


LOCAL GOVERNMENT LAW FOR  
NEWLY ELECTED OFFICIALS

Local Government Leadership Academy  
– Electoral Areas

City of Richmond  
January 20, 2015

Presented by:  
Peter Johnson



STEWART McDANNOLD STUART  
Barristers & Solicitors

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**INTRODUCTION**

Outline

- Constitutional source of powers
- Statutory framework
- Types of Local Governments – Municipalities and Regional Districts
- Regional District purposes/powers
- Regional District Boards and their governance
- Bylaws and resolutions
- Delegation of powers
- The role of the courts – judicial review of Regional District decisions
- Other things you should know...

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**CONSTITUTIONAL SOURCES OF POWER**

Constitution Act, 1867

- Legislative powers are divided between Federal and Provincial levels of government
- Federal powers include those over railways, banks, criminal law, navigation and shipping, and aeronautics
- Provincial powers include municipal institutions and matters of a local nature
- Province establishes local governments by statute – grants local governments powers within areas of Provincial competence

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**CONSTITUTIONAL SOURCES OF POWER**

Constitution Act, 1867

- Local governments cannot exercise powers within the exclusive jurisdiction of the federal government
- For example:
  - Local governments cannot regulate noise to the extent that this interferes with the operation of an airport
  - Local governments cannot regulate matters that are essentially "criminal" in nature



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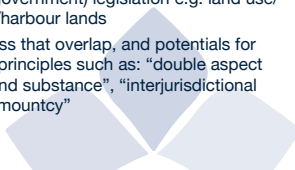
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**CONSTITUTIONAL SOURCES OF POWER**

Constitution Act, 1867

- Some matters have both federal and provincial aspects – in our federal system this means that a degree of overlap may exist between federal and provincial (local government) legislation e.g. land use/ planning for port/harbour lands
- The courts address that overlap, and potentials for conflict, through principles such as: "double aspect doctrine", "pith and substance", "interjurisdictional immunity", "paramountcy"



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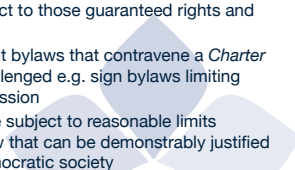
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**CONSTITUTIONAL SOURCES OF POWER**

Constitution Act, 1982

- The Canadian *Charter of Rights and Freedoms* guarantees certain rights and freedoms.
- Exercise of government (including local government) authority is subject to those guaranteed rights and freedoms
- Local government bylaws that contravene a *Charter* right may be challenged e.g. sign bylaws limiting freedom of expression
- *Charter* rights are subject to reasonable limits prescribed by law that can be demonstrably justified in a free and democratic society



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**STATUTORY FRAMEWORK**

History

- Until 1998, primary legislation applicable to local government was the *Municipal Act*
- Following a series of legislative reforms in the late 1990's, the *Municipal Act* renamed the *Local Government Act*, and municipal and regional district powers were broadened
- In 2004, substantial portions of the *Local Government Act* were repealed and the *Community Charter* was enacted

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**STATUTORY FRAMEWORK**

Local Government Act

- The *Local Government Act* retains provisions applicable to Municipalities and Regional Districts, including:
  - Incorporation of municipalities and boundary changes
  - Elections and Other Voting
  - Challenge of Bylaws
  - Legal Proceedings
  - Regional Growth Strategies
  - Planning and Land Use Management
  - Heritage Conservation

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**STATUTORY FRAMEWORK**

Local Government Act

- *Local Government Act* also contains provisions that apply exclusively to Regional Districts
  - Regional District corporate powers (Part 5) including:
    - Agreements
    - Assistance
    - Disposing of Land and Improvements
    - Delegation
  - Regional District officers and employees (Part 5.1)
  - Boards and their proceedings (Part 5.2)

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**STATUTORY FRAMEWORK**

Local Government Act

- *Local Government Act* also contains provisions that apply exclusively to regional districts
  - Regional District fees and charges (Part 10.1)
  - Specific Regional District service powers in relation to fire protection, health, etc. (Part 15)
  - Building Regulations (Part 21)
  - Regulation of animals, nuisances and disturbances (Part 22)
  - Part 24 – Regional Districts

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**STATUTORY FRAMEWORK**

Local Government Act

Part 24 – Regional Districts

- Incorporation of Regional Districts
- Government and procedure (including section 791 – voting on resolutions and bylaws)
- Services and powers
- Establishing bylaws for services
- Cost recovery for services
- Requisition and tax collection/tax exemptions
- Dispute resolution in relation to services
- Financial operations (including financial plan, borrowing)

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**STATUTORY FRAMEWORK**

Community Charter

- Came into force in 2004
- Grants broad regulatory and service powers to municipalities
- Grants “natural person powers” to municipalities
- Contains provisions that are also applicable to Regional Districts, for example:
  - Remedial action requirements
  - Open/closed meetings
  - Conflict of interest
  - Bylaw enforcement, i.e. Municipal Ticket Information provisions; enforcement by civil proceedings

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**STATUTORY FRAMEWORK**

Other Provincial Statutes that Affect Regional Districts

- *Freedom of Information and Protection of Privacy Act*
- *Land Title Act*
- *Environmental Management Act*
- *Fire Services Act*
- *Hospital District Act*
- *Public Health Act*
- *Drinking Water Protection Act*
- *Water Act*
- *Financial Disclosure Act*
- *Agricultural Land Commission Act*



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**TYPES OF LOCAL GOVERNMENT**

Municipalities and Regional Districts

- Two main categories of local governments – Municipalities and Regional Districts
- Municipalities as an institution have existed in the Province for well over 100 years
- Municipalities enjoy broad regulatory and service powers, and “natural person powers”
- Framework for Regional Districts created in 1964 with an amendment to the former *Municipal Act*
- Regional Districts comprised of member municipalities and the unincorporated areas outside municipal boundaries known as electoral areas



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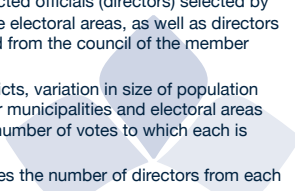
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**TYPES OF LOCAL GOVERNMENT**

Municipalities and Regional Districts (cont'd)

- Municipalities are governed by the council, which is composed of elected officials – mayor and other council members
- Regional districts are governed by the Board - composed of elected officials (directors) selected by the electors in the electoral areas, as well as directors appointed by and from the council of the member municipalities
- For regional districts, variation in size of population between member municipalities and electoral areas determining the number of votes to which each is entitled
  - also determines the number of directors from each municipality



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**REGIONAL DISTRICTS**

Regional District Purposes

*Local Government Act section 2:*  
Recognizing that regional districts are an independent, responsible and accountable order of government within their jurisdiction, the purposes of a regional district include

- (a) providing good government for its community,
- (b) providing the services and other things that the board considers are necessary or desirable for all or part of its community,
- (c) providing for stewardship of the public assets of its community, and
- (d) fostering the current and future economic, social and environmental well-being of its community.

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**REGIONAL DISTRICTS**

Regional District Powers

A Regional District may fulfill its statutory purposes by exercising its powers, duties and functions to:

- Provide services to its members municipalities and electoral areas
- With its member municipalities, develop regional growth strategy
- Exercise authority over land use planning in electoral areas
- Exercise its regulatory authority – e.g. building inspection, animal control
- Exercise its corporate powers – entering into agreements with other public bodies (e.g. First Nations), providing assistance to benefit the community

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**REGIONAL DISTRICTS**

Regional District Powers

- Corporate powers
- Service powers
- Regulatory powers
- Other statutory powers



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**REGIONAL DISTRICTS**

Regional District Powers – Corporate Powers

A Regional District's corporate powers (*Local Government Act*, section 176) include the authority to:

- enter into agreements
- dispose of and acquire land and other assets
- provide assistance (e.g. grants)
- delegate its powers, duties and functions
- engage in business undertakings
- establish commissions to operate services

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**REGIONAL DISTRICTS**

Regional District Powers – Corporate Powers

- Statutory limits on corporate powers include:
  - disposition of land and improvements – must make available to the public (with exceptions); publish notice of intent to dispose
  - electoral approval process for contracts over 5 years if Regional District incurs a capital liability
  - delegation of powers, duties and functions (discussed later)
  - acquisition of shares/incorporation of companies – requires approval of the Inspector of Municipalities

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**REGIONAL DISTRICTS**

Regional District Powers – Service Powers

- Regional District service powers have evolved over time - Regional Districts now have broad service powers
- "Service" – an activity, work or facility undertaken by or on behalf of a Regional District; includes exercise of regulatory authority
- *Local Government Act*, section 796(1) - subject to any statutory limitations, a Regional District may operate any service that the Board considers necessary or desirable for all or part of the regional district

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**REGIONAL DISTRICTS**

Regional District Powers – Service Powers

- Regional Districts provide “local” services (e.g. water, sewer, building inspection) to electoral areas, and municipal participants
- Provide planning service in electoral areas
- Provide services to municipalities and electoral areas that are “regional” in nature – trunk sewers, sewage treatment, land fills, regional parks in nature



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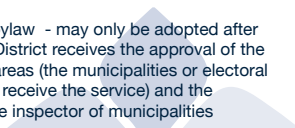
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**REGIONAL DISTRICTS**

Regional District Powers – Service Powers

- With certain exceptions (such as the service of general administration), in order to operate a service the Board must first adopt an establishing bylaw for the service (*Local Government Act*, section 800(1))
- Establishing bylaw - may only be adopted after the Regional District receives the approval of the participating areas (the municipalities or electoral areas that will receive the service) and the approval of the inspector of municipalities



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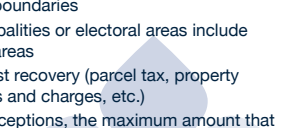
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**REGIONAL DISTRICTS**

Regional District Powers – Service Powers

Establishing bylaws set out:

- Description of the service
- Service area boundaries
- Which municipalities or electoral areas include participating areas
- Method of cost recovery (parcel tax, property value tax, fees and charges, etc.)
- With some exceptions, the maximum amount that may be requisitioned for the service
- Each Regional District service operates independently and must sustain itself financially



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**REGIONAL DISTRICTS**

Regional District Powers – Regulatory Powers

- Regional Districts have the authority to adopt bylaws that regulate in relation to Regional District services (*Local Government Act* section 796.2)
- As an aspect of that power to regulate:
  - may provide for a system of licences, permits and approvals
  - may “discriminate” by establishing categories of area, time, conditions, persons, places, activity, property or things
- Examples: a Regional District could adopt a regulatory bylaw in relation to a water service, and under that bylaw set rules for the use of the service, impose fees and charges, etc.

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**REGIONAL DISTRICTS**

Regional District Powers – Regulatory Powers

- Exception to broad regulatory powers - “regulatory services”
- Defined as the exercise of a regulatory authority that is conferred on a Regional District by the *Local Government Act* or another enactment (other than certain specific regulatory authority under the *Local Government Act*)
- Regulatory services would include: building regulation, regulation of animals, regulation of noise and nuisances, zoning regulation
- With regulatory services, extent of the power to regulate must be found within the authorizing legislation

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**REGIONAL DISTRICTS**

Regional District Powers – Regulatory Powers

Notable limits on Regional District regulatory powers:

- business regulation and licensing
- highways

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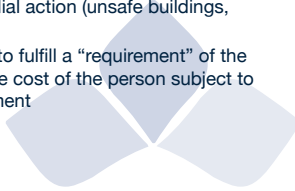
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**REGIONAL DISTRICTS**

Regional District Powers – Other Statutory Powers

A Regional District also enjoys powers under legislation to:

- expropriate
- order remedial action (unsafe buildings, nuisances)
- take action to fulfill a “requirement” of the Board, at the cost of the person subject to the requirement



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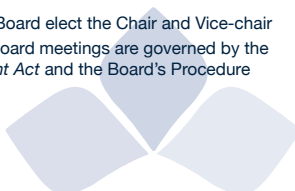
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**REGIONAL DISTRICT GOVERNANCE**

Board as the Governing Body

- The Board is the governing body of the Regional District (section 174, *Local Government Act*)
- The Board is comprised of the elected and appointed directors
- Members of the Board elect the Chair and Vice-chair
- Proceedings at Board meetings are governed by the *Local Government Act* and the Board’s Procedure Bylaw



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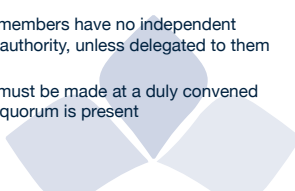
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**REGIONAL DISTRICT GOVERNANCE**

Board as the Governing Body

- Only the Board may exercise the powers, duties and functions of the Regional District, unless provided otherwise by the *Local Government Act* or another enactment
- Individual Board members have no independent decision-making authority, unless delegated to them by the Board
- Board decisions must be made at a duly convened meeting, when a quorum is present



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**REGIONAL DISTRICT GOVERNANCE**

Board meetings

- Board meetings must be open to the public - *Community Charter* section 89
- Open meeting rule also applies to Board committees
- Exception – Board meeting may (in some cases **must**) be closed where subject matter relates to one or more topics outlined in *Community Charter* section 90 including:
  - labour/employee relations
  - acquisition or disposition of land
  - litigation/legal advice

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**REGIONAL DISTRICT GOVERNANCE**

Board meetings

- What constitutes a “meeting”?
- *Southham Inc. v. Ottawa (City)*

“The key would appear to be whether the councillors are requested to (or do in fact attend without summons) attend a function at which matters which would ordinarily form the basis of council’s business are dealt with in such a way as to move them materially along the way in the overall spectrum of a council decision. In other words, is the public being deprived of the opportunity to observe a material part of the decision-making process?”
- Retreats, informal gatherings may qualify as a “meeting”, to which the open meeting rules applies

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**REGIONAL DISTRICT GOVERNANCE**

Board Chair

- *Local Government Act* confers specific powers on the Chair:
  - Chair is the head and chief executive officer of the regional district.
  - In addition to the Chair’s powers and duties as a board member, the Chair has the following duties:
    - to see that the law is carried out for the improvement and good government of the regional district;
    - 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;

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**REGIONAL DISTRICT GOVERNANCE**

Board Chair (cont'd)

- 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;
- 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.
- In addition, the Chair has the statutory right to ask for reconsideration of a matter (section 219 *Local Government Act*)

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**REGIONAL DISTRICT GOVERNANCE**

Bylaws and Resolutions

- Regional District Board may only exercise its powers by bylaw or resolution (*Local Government Act* - section 794(5) )
- If an enactment requires that a power be exercised by bylaw, it may only be exercised by bylaw
- If the enactment does not specifically require the adoption of a bylaw, then the power may be exercised by either resolution or bylaw

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**REGIONAL DISTRICT GOVERNANCE**

Bylaws and Resolutions (cont'd)

- Bylaws are a formal statement of legislative intent
- Bylaws are "enactments", and may be enforced through the courts by prosecution, ticketing or through civil proceedings commenced by the Board
- Resolutions are a formal expression of a Board decision
- Resolutions are typically adopted as an exercise of a corporate power, e.g. to enter into an agreement, dispose of or acquire land, hire or terminate an officer; or as a matter of procedure at a Board meeting

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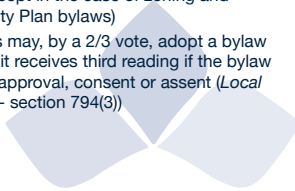
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**REGIONAL DISTRICT GOVERNANCE**

Bylaws

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



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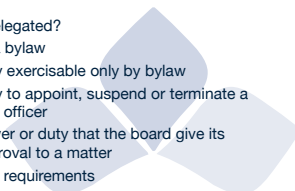
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**REGIONAL DISTRICT GOVERNANCE**

Delegation

- A Board may delegate its powers, duties and functions
- For the most part, delegation must be by bylaw – requires 2/3 of votes cast
- The holding of a hearing may be delegated by bylaw or resolution
- What cannot be delegated?
  - the making of a bylaw
  - a power or duty exercisable only by bylaw
  - a power or duty to appoint, suspend or terminate a regional district officer
  - a statutory power or duty that the board give its consent or approval to a matter
  - remedial action requirements



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**REGIONAL DISTRICT GOVERNANCE**

Delegation (cont'd)

- Board powers, duties and functions may be delegated to:
  - officers or employees
  - its committees or its members
  - other bodies established by the Board
  - the holding of a hearing may only be delegated to one or more directors



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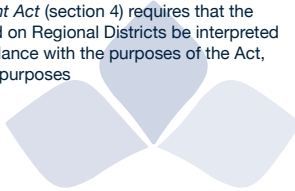
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**THE ROLE OF THE COURTS**

Legal proceedings

- Courts have evolved in their approach to review of local government decisions – now take a more deferential approach in reviewing decisions of elected officials
- *Local Government Act* (section 4) requires that the powers conferred on Regional Districts be interpreted broadly in accordance with the purposes of the Act, Regional District purposes



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**THE ROLE OF THE COURTS**

Legal proceedings

- However, the exercise of a Regional District's powers, duties and functions may be challenged in the courts:
  - Proceedings to set aside a decision or bylaw
  - Claims for damages or other relief against the Regional District and its officers and employees



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**THE ROLE OF THE COURTS**

Legal Proceedings

- The *Local Government Act* sets out a statutory process for challenging local government bylaws or resolutions
- On application under section 262, a court may set aside all or part of a bylaw, resolution or order for illegality
- There are strict time limits for bringing an application under these provisions



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**THE ROLE OF THE COURTS**

Legal Proceedings

- In addition, local government decisions may be subject to review or challenge:
  - Under the *Judicial Review Procedure Act*;
  - By court proceedings in which a declaration of invalidity or illegality is sought
- Challenge to the lawfulness of a local government decision or action may also form the basis for a claim in damages
- Standard of review will depend on the category of the decision

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**THE ROLE OF THE COURTS**

Review of Legislative Decisions

- Bylaw adoption often includes considerations of broad public policy
- Courts do not interfere with legislative powers unless court finds:
  - “ultra vires” – no legal authority
  - bylaw adopted in “bad faith”
  - vague and uncertain
  - discriminatory without express authority
  - statutory procedures for adoption not followed
- as well the courts have confirmed that bylaws are subject to judicial review based on their “reasonableness”

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**THE ROLE OF THE COURTS**

Challenge to Decisions - Failure to Comply with Procedural Requirements

- *Community Charter and Local Government Act* establish rules of procedure, which if not followed may result in legal challenge to decisions
- Courts may declare bylaws invalid if statutory process not followed
- Examples of procedural requirements include:
  - notice of intention to sell an interest in real property;
  - failure to give notice of a statutory public hearing

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### THE ROLE OF THE COURTS

#### Review of Legislative Decisions (cont'd)

- Bylaws are also subject to judicial review based on their "reasonableness".
- *Catalyst Paper Corp. v. North Cowichan (District)*:  
"It is thus clear that courts reviewing bylaws for reasonableness must approach the task against the backdrop of the wide variety of factors that elected municipal councillors may legitimately consider in enacting bylaws. The applicable test is this: only if the bylaw is one no reasonable body informed by these factors could have taken will the bylaw be set aside. The fact that wide deference is owed to municipal councils does not mean that they have *carte blanche*."

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### THE ROLE OF THE COURTS

#### Review for "reasonableness"

- *Catalyst Paper Corp. v. North Cowichan (District)*  
"The case law suggests that review of municipal bylaws must reflect the broad discretion provincial legislators have traditionally accorded to municipalities engaged in delegated legislation. Municipal councillors passing bylaws fulfill a task that affects their community as a whole and is legislative rather than adjudicative in nature. Bylaws are not quasi-judicial decisions. Rather, they involve an array of social, economic, political and other non-legal considerations . . . In this context, reasonableness means courts must respect the responsibility of elected representatives to serve the people who elected them and to whom they are ultimately accountable"

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### THE ROLE OF THE COURTS

#### Review of Legislative Decisions (cont'd)

- No duty of care in the law of negligence in relation to the exercise of legislative powers – i.e. adoption of a bylaw
- However, actions of officers and employees in fulfilling their duties or exercising authority under a bylaw may give rise to a duty of care in the law of negligence – e.g. building inspection claims
- Under negligence law, courts also distinguish between "policy" and "operational" decisions – adoption of a bylaw is a clear example of a "policy" decision

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**THE ROLE OF THE COURS**

Review of Quasi-Judicial Decisions

- Decisions that affect an individual's or corporation's rights or interest in property (e.g. placing a notice on title to warn of a building problem, ordering property clean up, remedial action requirement)
- Similar to the kind of decisions a judge or administrative tribunal would make
- Courts apply principles of administrative law (natural justice/procedural fairness) to review of quasi-judicial decisions

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**THE ROLE OF THE COURTS**

Review of Quasi-Judicial Decisions (cont'd)

- Procedural fairness and natural justice may require:
  - 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

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**THE ROLE OF THE COURTS**

Review of Quasi-Judicial Decisions (cont'd)

- The first four apply in every case
- In contrast to the requirement that individual elected officials maintain an "open mind" when making legislative decisions, when acting in a quasi-judicial capacity Board members have a duty to be impartial
- 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

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**OTHER THINGS YOU SHOULD KNOW**

A few other points to consider...

1. Respect the role and experience of Regional District staff
2. Conflict of interest rules and the consequences of violating them
3. Duty to respect confidentiality (*Community Charter* section 117)
4. Consequences of authorizing illegal expenditures
  - *Community Charter* – section 191
  - *Orchiston v. Formosa* (2014) – recognizes defence of honesty and good faith
5. Statutory immunity from personal liability (*Local Government Act* section 287(2)) – note exceptions for dishonesty, gross negligence, malicious or wilful misconduct, libel or slander

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