



Local Government Law 101

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Presented by Kathleen Higgins and Olga Rivkin at Newly Elected Officials Forum, January, 2015

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- PART 1 – Jurisdiction and Powers

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**Principles to be discussed...**

- Municipal bylaws must fall within an area constitutionally allocated to the Province
- Municipal bylaws must be within statutory authority and for a municipal purpose
- Provincial laws are paramount
- Powers are broad, but have limits – main sources for both are *Community Charter* and *Local Government Act*

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## Levels of government

- The *Constitution Act, 1867* recognizes the federal and the provincial governments
- The Province has jurisdiction (among other things) over “municipal institutions” and “property and civil rights”
- Local governments’ authority is granted and is limited by the Province

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## Examples of federal undertakings

- Aeronautics
  - Location of airports
- Navigation and shipping
  - Ships and barges...but, what if they are used as an office?
  - How about a cement plant on port lands?

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## Sources of authority

- The main sources of authority for local governments in British Columbia are the *Community Charter* and the *Local Government Act*
- Other statutes include the *Environmental Management Act*, the *Freedom of Information and Protection of Privacy Act*, the *Island Trust Act*, the *Interpretation Act* and more

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### Sources of authority (cont.)

- Incorporated by letters patent
- May be dissolved by revoking letters patent (need majority of electors of the municipality)
- Letters patent may contain specific powers and limitation on such powers
- Typically, courts broadly interpret municipal powers

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### Purpose

- Providing for good government
- Providing for services, laws and other matters for community benefit
- Providing for stewardship of the public assets of its community
- Fostering the economic, social and environmental well-being of the community

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### Is the action within statutory authority?

- Bylaw requiring pawnbrokers to collect personal information
- Resolution to seek permit to cull deer

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### Is the action for a municipal purpose?

- Resolution not to do business with Shell until they withdraw from South Africa
- Bylaw prohibiting sale of shark fin soup
- Bylaw banning the sale of puppies and dogs from pet stores

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### Provincial laws are paramount

- If a bylaw is not consistent with a Provincial law, it has no effect
- A bylaw is not inconsistent if a person who complies with such law does not contravene the other enactment
- Some statutes set out a different relationship:
  - *Agricultural Land Commission Act* (bylaw allows use not permitted by the Act)
  - *Environmental Management Act* (Minister may declare a conflict)

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### Spheres of concurrent authority

- Some bylaws require Provincial approval
  - Public health
  - Protection of natural environment
  - Animals (wildlife)
  - Buildings and structures
  - Removal and deposit of soil

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### Spheres of concurrent authority (cont.)

- May not adopt a bylaw unless:
  - In accordance with a regulation
  - In accordance with an agreement with the Province
  - Approved by the Minister

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### Example of concurrent authority

- Buildings and other structures bylaw regulation
  - Sets out the parameters of a building bylaw in relation to the Building Code

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### Broad powers

- Municipalities have the capacity, powers, rights and privileges of a natural person of full capacity
- Regional districts have specifically-listed corporate powers
- **NOTE:** consult the *Community Charter* and the *Local Government Act* as a first step to determine scope of powers

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## General and specific powers

- Some powers are general (for example: power to regulate, prohibit or impose requirements in relation to animals)
- Some powers are specific (for example: a council may by bylaw ...provide for the seizure of animals that are... unlicensed)
- A specific power does not limit the general power, but only that aspect of the general power set out in the specific section

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## Area of jurisdiction

- Council may only exercise its powers within the boundaries of the municipality, unless authorized otherwise
- Exceptions:
  - Natural person powers may be exercised outside the boundaries of the municipality
  - Using works and facilities outside the boundaries of the municipality for the purposes of a municipal service

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## Assistance to business

- Unless expressly authorized, must not provide assistance to business

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## What constitutes assistance to business?

- Must be a semblance of something for nothing
- Consider:
  - Selling land for less than fair market value
  - What if the sale is in the context of a development where local government is receiving amenities, services, etc.?

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## Public participation

- Some powers require electoral approval or assent of the electors
  - Council may seek community opinion on a question – not binding
  - If approval of electors is required, must obtain by
    - > Assent of the electors – majority of the votes
    - > Alternative approval process – less than 10% are opposed

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## Example of public participation requirement

- Some agreements over 5 years in duration require approval of the electors
  - Agreement contains a liability of a capital nature
  - Agreement is a loan guarantee
  - Liability is extensive (formula set out in regulation)

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### Charter of Rights and Freedoms

- Local governments' actions are subject to the Charter
- Example: recent challenge by the Falun Dafa of the City of Vancouver's Street and Traffic Bylaw

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### PART 2 – Governing Body

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### Principles to be discussed...

- Council is the governing body
- Role of Mayor/Chair who is part of council/board
- Exercise of powers
- Legislative, administrative and quasi-judicial powers
- Local governments must act fairly
- Local governments must act transparently
- Open meetings

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### Governing body

- Powers, duties and functions of a municipality must be performed by a council
- Powers, duties and functions of a regional district must be performed by a board

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### Incidental Powers

- A municipal council or board has all necessary power to do anything incidental or conducive to the exercise or performance of any power, duty or function conferred on a council or board by the CC or LGA
- However, this general provision does not override more specific requirements imposed on a council by the CC or the LGA (s.4(2) CC)
  - *Highlands Preservation Society v. Highlands (District)*, 2005 BCSC 1743

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### Responsibility to Act in the Public Interest

- Once elected, the council or board is entrusted with responsibility for governing in the interest of the community generally, that is, in the public interest
  - “Public interest” is a fairly vague and controversial concept
  - It is a generalized judgment of what is best for individuals, as a part of a community
  - From the perspective of particular individuals and interest groups, the public interest may be conceived differently and, as amongst them, views of the public interest will inevitably conflict
    - > *Catalyst Paper Corp. v. North Cowichan (District)*, 2010 BCCA 199

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### Job Description

- Council and board members are “legislative officers” and do not perform executive or ministerial functions (unlike the mayor)
  - Valcourt v. Capital (Regional District)* [1983] B.C.J. No. 1997, 2 D.L.R. (4<sup>th</sup>) 339



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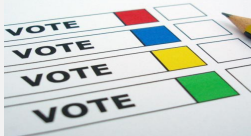
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### Political/Legislative Function

- Council and board members serve a political – as opposed to administrative or adjudicative – function
  - They bring certain views – on the basis of which they are elected - to bear on municipal decisions
  - They are accountable at the ballot box
    - > *Catalyst Paper Corp. v. North Cowichan (District)*, 2010 BCCA 199



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### General Responsibilities

- Every council and board member has a statutory responsibility to:
  - consider the well-being and interests of the municipality and its community;
  - contribute to the development and evaluation of the policies and programs of the municipality respecting its services and other activities;
  - participate in council meetings, committee meetings and meetings of other bodies to which the member is appointed;
  - carry out other duties assigned by the council; and
  - carry out other duties assigned under the CC and LGA

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## Special Responsibilities

- Council and board members have special responsibilities to:
  - Disclose and avoid conflicts of interest; and
  - Respect confidentiality



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## Limits on Powers

- A council and board can only exercise its authority by resolution or bylaw and in accordance with the procedures set out in the CC
- Thus, council members have no powers aside from those that can be exercised as part of the collective council. The individual actions of councilors cannot bind council.
  - The exception is the power under s.126 of the CC for two or more councilors to call a special council meeting
- Council members are subject to disqualification in accordance with ss.110-113 of the CC

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## Role of the mayor/chair

- Mayor has some responsibilities additional to council members
  - Example: the mayor is the chief executive officer
- Chair of the board has some responsibilities additional to other board members
- **BUT**, mayor and chair have only one responsibility (in addition to other council/board members)



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### Job Description

- The mayor has all the same responsibilities as individual council members and additional executive and administrative duties imposed by statute, which he or she may be compelled to perform by mandamus
  - Vancouver (City) v. British Columbia Electric Railway Co.* [1918] B.C.J. No. 21, 26 B.C.R. 162
- The mayor is the head and chief executive officer of the municipality (s.116(1) CC)
  - The term "chief executive officer", in and of itself, does not confer any additional powers beyond the powers allocated to the mayor by statute

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### General Responsibilities

- The mayor has a statutory responsibility 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;
  - communicate information to the council;
  - preside at council meetings when in attendance;

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### General Responsibilities (cont.)

- provide, on behalf of the council, general direction to municipal officers respecting implementation of municipal policies, programs and other directions of the council;
- establish standing committees in accordance with s.141 of the CC;
- suspend municipal officers and employees in accordance with s. 151 of the CC;
- reflect the will of council and carry out other duties on behalf of the council; and
- carry out other duties assigned under the CC or any other Act (s. 116(2) CC)

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### Special Responsibilities: Council Meetings

- The mayor can call a special council meeting in his or her discretion (s.126(1) CC)
- If presiding at a council meeting, the mayor:
  - Has a responsibility to preserve order and decide points of order that may arise (s.132(1) CC)
  - Can expel a person from the council meeting if he or she considers that that person is acting improperly (s.133(1) CC)





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### Special Responsibilities: Reconsiderations

- The mayor can require the council to reconsider and vote again on a matter that was the subject of a vote (s.131 CC)





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### Special Responsibilities: Reconsiderations (cont.)

This power:

- Does not limit the authority of council to reconsider a matter
  - > *Brown v. Surrey (City)* [1997] B.C.J. No. 2771, 154 D.L.R. (4<sup>th</sup>) 763
- Can only be exercised at the same council meeting as the vote took place or within 30 days following that meeting
- Cannot be exercised:
  - > If the matter has had the approval of the electors or the assent of the electors and was subsequently adopted by council, or
  - > If there has already been a reconsideration under section 131 of the CC in relation to the matter



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## Limits on Powers

- Like other council members, the mayor:
  - Has no authority to act for the municipal corporation, except in conjunction with other persons constituting a quorum. The individual actions of the mayor cannot bind council.
    - *The Pas v. Porky Packers Ltd.*, [1977] 1 S.C.R. 51 at 67-68
  - Is subject to disqualification in accordance with ss. 110-113 of the CC

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## Exercising powers

- If the statute dictates that a bylaw is required, must enact a bylaw
- If nothing is specified, may enact a bylaw or pass a resolution
- Bylaw or resolution can only be passed in a meeting

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## General voting rules

- Motion is decided by majority present, unless expressly stated otherwise
- Each council member has one vote
- Each council member present must vote
- If a council member does not indicate a vote, the vote is deemed affirmative
- If it is a tie, the motion is defeated
- If section requires portion of all members – it means ALL members (present or not)

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### Procedure bylaws

- Council **MUST** by bylaw establish general procedures
- Procedure bylaw may contain:
  - Rules of procedure at meetings
  - Procedure for taking minutes
  - Procedure for public notice

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### Quorum

- Quorum is a majority of the number of members of the total council
- Acts done by a quorum of council

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### Types of powers and delegation

- Powers can be divided into legislative, quasi-judicial and administrative
  - Legislative – for example, enacting bylaws
  - Quasi-judicial – for example, ordering remedial action
  - Administrative – day to day operation and administration
- Typically, delegate administrative powers
- May not delegate legislative powers

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## Powers may be mandatory or permissive

- Some powers are mandatory (i.e., "shall enact..."); others are permissive (i.e., "may enact").
- Mandatory: have to do – no discretion not to do
  - Must enact a procedure bylaw
- Permissive: discretion of local government whether to do it
  - May adopt a zoning bylaw

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## Local governments must act fairly

- Local government must act fairly in making decisions. The scope of what is "fair" varies with the circumstances.
- For example, a decision must not be made for improper purpose or in bad faith. Also, a process may be found unfair if some relevant information which must be provided to the public is omitted.

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## Local governments must act transparently

- With few listed exceptions, council/board meetings must be open to public.
- Some meetings *may* be closed to the public. For example, a meeting where a council or a board discusses litigation or potential litigation affecting the local government.

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### Local governments must act transparently (cont.)

- Some meetings *must* be closed to the public. For example, a meeting where a council or a board discusses a matter which is being investigated by the *Ombudsperson Act*.

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### The Open Meeting Rule

- Theory:
  - Open governance
  - Visibility and accountability
  - Democratic legitimacy
- Examples:
  - London (City) v. RSJ Holdings (SCC)* and *TimberWest Forest Corp. v. Campbell River (City) (BCSC)*

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### The Open Meeting Rule (cont.)

- Common Law:
  - No right of access for press or constituents to council deliberations
  - Different from administrative law presumption in favour of open hearings (adjudicative)
  - Example:
    - > Mayor, Alderman, and Burgesses of *Tenby v. Mason (Chancery Division)*

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### The Open Meeting Rule (cont.)

- The *Community Charter*:
  - Section 89: meetings must be open to the public
  - Section 90: exemptions to section 89
  - Applies to various local government entities

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### Open Meeting Rule (cont.)

- Legislative evolution of the open meeting rule under the *Community Charter*:
- Dates back to the 19th century
- Early clauses distinguished between “ordinary” and “special” meetings
- In 1999, legislative change from “special” vs. “ordinary” to subject matter considerations (similar to current sections 89/90 of the *Community Charter*)

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### The What, Where and How of the Open Meeting Rule

- The interpretation of the term “meeting”:
- Not defined in the *Community Charter*
- Meeting vs. informal gathering
- Some indicators of a “meeting”:
  - > Matters within council jurisdiction are discussed
  - > All (or most) council members are present
  - > Matters are voted on or are agreed upon

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### The What, Where and How of the Open Meeting Rule (cont.)

- The rules of order:
  - Procedure bylaw
  - Due notice of time and place of meetings
  - Meetings must be held within the boundaries of the municipality (subject to exceptions)
  - Various rules of decorum (voting, quorum, role of the mayor, etc.) are set out in the *Community Charter*

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### The What, Where and How of the Open Meeting Rule (cont.)

- Section 128 of the *Community Charter* permits special council meetings to be held electronically
- Such meetings are also subject to the open meeting rule

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### The What, Where and How of the Open Meeting Rule (cont.)

- Section 89(2) of the *Community Charter*
- Certain actions are prohibited in a closed council meeting, namely, the reading or adoption of a bylaw

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### After a Closed Council Meeting

- Local governments should consider whether the minutes and other records generated in relation to the closed council meeting should be released

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### After a Closed Council Meeting (cont.)

- The head of a local government may refuse to disclose information that would “reveal the substance of deliberations” of a closed council meeting under s.12(3)(b) of FOIPPA if:
  - The meeting was authorized to be closed by the Community Charter; and
  - The information is not in a record that has been in existence for 15+ years

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### After a Closed Council Meeting (cont.)

- Section 117(1)(b) of the Community Charter
- Unless specifically authorized by council, a council member or former council member must keep information considered in a closed council meeting confidential until:
  - council discusses the information at a meeting that is open to the public; or
  - otherwise releases the information to the public

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### The What, Where and How of The Open Meeting Rule (cont.)

- Consequences of breaching the open meeting rule:
  - Failure to observe procedure is unlikely to result in invalidation of a bylaw or a resolution adopted at the meeting (*Rella v. Montrose (Village)*)
  - Continued ....

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### The What, Where and How of The Open Meeting Rule (cont.)

- Failure to hold an open meeting when required warrants less judicial deference to the decision and may result in invalidation of a bylaw or a resolution adopted at the meeting
  - *London (City) v. RSJ Holdings Inc.*
  - *TimberWest Forest Corp. v. Campbell River (City)*
- Continued...

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### The What, Where and How of The Open Meeting Rule (cont.)

- If a closed council meeting was not authorized to be closed under the Community Charter, the head of a local government will not be able to refuse to disclose information pursuant to section 12 of FOIPPA

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### The What, Where and How of The Open Meeting Rule (cont.)

- Section 117(2) of the Community Charter
- If the municipality suffers loss or damage because a person contravenes Section 117(1) (b)(confidential information) and the contravention was not inadvertent, the municipality may recover damages from the person for the loss or damage

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### The What, Where and How of The Open Meeting Rule (cont.)

- UBCM recently endorsed a resolution that the Community Charter be amended to provide that a council member who breaches s.117 will be subject to disqualification from office

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- COMMENTS? QUESTIONS?

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