

17 April 2013

VIA - Email

Reply to: Douglas King
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Chief Constable Jim Chu
Vancouver Police Department
Vancouver, BC

Re: Protests at PIDGIN Restaurant and application of s. 430(1) of the *Criminal Code*

Dear Chief Chu,

Our office was contacted today to analyze and advise the group of protestors who have been picketing the PIDGIN restaurant on Carrall Street regarding the application of section 430(1) of the *Criminal Code*, as outlined in the warning letter delivered earlier today which is attached to this document. In examining the case law on this section of the *Criminal Code*, and the previous decisions of courts across Canada, it concerns me that the department appears to be defining the application of this section too broadly to include legally protected protest.

In the warning letter delivered by the VPD it states the following:

“Obstruction or interference with the use of property includes but is not limited to the following behaviours: shouting, screaming, or swearing at anyone that disrupts public peace or physically blocking any person from freely entering, leaving or staying at any public place.”

Our concern is that the above definition is inaccurate, and too broadly defines section 430(1) of the *Criminal Code*. It is our opinion that the courts have clearly stated that section 430(1) is only intended to cover “physically blocking any person from freely entering, leaving or staying at any public place” and does not cover “shouting, screaming, or swearing at anyone that disrupts the public peace”. Disruptions of the public peace during an ongoing protest are matters covered by civil injunction, and by itself should not amount to a breach of s. 430(1) of the *Criminal Code*.

While the cases regarding this section have typically been applied in a labour dispute setting, where a picket has been set up to protest an employer, in my opinion there is no reason why the legal principles would not apply to the current picket at PIDGIN restaurant. These cases focus on the definition of “enjoyment”, and what behaviour would bring rise to a criminal charge under this section.

In the case of *R v. Drapeau* from the Quebec Court of Appeal, it was determined that the definition of “enjoyment” in s. 430(1) was limited to the legal definition composing the entitlement or exercise of a right, and not “enjoyment” in its most common everyday dictionary sense. The court stated:

"I do not believe that "enjoyment" in sec. 430(1)(d) refers to a purely subjective state, such as the nature or intensity of the pleasure derived from a property by its owner, possessor or occupant. Nor do I believe that a person who diminishes that pleasure, even knowingly, is liable for that reason alone to conviction for criminal mischief.

To conclude otherwise, in my respectful view, is to make of a crime in relation to property an offence against feelings and tastes. With respect for the views expressed by my colleague Chamberland, I would not interpret the law so broadly as to permit that result, and then impose on policemen and prosecutors the thankless task of enforcing it."

Or as the Newfoundland Supreme Court said in more simpler terms in the case of *R v. Dooling*:

“Where persons peaceably attend at business premises and the only act which is complained of is the communication of information by picketing, without any physical obstruction, interruption or inference, the fact that persons may be persuaded voluntarily not to do business with the struck employer, thereby causing business disruption and thereby incidentally interfering with the employer's enjoyment of his property, does not, in my view, constitute obstruction, interruption or interference for the purpose of s. 430(1)(d).

If an employer could charge mischief simply because picketing itself causes business interruption on property owned by an employer, there would be no need for injunctive or other court relief.”

If the VPD intends to intervene in this protest and charge under the section in question it is our hope that it will do so on the basis that there is clear evidence that a physical obstruction has occurred which has prevented patrons or the owner from accessing or leaving the property. In our opinion charges under this section related to “disruptions of the public peace“ would rightly be challenged, and given the opinions expressed by the courts above it would appear that such a dispute may be better left for the owner to bring through the civil court process.

Yours truly,

PIVOT LEGAL SOCIETY



Douglas King
Barrister & Solicitor



CRIMINAL CONDUCT WARNING

Attention _____

The Vancouver Police Department (VPD) is committed to providing an environment that allows for safe and lawful democratic protest; however, the VPD is also committed to ensuring people are not denied the lawful use, or the enjoyment of property. The VPD will take appropriate actions in relation to persons interfering with the lawful use and/or enjoyment of property.

Section 430 of the Criminal Code of Canada states the following: Everyone commits mischief who wilfully:

- a) Destroys or damages property;
- b) Renders property dangerous, useless, inoperative or ineffective;
- c) Obstructs, interrupts or interferes with lawful use, enjoyment or operation of property; or
- d) Obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

Obstruction or interference with the use of property includes but is not limited to the following behaviours: shouting, screaming, or swearing at anyone that disrupts public peace or physically blocking any person from freely entering, leaving or staying at any public place.

Any future conduct that contravenes this section or any other of the Criminal Code of Canada may result in criminal charges.

Inspector Cumberworth
Officer in Charge, General Investigation Section
Vancouver Police Department