, and Occupy Fredericton.

At this point, it is our position that the shelter and sign were not in violation of the by-law that the Mayor cites in the letter he delivered on December 31<sup>st</sup>. The letter states that the following activity is prohibited:

“Installing, erecting or maintaining a building or other structure in contravention of Section 5 of By-law No. T-4, A By-law Respecting Streets and Sidewalks.”

As you are no doubt aware, Section 5 of by-law T-4 makes no reference to structural features which would cause an infraction. It is thus impossible for a shelter to be in contravention of Section 5 of by-law T-4. Indeed, there is no section in the entire text of by-law T-4 of which the Occupy Fredericton shelter would have been in contravention.

Furthermore, even if the Occupy Fredericton shelter had been in contravention of Section 5 of by-law T-4, and the occupants had failed to obey a notice indicating such, the remedy provided in by-law T-4 does not authorize the Mayor to order its destruction. In that scenario, Section 5 merely provides the following remedy:

“...the Director of Engineering and Public Works shall report the facts and circumstances to the City Clerk.”

I also note that many personal possessions were destroyed, stolen, or lost as a result of the actions of the Mayor and the city crew he instructed to destroy the shelter. We sent an e-mail to the City weeks ago with a list of the lost or stolen property, and inquired as to where it was. We received a response from the City's legal team which stated that they were looking into the issue. However, we have received no further correspondence from the City since.

There are also issues that have arisen as a result of a letter from the Director of Engineering & Public Works, which was attached to the Mayor's letter. It states:

“Pursuant to Section 5 of By-law No. T-4, A By-law Respecting Streets and Sidewalks, you are

hereby given three (3) days notice to remove any and all structures that are located in Phoenix Square, being a public square and a public place in the City of Fredericton.

If you fail to remove any and all structures from Phoenix Square after three (3) days you will be in violation of By-law No. T-4.”

I note that three days had not elapsed between the time that we were served these letters by the Mayor and the time that the Mayor and city crew arrived to destroy the shelter and signage. We were served at approximately 5:45PM on December 31<sup>st</sup>, 2011, and the shelter was destroyed at 5AM on January 3<sup>rd</sup>, 2012. This does not satisfy the three-day warning. Thus, according to the engineer's own letter, we were not in contravention of by-law T-4, as we had not failed to remove “any and all structures from Phoenix Square” within three days.

Furthermore, the Director of Engineering & Public Works did not explain how we would have been in contravention of by-law T-4, or what sections we could have contravened. It is a fundamental principle of natural justice that, if a person is alleged to have committed an offense, the nature of that offense must be explained clearly and accurately. That requirement was not satisfied in this case.

I am very concerned about this incident, because it appears that, in ordering the destruction of the Occupy Fredericton tent and related protest paraphernalia, the Mayor acted without lawful authority. In fulfillment of your duties as City Solicitor, I respectfully request your legal opinion on this matter. A response in writing would suffice, or we could meet in person to discuss it without prejudice.

Thank you for your attention to this important matter. I look forward to your reply. It is my hope that this matter can be resolved such that legal recourse is unnecessary.

Sincerely,

Julian Renaud  
[julian.c.renaud@gmail.com](mailto:julian.c.renaud@gmail.com)

On behalf of Dana Hartt, Arthur Taylor, Alex Davenport, André Faust, and other members of Occupy Fredericton