

LOCAL GOVERNMENT LAW FOR NEWLY ELECTED OFFICIALS

AVICC

City of Parksville

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INTRODUCTION

Outline

- Constitutional source of powers
- Applicable legislation
- Statutory duties
- Delegation of powers
- Types of decisions
- Administrative law principles
- Bylaws and resolutions
- Statutory officers and boards

CONSTITUTIONAL SOURCES OF POWER

Constitution Act, 1867

- Two heads of power
- Federal and Provincial jurisdictions
- Federal powers include those over railways, banks, criminal law, navigation and shipping and aeronautics
- Provincial powers over municipal institutions and matters of a local nature
- Province can delegate these powers to local governments
- Province cannot delegate powers of the Federal Government

CONSTITUTIONAL SOURCES OF POWER

Constitution Act, 1867

- Local governments cannot exercise powers within the exclusive jurisdiction of the federal government
- For example, local government cannot regulate noise if to do so would interfere with the operation of an airport
- For example, local government cannot regulate offences contained in the Criminal Code

LEGISLATION

History

- Until 1998, primary legislation applicable to local government was the *Municipal Act*
- Following a series of legislative reforms *Municipal Act* renamed the *Local Government Act*
- In 2004, significant portions of the *Local Government Act* were repealed and the *Community Charter* was enacted

LEGISLATION

Local Government Act

- The *Local Government Act* retained significant portions applicable to both municipalities and regional districts
 - Elections and Other Voting
 - Management of Development
 - Tax Sales
 - Personal Immunity
 - Incorporation, Amalgamation
 - Boundary Changes
- *Local Government Act* also contains parts that apply to regional districts and improvement districts

LEGISLATION

Community Charter

- Began as a Private Member's Bill in 1995
- Modeled on Alberta's *Municipal Government Act*
- Contains broad powers rather than prescriptive powers
- Grants natural person powers to municipalities
- Broad powers are limited to some degree in Part 3 of *Community Charter*
- Broad powers may not be broad enough so Part 3 of *Community Charter* grants additional powers
- NPP do not include powers to tax, regulate or legislate

LEGISLATION

Other Applicable Legislation

- *Vancouver Charter*
- *Financial Disclosure Act*
- *Freedom of Information and Protection of Privacy Act*
- *Motor Vehicle Act*
- *Land Title Act*
- *Environmental Management Act*
- *Fire Services Act*
- *Public Health Act*
- *Interpretation Act*

TYPES OF LOCAL GOVERNMENT

Municipalities and Regional Districts

- Two main types – municipalities and regional districts
- Municipalities oldest historically
- Regional districts created in 1964 with an amendment to the former *Municipal Act*
- Regional districts are comprised of member municipalities and the unincorporated areas outside municipal boundaries known as electoral areas

TYPES OF LOCAL GOVERNMENT

Municipalities and Regional Districts

- Municipalities are governed by council composed of elected officials
- Regional district boards are composed of elected officials selected by the electors in the electoral areas and chosen by and from the council of the member municipalities
- For regional districts, variation in size of populations in member municipalities and electoral areas means weighted voting in some cases: more than one elected official for some member municipalities or more than one vote in some cases

TYPES OF LOCAL GOVERNMENT

Others

- Improvement Districts – usually for water and/or fire protection and usually in electoral areas
- Islands Trust with jurisdiction over land use in Southern and Central Gulf Islands
- Island Municipality – Bowen Island
- Resort Municipality – Whistler
- Municipal Corporation under the Indian Self-Government Enabling Act – Sechelt

PURPOSES OF LOCAL GOVERNMENT

Municipalities

- *Community Charter, Section 7:*

Municipal purposes

7. The purposes of a municipality include
 - a) providing for good government of its community,
 - b) providing for services, laws and other matters for community benefit,
 - c) providing for stewardship of the public assets of its community, and
 - d) fostering the economic, social and environmental well-being of its community.

PURPOSES OF LOCAL GOVERNMENT

Regional Districts

- Regional District Purposes
- Section 2 of the *Local Government Act* is identical with Section 7 of the *Community Charter* except for (b) which says “providing the services and other things that the board considers are necessary or desirable for all or part of its community.”

RESPONSIBILITIES

Council

- *Community Charter*, Section 115:

Responsibilities of council members

115. Every council member has the following responsibilities:

- a) to consider the well-being and interests of the municipality and its community;
 - b) to contribute to the development and evaluation of the policies and programs of the municipality respecting its services and other activities;
 - c) to participate in council meetings, committee meetings and meetings of other bodies to which the member is appointed;
 - d) to carry out other duties assigned by the council;
 - e) to carry out other duties assigned under this or any other Act.
- Related to policies and programs
 - Mayor's right to ask for reconsideration of a matter, Section 131 of the *Community Charter*

RESPONSIBILITIES

Mayor

- *Community Charter*, Section 116:

Responsibilities of mayor

116 (1) The mayor is the head and chief executive officer of the municipality

(2) In addition to the mayor's responsibilities as a member of council, the mayor has the following responsibilities

- a) to provide leadership to the council, including by recommending bylaws, resolutions and other measures that, in the mayor's opinion, may assist the peace, order and good government of the municipality;
- b) to communicate information to the council;

RESPONSIBILITIES

Mayor, Community Charter, Section 116 (cont'd)

- c) to preside at council meetings when in attendance;
- d) to provide, on behalf of the council, general direction to municipal officers respecting implementation of municipal policies, programs and other directions of the council;
- e) to establish standing committees in accordance with section 141;
- f) to suspend municipal officers and employees in accordance with section 151;
- g) to reflect the will of council and to carry out other duties on behalf of the council;
- h) to carry out other duties assigned under this or any other Act.

DUTIES

Chair

- *Local Government Act*, Section 218:

Powers and duties of chair

218.(1) The chair is the head and chief executive officer of the regional district.

- (2) In addition to the chair's powers and duties as a board member, the chair has the following duties:

DUTIES

Chair, Section 218 of *Local Government Act* (cont'd)

- a) to see that the law is carried out for the improvement and good government of the regional district;
- b) to communicate information to the board and to recommend bylaws, resolutions and measures that, in the chair's opinion, may assist the peace, order and good government of the regional district in relation to the powers conferred on the board by an enactment;

DUTIES

Chair, (Section 218 *Local Government Act* cont'd)

- c) to inspect and direct the conduct of officers and employees, to direct the management of regional district business and affairs and, if considered necessary, to suspend an officer or employee;
 - d) so far as the chair's power extends, to see that negligence, carelessness and violation of duty by an officer or employee is prosecuted and punished.
- Note differences with Mayor responsibilities
 - Chair's right to ask for reconsideration of a matter (Section 219 *Local Government Act*)

LOCAL GOVERNMENT ACTIONS

Continuing Body

- A council and board are continuing bodies (Section 114 of the *Community Charter*; Section 174 *Local Government Act*)
- Only the council or board may exercise the powers, duties and functions of a local government; individual elected officials may not unless given express statutory authority
- Actions are taken when a quorum is present
- Some powers, duties and functions may be delegated by bylaw (Sections 154-155 of the *Community Charter*; Section 191-193 *Local Government Act*)
- Incidental powers (Section 114 of the *Community Charter*; Section 798 *Local Government Act*)

LOCAL GOVERNMENT ACTIONS

Bylaws and Resolutions

- Local government may only exercise its powers by bylaw or resolution (Section 122 of the *Community Charter*; Section 794(5) *Local Government Act*) and only when there is a quorum
- If an enactment requires that the power be exercised by bylaw it may only be exercised by bylaw
- If it is silent then it may be exercised by either resolution or bylaw

LOCAL GOVERNMENT ACTIONS

Bylaws and Resolutions (cont'd)

- Bylaws are the formal statement of legislative intent
- Bylaws are enactments; laws just as any provincial statute
- Resolutions are an expression of decision
- Resolutions are typically the result of an exercise of corporate power

LOCAL GOVERNMENT ACTIONS

Bylaw Readings

- A bylaw requires three readings and adoption (Section 135 of the *Community Charter*)
- There must be at least a day between the third reading and adoption
- Regional districts may by a 2/3 vote, adopt a bylaw on the same day it receives third reading if it does not require approval or consent (Section 794(3) *Local Government Act*)

LOCAL GOVERNMENT ACTIONS

Delegation

- Delegation must be done by bylaw (with the exception of certain delegation of hearings)
- What cannot be delegated?
 - bylaws
 - something requiring council/board approval
 - appeals to/reconsiderations of council/board
 - termination of officer
 - remedial action
- Delegation to?
 - elected official
 - officer or employee
 - other body established by local government

LOCAL GOVERNMENT ACTIONS

Delegation (cont'd)

- Power to suspend/appoint an officer to CAO only
- No delegation to corporation
- Hearings
 - delegate to one or more elected officials
 - by bylaw or resolution
 - cannot delegate hearings:
 - where council/board required by statute to hear an appeal or reconsider an action, e.g. for councils, the reconsideration of the suspension of a business licence
 - where hearing required by law or an enactment, e.g. declaration of unsightly property

LOCAL GOVERNMENT POWERS

Types of Powers

- Three basic types of powers:
 - corporate/administrative
 - legislative
 - quasi-judicial



LOCAL GOVERNMENT POWERS

Corporate/Administrative

- Municipalities granted natural person powers; enables them to enter into a broad range of agreements as would a real individual or “natural person”
- Regional districts do not have natural person powers but they have significant corporate powers
 - enter into contracts
 - sue and be sued
 - acquire, hold, manage and dispose of lands, improvements and personal property
 - “manage” defined broadly to include conserve, use, develop, construct, improve, operate, administer and maintain
 - partnering agreements

LOCAL GOVERNMENT POWERS

Corporate/Administrative (cont'd)

- Limits on corporate powers:
 - notice of land dispositions
 - public approval process for contracts over 5 years if local government incurs capital liability
 - delegation policies

LOCAL GOVERNMENT POWERS

Legislative

- Power to enact bylaws that regulate individuals and corporations
- Purely discretionary – broad public policy
- Validly enacted bylaw is an “enactment”
- Breach of a bylaw is an offence like the breach of a provincial statute or regulation

LOCAL GOVERNMENT POWERS

Legislative (cont'd)

- Courts do not usually interfere with legislative powers unless court finds the bylaw to be:
 - so unreasonable or unfair so as to constitute an abuse of power
 - adopted in bad faith
 - vague and uncertain
 - in conflict with Federal or Provincial law
 - an unlawful delegation
 - discrimination without express authority

LOCAL GOVERNMENT POWERS

Quasi-Judicial

- Decisions that affect an individual's or corporation's rights (e.g. suspend a business licence, place a notice agreement title to warn of a building problem, order property clean up)
- Similar to the kind of decisions a judge or administrative tribunal would make
- Courts have applied principles of administrative law to quasi-judicial decisions

LOCAL GOVERNMENT POWERS

Quasi-Judicial (cont'd)

- Procedural fairness and natural justice:
 - Right to a hearing of some kind
 - Right to notice of hearing beforehand
 - Right to know subject matter of hearing
 - Right to be heard
 - Right to legal counsel
 - Right to know evidence
 - Right to cross-examine witnesses
 - Right to reasons

LOCAL GOVERNMENT POWERS

Quasi-Judicial (cont'd)

- The first four apply in every case
- Decision makers must approach matter with open mind, listen fairly to facts and make decision based on facts
- Decisions may be struck down if these principles of natural justice or procedural fairness are violated

ACTING OUTSIDE LOCAL GOVERNMENT POWERS

Federal Jurisdiction

- Local governments cannot act so as to interfere with exclusive federal jurisdiction
- Railways, banks, criminal law, navigation and shipping and aeronautics
- Examples: noise, regulation of airports, regulating location of airstrips or matters of criminal law

ACTING OUTSIDE LOCAL GOVERNMENT POWERS

Provincial Jurisdiction

- Local government bylaws that are inconsistent with provincial laws have no effect (Section 110 of the *Community Charter*)
- Province has identified particular spheres of provincial interest in Section 9 of the *Community Charter*:
 - public health
 - protection of the environment
 - animals (wildlife)
 - buildings
 - soil removal and deposit
- Bylaws that overlap with these spheres must either be consistent with regulations, under an agreement or with the approval of the Province

ACTING OUTSIDE LOCAL GOVERNMENT POWERS

Charter of Rights and Freedoms

- Local governments must ensure that their bylaws and actions do not offend the Charter of Rights and Freedoms
- In the local government context the Charter of Rights and Freedoms may be relied upon to challenge the validity of a bylaw
- Examples include:
 - freedom of expression in relation to sign bylaws, panhandling bylaws and noise bylaws
 - right to life, liberty and security in relation to park regulation bylaws
 - equal protection under the law without discrimination in relation to panhandling bylaws and licensing bylaws

ACTING OUTSIDE LOCAL GOVERNMENT POWERS

Procedural Requirements

- *Community Charter and Local Government Act* establish rules of procedure, which if not followed may result in legal actions
- Courts may declare bylaws invalid or award damages to persons who have incurred costs as a consequence of unlawful council actions
- Examples of procedural requirements include providing notices of:
 - an intention to sell an interest in real property;
 - granting a variance permit; or
 - holding a public hearing

ACTING OUTSIDE LOCAL GOVERNMENT POWERS

Prohibitions

- Examples:
 - granting assistance to a business outside scope of a partnering agreement
 - authorizing an expenditure that is not authorized in a financial plan
 - entering into an agreement of more than 5 years without electoral approval when it is required
 - meetings of council open to public unless Section 90 of the Community Charter requires or permits them to be closed
 - “coffee shop meetings” with quorum where local government business is deliberated are subject to Section 90

STATUTORY OFFICERS AND BODIES

Approving Officer

- Council appoints its approving officer pursuant to Section 77 of the *Land Title Act*
- Approving officer is a statutory officer with independent powers to approve subdivisions in accordance with the *Land Title Act* and its Regulation
- Regional districts may request the power to appoint an approving officer within the electoral areas otherwise, its approving office is the Ministry of Transportation approving officer

STATUTORY OFFICERS AND BODIES

Board of Variance

- Board of Variance must be established where a local government has adopted a zoning bylaw (Section 88 of the *Local Government Act*)
- Board of Variance members cannot be officers, employees or elected officials or Advisory Planning Commission members

STATUTORY OFFICERS AND BODIES

Board of Variance (cont'd)

- Board of Variance may grant a variance if it finds that certain bylaws would cause hardship
 - siting and size of manufactured home in a mobile home park
 - tree regulation
 - section 911(5) – structural alteration or addition to a non-conforming building
 - subdivision servicing requirement in an area zoned agricultural or industrial