

LGLA -Local Government Law for Newly Elected Officials

January 12, 2012

Don Lidstone, Q.C.
LIDSTONE & COMPANY
BARRISTERS AND SOLICITORS

Overview

- Top 10 things you need to know about local government law
- Important for elected officials, CAO's, corporate/financial officers, planners, engineers
- Ensure your staff know
- Expense of litigation/bylaw attacks
- Proactive preventive doctrine

10. Order of Government

- 10. Municipalities/Regional Districts are not an order of government
- *Constitution Act, 1867*
 - Federal government
 - Provincial government
 - Municipalities: creatures of Province
 - Alberta school district reference case
 - Toronto amalgamation case

10. Order of Government (c'd)

- *Community Charter* re amalgamation/dissolution
- Re order of government
- Regional districts versus municipalities
- Vigilance re clawbacks/downloading

9. Creatures of Province

- 9. Local Governments creatures of Province
 - Only powers: delegated by Province [Act/reg]
 - Bylaw or resolution within powers or ultra vires
 - *Community Charter, Local Government Act*, over 100 statutes apply
 - *Land Title Act, Transportation Act, FOIPOP*, etc.
 - *Community Charter*: expanded powers, amplified by Supreme Court of Canada decisions

8. Acts or Decisions

- 8. Acts or Decisions – only bylaw or resolution
 - Valid act or decision – by Council, or by person delegated
 - Council only act by bylaw or resolution
 - Resolution unless Act says bylaw
 - Bylaw or resolution can only be passed in “meeting”: regular, special, electronic
 - Delegation of powers

7. Meeting

- 7. Council only act in a “meeting”
 - Definition of meeting – *Hamilton, Ottawa, Kingston, Yellowknife, London* cases
 - Issues – (a) validity of bylaw, resolution
(b) need notice, minutes, public access
 - Closed meetings
 - s. 90 CC
 - grounds
 - Regular vs. special meetings

6. Bylaw Attacks

- 6. Bylaws/resolutions may be attacked
 - Validity – ground for attack:
 - Constitutionality
 - Charter of Rights and Freedoms
 - Ultra vires
 - Bad faith

6. Bylaw Attacks (c'd)

- Ground for attack (c'd)
 - Discrimination
 - Uncertainty
 - Fettering
 - Unlawful Delegation
 - Statutory
 - Procedural fairness
- Procedure for attack: *LGA/JRPA*

6. Bylaw Attacks (c'd)

- 6. Council must comply with procedure
 - Bylaws
 - Remedial action
 - Zoning/OCP – public hearings/notice/consultation
 - Procedural fairness

5. Roles of Officials

- 5. The Roles of the Mayor/Chair, Councillors, Staff are Statutory
 - Mayor/Chair - CEO
 - Oversees implementation of law
 - Communicates information to Council
 - Recommends measures

5. Roles of Officials (c'd)

- Mayor/Chair - Continued
- Directs staff
- Suspend staff, subject to Council
 - Reconsideration
 - Order
 - Expulsion
 - Standing committees

4. Roles of Officials (c'd)

- Staff - statutory
 - CAO
 - Corporate officer
 - Financial officer
 - Policy vs. administration
 - Approving officer
 - Termination

4. Roles of Officials (c'd)

- Council Members
 - Collective not individual power
 - Special meeting
 - Consider well-being of LG
 - Contribute to measures
 - Participate in meetings
 - Carry out assigned duties
 - Legislative/judicial/administrative roles

3. Liability

- 3. Liability
 - Remove private law duties from bylaws
 - Policy resolutions versus operational
 - Transfer liabilities – agreement, bylaw
 - Insurance
 - Defence of due diligence
 - Defence of statutory authority

3. Liability (c'd)

- Personal liability
- S. 287 – statutory exemption exceptions (gross negligence, malicious/wilful misconduct, dishonesty, defamation)
- S. 287.2 – indemnification
- S. 287.1 – defence for financial officer

2. Financial Matters

- 2. Financial matters
 - Section 191 *Community Charter*
 - Personal liability and disqualification of elected officials
 - Financial officers – defence s. 287.1
 - *Hinton* case
 - Legal opinion – evidence of good faith

1. Dismissal Law

- 1. Wrongful/constructive dismissal
 - Cause
 - Without cause
 - Reasonable notice
 - Officers – 2/3 of elected officials
 - Procedural fairness – hearing
 - Suspension by Mayor/Chair

Lessons Learned

- Proactive preventive policies and procedures
- Checklists
- Pro forma documents
- Precedents
- Transfer risk
- Continuing education
- Policies versus operational
- Peer relationships
- New law