

ELECTED OFFICIALS: GAME MISCONDUCT

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Local Government Leadership Academy
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Crisis in Confidence?

“Fraud, nepotism, conflict of interest, questionable expense claims. In almost any workplace, these alleged transgressions would have led to one of two bleak prospects: resign or get fired. But in city council chambers across the country, some of those cloaked in scandal keep marching onward.”*

**The Globe and Mail “Mayors Behaving Badly: Cities strain to hold leaders accountable” Monday, January 13, 2014, p. A8*

Some Canadian Examples

- In Laval, Que., former Mayor Gilles Vaillancourt faces many criminal charges including gangsterism, while corruption-plagued Montreal has had four mayors in just over a year.*
- In Ontario, London Mayor Joe Fontana will be on trial this year on charges of fraud.*
- Brampton Mayor Susan Fennell's expenses are being audited following unproven allegations of budget misuse, while Winnipeg Mayor Sam Katz has weathered accusations of cronyism.*
- Toronto Mayor Rob Ford has openly admitted to using crack cocaine while in one of his "drunken stupors," though he has not been charged with any crime.*

**Globe and Mail, supra*

We are not immune in BC

- *R. v. Brian Skakun*
 - City of Prince George Councillor
 - Convicted in May, 2011 of breaching s.30.4 of FOIPPA
 - Released confidential personal information from a closed Council meeting
 - Failed in BCSC appeal
 - BCCA to hear appeal in April 2014
- *R. v. Scott Young*
 - Former Mayor of City of Port Coquitlam
 - Convicted of assault x2 in 2008
 - Termination of relationship with girlfriend
 - Stayed in Mayor's office while court proceeding went forward

What will we cover today?

1. When local government elected officials behave “badly” what can their council colleagues or the local government do?
2. Should we have more legal authority to deal with “bad” behaviour?
3. Should we have less legal authority to deal with “bad” behaviour?
4. Discussion

What can a local government do?

A. Censure Motions

- s.133 *Community Charter*; power to expel
- *Barnett v. CRD*, 2009 BCSC 471

“Thus, I do not accept that the Regional District “has no jurisdiction” to govern the (mis)conduct of Directors. The weight of the statutory and judicial authority suggests that a Regional Board has the ability to determine its own internal procedures, which surely must include the ability to control misconduct by a Director.”

- Prepare corporate policies in advance
- Procedural fairness is a must!!!

What can a local government do? cont..

B. Closed Meeting Confidences

■ s.117 *Community Charter*

- (1) *A council member or former council member must, unless specifically authorized otherwise by council,*
- (a) keep in confidence any record held in confidence by the municipality, until the record is released to the public as lawfully authorized or required, and*
 - (b) keep in confidence information considered in any part of a council meeting or council committee meeting that was lawfully closed to the public, until the council or committee discusses the information at a meeting that is open to the public or releases the information to the public.*

■ s.30.4 *FOIPPA*

An employee, officer or director of a public body or an employee or associate of a service provider who has access, whether authorized or unauthorized, to personal information in the custody or control of a public body, must not disclose that information except as authorized under this Act.

What can a local government do? cont..

B. Closed Meeting Confidences cont..

- *R. v. Skakun*, 2013 BCCA 94
- *Routine reminders to elected officials*

What can a local government do? cont..

B. Closed Meeting Confidences cont...

■ OMLET Report

“In the period covered by this report – September 1, 2012 to August 31, 2013 – we received **293** complaints about closed meetings. Of those, **246** fell within our jurisdiction, and were related to **59** different municipal councils, committees and local boards.

...

In all, the team reviewed **96** meetings. Of those, we determined **19** were illegal – that is, they violated the open meeting requirements of the *Municipal Act*, or Sunshine Law.

In other words, **20%** of the meetings we reviewed were illegal – or almost one in five. This is hardly good news for Ontarians concerned with transparency.”*

*Ombudsman Ontario, “Open Meeting Law Enforcement Team” Annual Report, 2012-2013

What can a local government do? cont..

B. Closed Meeting Confidences cont...

- s.117(2) *Community Charter*

If the municipality suffers loss or damage because a person contravenes subsection (1) and the contravention was not inadvertent, the municipality may recover damages from the person for the loss or damage.

What can a local government do? cont..

C. Conflict of Interest/Inside and Outside Influence/Disqualifications

- s.101 to 103 *Community Charter*
- s. 109 *Community Charter*
- s. 110 *Community Charter* ; disqualification from office
- s.111 *Community Charter*; BCSC order
- routine reminders about these *Community Charter* provisions

More Legal Authority?

A. *Municipal Act*, R.S.B.C. 1979, c.290

- Repealed s.82(1)

A person is disqualified from being nominated, being elected or from holding office as a member of the council who

(h) has been convicted, on indictment, of an offence in Canada, unless he has been pardoned for it or 5 years have passed from completion of the punishment.

More Legal Authority? cont..

B. New Community Charter Provisions?

- Penalize law breakers? (eg. In Arizona, Iowa and Michigan fines up to \$2000.00 may be imposed on officials who violate closed meeting rules in those jurisdictions.)
- Statutory censure motions?
- Expanded disqualification provisions?

More Legal Authority? cont..

C. **Bill 10 “An Act to provide for the provisional relief from office of an elected municipal officer”;** Quebec National Assembly

- s.312.1

- The Superior Court may, on a motion, if it considers it warranted in the public interest, declare provisionally incapable to perform any duty of office a member of the council a municipality against whom proceedings have been brought for an offence under an Act of the Parliament of Quebec or Canada that is punishable by a term of imprisonment of two years or more.

- *Boyer v. Lavoie*, 2013 QCCS 414

Less Legal Authority?

A. *Canadian Charter of Rights and Freedoms*

- Section 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.

- Section 11(d)

Any person charged with an offence has the right

...

to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.

Less Legal Authority? Cont..

B. Punishment is at the Ballot Box

- Are the electors the answer?
- A word of caution!

Discussion